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Proceedings and Debates
of the
Constitutional Convention
of the
State of Ohio

Convened January 9, 1912; adjourned June 7, 1912;
reconvened and adjourned without
day August 26, 1912.

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VOLUME II.

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Secretary of the Convention.

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PREFATORY NOTE

The prefatory note to the first volume of the Proceedings and Debates leaves little to be said by way of introduction to the second. The work, it will be seen, extends considerably beyond the limit of fifteen hundred pages contemplated in the contract with the printer.

The appendix to this volume is self-explanatory. It contains a list of the members of the convention similar to the one on pages one and two of the first volume, with the addition of the country and date of birth of each member. These items have been taken from the biographical sketches compiled by Captain N. W. Evans, delegate from Scioto County and historian and reference librarian of the Convention. These sketches, together with the photographs of all the members of the Convention, have been transferred, in compliance with Resolution No. 162, to the library of the Ohio State Archaeological and Historical Society, as have also the itemized account of all expenditures, duplicate copies of bills and vouchers, the original manuscript journal and other documents in the office of the secretary of the convention.

The constitution of Ohio, followed by the facsimile signatures, has been compiled from the best texts available. A few very obvious omissions or inaccuracies have been indicated by the proper word or letters in brackets. The date of adoption of all amendments prior to those submitted at the special election September 3, 1912, is given in every instance in order that the reader may determine what provisions are now in force. The Convention did not essay the task of eliminating all portions of the constitution of 1851 that had been superseded, modified or repealed by amendment.

The proposals introduced in the Convention were all printed, some of them more than once in amended form. These are available in libraries. The printed journal of the Convention contains the full text of the constitutions of Ohio of 1802 and 1851 respectively, and the constitution proposed for the state by the convention of 1873-74, with references from the sections of each to corresponding sections of the other.

Much has been written and more will doubtless yet be written of the work of the Constitutional Convention of 1912. A list of references to published articles was prepared for the appendix, but it has been omitted because it would soon be incomplete and for the further reason that such a list corrected to date may be found in many libraries of the state. While a number of these are well supplied with printed matter relating to the subject, the most complete collection will be found in the library of the Ohio State University. This collection, with the documents transferred to the library of the Ohio State Archaeological and Historical Society, located on the university grounds, brings within easy reach of the students of that institution and others interested practically all of the available source material on the Constitutional Convention and its work.

In these days, when the light of publicity shines upon all public events, great and small, it is needless to say that there will be found abundant source materials for the study of the Fourth Constitutional Convention and its work.

The index with which this volume closes, it is believed, will be found a comprehensive and satisfactory guide to the Proceedings and Debates.

C. B. GALBREATH,
Secretary of the Convention.

54098

FIFTY-SECOND DAY

(LEGISLATIVE DAY OF APRIL 2)

EVENING SESSION.

MONDAY, April 8, 1912.

The Convention met pursuant to recess, was called to order by the president and opened with prayer by the Rev. W. C. Stevenson, of Columbus, Ohio.

The president recognized the delegate from Mahoning [Mr. ANDERSON].

Mr. KNIGHT: Will the gentleman from Mahoning [Mr. ANDERSON] yield for a motion to suspend consideration of the present business for five minutes so seven or eight proposals can be referred to the committees?

Mr. ANDERSON: I will yield.

Mr. KNIGHT: I move that the pending discussion be suspended for five minutes.

The motion was carried.

Mr. KNIGHT: I now move that the rules be suspended in order that we may make a reference of proposals to the committees.

The motion was carried.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposals were read the second time by their titles and referred as follows:

Proposal No. 322 — Mr. Bowdle. To the committee on Judiciary and Bill of Rights.

Proposal No. 323 — Mr. Hoffman. To the committee on Equal Suffrage and Elective Franchise.

Proposal No. 324 — Mr. Antrim. To the committee on Taxation.

Proposal No. 325 — Mr. Anderson. To the committee on Judiciary and Bill of Rights.

Proposal No. 326 — Mr. Anderson. To the committee on Judiciary and Bill of Rights.

Proposal No. 327 — Mr. Beatty, of Wood. To the committee on Legislative and Executive Departments.

Proposal No. 328 — Mr. Woods. To the committee on Corporations other than Municipal.

Proposal No. 329 — Mr. Knight. To the committee on Education.

Mr. PIERCE: I would ask the gentleman from Mahoning [Mr. ANDERSON] to yield that I may ask unanimous consent of the Convention to introduce a resolution.

The delegate from Mahoning [Mr. ANDERSON] yielded and the gentleman from Butler [Mr. PIERCE] offered the following resolution:

Resolution No. 99:

WHEREAS, This Convention has been in session for practically three months, and,

WHEREAS, The work so far accomplished is but a small fraction of the whole work to be done, and,

WHEREAS, It is now necessary to take up much time with committee work, and,

WHEREAS, Many of its members are engaged in agricultural pursuits who feel their services are required at home, and,

WHEREAS, If due weight and consideration are given to all proposals submitted, and that may be submitted hereafter, it will require much time to dispose of them, and,

WHEREAS, It should be the policy of this Convention to give every proposal careful attention without being hurried in its closing days, therefore,

Be it resolved, That it shall be the policy of this Convention to hold three sessions a day, except Monday, from 9:30 to 12:00 o'clock a. m.; 1:30 to 5:00 o'clock p. m., and from 7:00 to 10:00 o'clock p. m. on Tuesday, Wednesday, Thursday and Friday of each week until the Convention has fully completed its labors.

Be it further resolved, That this Convention shall adjourn after the session on Friday night of each week until the following Monday evening at 7:00 o'clock.

Be it further resolved, That the chairman and minority chairman, if any, of any committee shall not speak longer than one hour consecutively on any subject, and that no other member shall speak longer than thirty minutes, without the unanimous consent of this Convention.

The PRESIDENT: The resolution will lie over under the rule.

Mr. KNIGHT: I now move that the discussion of the pending proposal be resumed.

Mr. SMITH, of Hamilton: Will the gentleman from Mahoning [Mr. ANDERSON] yield to me just a minute?

Mr. ANDERSON: Yes.

Mr. SMITH, of Hamilton: I introduced last Monday night an amendment to the Anderson proposal. I was asked by the vice president at that time to withdraw the resolution. I wanted to yield at the time, but my object in introducing it was to get it in the journal and printed so that every member could see what it is. During the last week, as some of you noticed, those members of the Convention who think the way to stamp out the evils in the liquor traffic is by a restricted license met and their conclusion was it would not be well at this time and in this Convention to inject another discussion on that proposal. You gentlemen know that I did not discuss the liquor proposition when it was up. It is a matter that does not touch me much personally, but I represent a constituency largely interested, and I want, with your permission, to make a motion now to indefinitely postpone Resolution No. 92 so it will not come up at this time. I want, before putting that motion, on behalf of the large wholesale interests, amounting to millions of dollars, in Cincinnati, to give due notice to all of you gentlemen, so you may know exactly what you

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are asked to do, that an amendment will be offered to the liquor license proposal when it comes up for its third reading. With that explanation I move to indefinitely postpone my resolution offered last Monday night.

The motion was carried.

On motion of Mr. Knight the consideration of the pending matter was then resumed and the chair recognized the gentleman from Mahoning [Mr. ANDERSON].

Mr. ANDERSON: Gentlemen of the Convention: In the beginning, I wish to say that I do not expect to read from any books except those in front of me [referring to a number of Ohio State Reports], and in reality I have not these books here for that purpose, but I have them here so that if I am challenged I shall be able to prove by the supreme court reports that the statements I make are true.

Mr. DOTY: We would rather take your word for it.

Mr. ANDERSON: The only way I could get you to take my word would be to have the evidence in front of me.

Now take this Proposal No. 184. I believe that this is the most important proposal that has been before this body or will come before this body. If it becomes a law, it will produce the most immediate good to the largest number of people; and the greatest good I see in it is that it makes, in many questions, the circuit court the court of final determination. Judge Worthington has one thing in his amendment to which I very much object, and that is that all questions where the interpretation of a statute is concerned may be taken to the supreme court. That, in effect, would be the same as it is at the present time. You gain next to nothing, therefore, by the Peck proposal. I also object to the amendment suggested by the member from Fayette [Mr. JONES], for under his proposed amendment if the circuit court disagrees on questions of law and fact it would permit the case to go to the supreme court. It must be understood by you who are not attorneys that at the present time the supreme court does not review questions of fact, and that the amendment offered by the member from Fayette, instead of diminishing the amount of work of the supreme court, would increase it.

The object of the Peck proposal, as I understand it, is to effect a speedy and economical determination of the rights of litigants. In other words, it is for the purpose, if the litigant be right, of permitting him speedily and economically to obtain that which is his, and if he be not right, of permitting that fact to be determined quickly and cheaply. We all know the great hardships that are caused by the law's delay. There is not a writer in any magazine or a writer of text books, who in any way touches upon the subject, that does not speak in emphatic terms of the great hardship occasioned to the poor people by reason of the law's delay.

Let us analyze the proposal so you who are not lawyers may understand. Say, for instance, my friend, Mr. Watson, while upon the train coming to this Convention, by reason of a derailment, has suffered injury. By reason of his becoming a passenger the company agreed to carry him to his destination safely. The company, of course, is not an insurer, but by its contract it impliedly agreed to exercise the highest degree of care. Shortly after the accident the claim agent of the company goes to see Mr. Watson for the purpose of attempting to make a settle-

ment, in which he fails. The next thing and the only thing left for Mr. Watson is to employ an attorney. The attorney draws a petition, Mr. Watson signs and swears to it and it is filed in the clerk's office and a summons issues. The railroad company is notified, through a deputy sheriff, that it has been sued. The summons is taken to the office of the corporation lawyers. The corporation, through its attorneys, for the sake of delay, files a demurrer or some motion. After the motion or demurrer is disposed of in Mr. Watson's favor, the railroad company, through its attorney, files an answer and in the answer it will probably set up contributory negligence on Mr. Watson's part, as he may have been standing in the aisle, or may have been attempting to walk through the car, or may have been on the platform at the time of the derailment. By reason of the claim of contributory negligence it will be necessary for Mr. Watson to file his reply. The filing and disposing of these papers in court will take at least six months. Then a jury is impaneled and at the end of the plaintiff's testimony a motion is made by the defendant's counsel to direct a verdict for the defendant. That motion is addressed to the learned man on the bench. The relationship of carrier and passenger existing between the railroad company and Mr. Watson, the motion will be denied. Then the defendant corporation puts in its evidence, and at the end of all the evidence the attorney for the defendant renews its motion to direct the verdict for the defendant, and that again is directed to and passed upon by the learned judge. Then upon the part of the railroad company comes a request to charge before argument and the charge is given provided it is the law. Then comes the argument of counsel to the jury, by the attorneys for the plaintiff and the defendant. After the arguments of counsel the judge charges the jury on what he believes to be the law, and in the charge he will especially caution the jury not to be influenced by prejudice or passion or sympathy in favor of the injured party. After considerable deliberation the jury brings in its verdict for Mr. Watson. Within three days the attorney for the defendant corporation files a motion for a new trial. That motion is heard by the judge and he reviews the evidence and the law, and if he finds the law and evidence both in favor of Mr. Watson he then renders a judgment on the verdict, and that ends the trial of the case in the common pleas court.

The next step taken by the railroad company is to get out a record and bill of exceptions. This is done by the official stenographer, and the bill of exceptions and record is in typewritten form; then the case is taken to the circuit court, composed of three men learned in the law, and those three men carefully and conscientiously review the law and the evidence, and if the evidence is in Mr. Watson's favor, and the trial judge has made no mistake in his charge to the jury before or after argument, and if he has made no mistake in overruling motions or demurrers, and if he has made no mistakes in the introduction or exclusion of evidence, then the circuit court will decide the controversy in Mr. Watson's favor. At least a year and one-half have elapsed from the time of the receiving of the injury and the time of the final determination by the circuit court, and hundreds of dollars have been spent in the way of attorney's fees, court costs and costs of records and briefs. The railroad com-

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pany, through its attorneys, wishing to delay the payment of the judgment as long as possible, then takes the case to the supreme court, but before it can be taken to the supreme court the typewritten record on which it was tried in the circuit court must be printed, and the briefs of all parties must also be printed, all of which means an expenditure of a considerable amount of money. In about two years from the time that the circuit court found in favor of Mr. Watson the case would be heard and determined by the supreme court, consisting of six judges, and say, for the sake of argument, that the supreme court might find some technical, prejudicial error of the trial court in the introduction or exclusion of evidence or in its charge to the jury, that error would cause a reversal of the case and would necessitate Mr. Watson's starting again in the common pleas court, to all intents and purposes as if the case had never been tried.

The Peck proposal, provided it had been the organic law, would have stopped that case in the circuit court cheaply and quickly, and if the money was legally due Mr. Watson at all it was his at the time he was negligently injured, and if Mr. Watson were wrong in his contention, and there was no money legally coming to him, he ought to have found it out long before it was necessary to go to the supreme court. No one can claim that under the Peck proposal the corporation would not be entirely and completely protected in all things that honestly demand that protection should be extended.

The law today is not the poor man's law. The poor and the wealthy do not stand equally before the law. But some one may urge that the rich should have full opportunity to defend against any claim, but we insist that we give full opportunity to the wealthy to defend. Let us analyze it. Under the Peck proposal the petition, the demurrers, motions, answers, the motions to direct verdicts, the charging of the law before and after argument, the motion for a new trial, the trial of the case in the circuit court, or, if the Peck proposal is adopted, the court of appeals, are all addressed to learned judges, and surely after not only the jury has found in favor of the injured party, but all matters that the judges have a right to speak on are also determined in the plaintiff's favor, no one can claim that the corporation has not been properly protected and all of its rights conserved. It is a notorious fact that considerable attention of the railroad companies' attorneys is given to a study of determining how best a final determination of a claim against a railroad company can be delayed. A lawyer for a corporation is paid as much for causing delay as he is paid for actual work in the trial of a case.

Mr. ELSON: May I ask a question?

Mr. ANDERSON: Certainly.

Mr. ELSON: If I understand the Peck proposal it provides if a case involves a constitutional point it may be carried up to the supreme court; is that correct?

Mr. ANDERSON: Yes.

Mr. ELSON: Could not almost any corporation lawyer inject some kind of a constitutional point in the average case?

Mr. ANDERSON: No; I do not think so. He could inject an interpretation of a statute in very nearly every case, but not a constitutional question, for the reason that practically every constitutional question that can be made, where a master is on one side and the servant on the

other, or an individual on one side and a corporation on the other, has been determined. The corporations for so many years have been trying to escape liability through the avenue of the unconstitutionality of statutes that there is practically nothing left undecided.

It must be understood that we are trying to get the Peck proposal through, not as a protection to the lawyers, because if we were legislating in our organic law for the lawyer we would create a higher court, which would be over the supreme court, and we would probably, if we did our full duty toward the attorneys, not stop there, because every court in which a case can be reviewed, of necessity, means additional fees to the lawyer.

Mr. KRAMER: How much more do the attorneys who take damage suits against railroad companies get, if the cases go to the supreme court than if they stop in the circuit court?

Mr. ANDERSON: No more, as a rule, and for this reason: Unfortunately the men who have causes for wrongful injury, or a widow who has a cause of action for the wrongful death of her husband, have no money to pay the attorney a retainer or pay him his fees, because, with very few exceptions, it is the man who has to work around dangerous machinery or in dangerous occupation for his day's wage that is injured or killed, and, although we claim that we have great prosperity in the United States, it has required all the money he could possibly make by day's wage to take care of his family. Therefore, by reason of the poverty of the litigant the attorney has to take such case upon a contingent fee, and if it were not for the fact that some "damage lawyer" is willing to take the case upon a contingent fee the corporation would go acquit, and that is one reason why, through corporate influence, so many harsh and abusive things have been said concerning lawyers who take cases upon a contingent fee.

But let me again state we are not legislating with an eye single to the benefit to the lawyers, and therefore we claim that we should not be compelled to try our cases in the same old way. You know that the lawyer, other than the "damage lawyer," charges a big fee for taking a case to the supreme court. He assumes an air of importance and tells his client that he is taking it to the "supreme court of Ohio;" that he is getting out a printed record and brief, and by repeatedly mentioning the "supreme court" and producing a feeling of awe in his client he succeeds in charging a larger fee than it is worth, for it is easier to try a case in the supreme court than it is in the common pleas or circuit courts. An attorney should charge less, but he always charges more. Therefore, if we were legislating for the lawyers, we would add another court instead of reducing it by one. Nor are we legislating here for the benefit of the supreme court.

Speakers told us the other day—several of them—that if the Peck proposal prevailed the supreme court would not have much, if anything, to do, and the speakers' conclusions were, because the supreme court would not have anything to do, we must put that great burden and charge on the poor people to the end that the supreme court would be kept reasonably busy.

Let me again say we are not legislating with an eye single for attorneys and the supreme court; we are try-

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ing to legislate for the whole people of the state of Ohio, including the attorneys and the members of the supreme court. I admit that it is difficult to discuss this question without doing that which the newspapers may say is making an attack upon the supreme court, but I am not trying to do that. It is far from my intention. I have practiced law before a great many judges, both federal and state. I do not believe I ever practiced law before a corrupt judge; consequently, I am not trying to make an attack upon any judge or any set of judges, and that is one of the reasons I have here before me these many books which contain the opinions of the supreme court. I have a right to refer to what there is contained in these books. I am not in any way responsible for the record therein contained, and if it may be said that I criticise the supreme court such claim must be predicated upon the fact that the decisions which the court has made seem to create hardships.

The people who suffer most by reason of the law's delay are the persons of little or no wealth. The poor people who have to go into court to try to get that which is legally coming to them are those who while in the employ of some corporation have received an injury, or the representatives of those who while employed by a corporation were negligently killed.

Judge Taft, in speaking of this class of litigants, said:

No one can have sat upon the federal bench as I did for eight or nine years and not realize how defective the administration of justice in these cases must have seemed to the defeated plaintiff, whether he was the legless or armless employe himself or his personal representative. A non-resident railway corporation has removed the case which had been brought in the local court of the county in which the injured employe lived to the federal court, held, it may be, at a town forty or one hundred miles away. To this place, at great expense, the plaintiff was obliged to carry his witnesses. The case came on for trial, the evidence was produced and under the strict federal rule as to contributory negligence or as to the non-liability for the negligence of the fellow servant, the judge was obliged to direct the jury to return a verdict for the defendant.

* * * How could a litigant thus defeated, after incurring the heavy expenses incident to litigation in the federal court, with nothing to show for it, have any other feeling than that the federal courts were instruments of injustice and not justice, and that they were organized to defend corporations and not help the poor to their rights?

You will notice that Judge Taft was describing the procedure in a federal court. For twenty years I have been practicing law and where it was possible I have taken my cases into the federal court instead of the state court. I did it because the federal courts of this part of the United States, notwithstanding the description of Judge Taft (himself, for years, a federal judge), were preferable to the state courts.

Let me read what another judge has said, a man of national reputation, and I especially desire to call your attention to the criticism made upon the floor of this Convention of the Peck proposal, in reference to that para-

graph which, upon constitutional questions, holds that all of the judges of the supreme court must concur before they can hold an enactment of the general assembly unconstitutional. The writers upon constitutional law and the judges themselves, in their opinions, state that before an act can be declared unconstitutional its unconstitutionality must clearly appear. In fact, some writers claim that the rule is the same as in criminal cases, and the unconstitutionality must appear beyond the question of a reasonable doubt, and before a court can declare a law unconstitutional it is its duty to do everything within reason to so interpret the law in question as to render it constitutional. Since that is the rule, how can a court of nine, five one way, and four another, declare an act of the legislature unconstitutional? Is there not a doubt where four out of nine, all equally learned, hold an act to be unconstitutional?

Mr. JONES: Is it not the duty of every judge to give a case that comes before him his individual best judgment, and if the individual and best judgment of that court is that the law is unconstitutional is there as to that majority any reason for doubt?

Mr. ANDERSON: That is just the point. If the five were there by themselves constituting the court it would be all right, but there are four other men who are supposed to be equally learned, equally honest and equally conscientious, who do not agree with them. Does not that put the decision in the domain of doubt?

Mr. JONES: Is not there too much in your argument? If it proves anything in regard to the constitution does it not prove something in favor of the point I make?

Mr. ANDERSON: No.

Mr. JONES: In other words, the rule of a majority of the court determining the question does not apply?

Mr. ANDERSON: I will explain that. You remember I opposed the less-than-unanimous verdict in criminal cases because the rule in criminal cases differs entirely from that in civil cases. In criminal cases you have to find the accused guilty beyond the question of a reasonable doubt, but in civil cases all you need is probability. And our supreme court, in 80 O. S., there lays down the rule of probability. Where there are probabilities at stake, and only that, then it would be proper for the deciding court to render a verdict on probabilities, and that was the reason why I favored the passage of the Elson proposal, requiring less than a unanimous verdict in civil cases. But where the rule is that before an act can be declared unconstitutional it must be clearly and beyond a doubt so found, then a majority of one does not take such question out of the realm of doubt. Have I answered you?

Mr. JONES: Would it not be possible with that rule to put the judgment of one man against eight or nine?

Mr. ANDERSON: You don't want minority rule?

Mr. JONES: Suppose you have a case in the common pleas court where the common pleas judge holds the law unconstitutional, and the court of appeals also holds it unconstitutional. Now you go to the supreme court of six judges, and five of them declare it unconstitutional. Do you think it the right thing to let that one man man in the supreme court defeat the judgment

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of the five members of the supreme court, the three circuit judges and the common pleas judge?

Mr. ANDERSON: You didn't start back far enough. Where did the act come from?

Mr. JONES: Do you think it right to let one member of the supreme court, by his individual judgment, defeat the judgment of the other nine judges that the law was unconstitutional?

Mr. ANDERSON: You didn't start back far enough. In the first place, take the house of representatives. We presume there are a number of lawyers elected to the house, and we presume they are moderately well posted in the law, as well, say, as the average lawyers on this floor. It may be a violent presumption, but we will presume for the sake of argument that they are, and those lawyers give their best efforts to framing the law. Then from the house of representatives the act goes to the senate, and we will presume the senate has a like proportion of lawyers, who give their best attention to the consideration of the proposed law. And the house and senate pass it and then it goes to the governor—I hope in the future the governor will be a lawyer, and generally he has been a lawyer—and then we will presume that the governor, after careful consideration, does not veto it but approves it, and of course if there is any question concerning the constitutionality of the law he will ask the advice of his attorney general. Then we will say, later, in the court of common pleas the constitutionality of the act is questioned, but that the judge of the court of common pleas holds it to be constitutional; from there the case is taken into the circuit court and two circuit judges say it is unconstitutional and one says it is constitutional; from there the case is taken to the supreme court, composed of six learned men, and they divide equally three to three, and that by reason of the circuit court, divided though it was, holding the law unconstitutional, would cause the act of the legislature to be declared null and void. What have you in favor of the constitutionality of the act? The house of representatives, the senate, the attorney general, the governor, the common pleas judge, one of the circuit court judges and three of the supreme court judges. But as against them you have two circuit judges and three supreme court judges. So that, after all, you have, under my hypothetical statement, minority rule, and in reference to that which all law writers declare must be found unconstitutional beyond the question of a reasonable doubt.

Now let me read to you what this ex-judge, this man of national reputation, Mayor Gaynor, has said on this question:

Nothing is more distressing than to see a bench of judges, old men as a rule, set themselves against the manifest and enlightened will of the community in matters of social, economic or commercial progress.

The same rule is true in matters of moral and religious growth. Jesus, Socrates, and many who came after them, age after age, fell victims to judicial narrowmindedness.

Let me cite some of the recent judicial decisions which are planted right in the path of economic and social progress.

The tenement house tobacco case was decided by the court of appeals of this state in 1885.

Good men and women found tobacco being manufactured into its various products in tenements. They found little children born and brought up there in the unwholesome fumes of tobacco. They applied to the legislature and had a law passed forbidding the manufacture of tobacco in such tenements.

The courts held it was "unconstitutional." They professed to find this constitutional provision latent in the general provision in our state constitution that no one shall be deprived of "life, liberty or property without due process of law."

The court has said that the tenant has the right, under the constitution, to do what he liked in the way of lawful business in his tenement.

Some years later good and intelligent influences brought about the enactment of a statute for the sanitary regulation of underground bakeries. It prescribed a list of sanitary safeguards, and also that the employes should not work more than ten hours a day.

The supreme court of the United States declared this ten-hour requirement to be unconstitutional, as depriving workmen, without due process of law, of the "liberty" to work as long hours as they saw fit in underground bakeries.

The learned court stood five to four. Notwithstanding a rule which is often repeated by the courts that they will declare a statute unconstitutional only in a case free from doubt, they declared this statute unconstitutional. What is five to four but a state of doubt?

In 1893 the legislature passed a statute that women should not work in factories between the hours of 9 at night and 6 in the morning. This statute was intended to protect the health of women, and hence of their offspring.

It is almost inconceivable that the gentlemen then composing the court of appeals of this state found in this humane and benevolent law an infringement of the "liberty" of women.

It is not at all to be wondered at that such decisions should provoke a widespread dissatisfaction with the courts. These decisions so exasperated the people of this state that they swept them all out of existence.

Who is to be the judge of legislation as to whether it tends to general health, comfort, safety and welfare? The legislature, representing the community? No. The judges took that unto themselves. They judge, therefore, over the heads of the legislators and declare legislation unconstitutional which exceeds their opinion of what is economically or socially wise or beneficial.

No such power was ever given to the courts. They have simply taken it away from the legislative department of government. They have set themselves up as "protectors" of society against the lawmaking power, safeguarded as it is by the consent of two houses and the executive veto.

They do not seem to consider who is to protect us against them in their judicial legislation.

Mr. WATSON: Do you think that decision is rendered in the light of the Declaration of Independence?

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Mr. ANDERSON: No; I think it was in the "light" of big interests. I have no doubt all of you who are attorneys have in your library "Words and Phrases". Let me read from volume 3, page 2096:

The most odious and dangerous of all laws would be those depending on the discretion of judges.

Lord Camden, one of the greatest and purest of English judges, said:

The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends on constitution, temper and passion. At best it is often caprice. In the worst it is every vice, folly and passion to which human nature can be liable.

What is the definition of judge-made law? What do we mean by judge-made law? It very largely springs from the common law. The common law is supposed to be present wherever there are communities. As soon as you have a territory you have common law, and always within the borders of the state common law is present, and it differs in different states, because of the personality of the judges, because of the environment of the judges, because of the habit of thought of judges. Take Pennsylvania and Ohio. On the one side of the line you have one kind of common law and on the other side another and entirely different and distinct kind of common law. The rights of the people, so far as outlined by the common law, may be largely protected on one side, and just on the other side of the imaginary line dividing the states by reason of this same common law the rights of the corporation and "big business" may be supreme. Judge-made law very largely depends upon the condition of the liver of the judge at the time of its making.

Now you hear much of assumed risk. Assumed risk has been defined as the legal right given through judge-made law to a corporation to kill and maim without any legal responsibility on its part. Let me repeat it. The common law right given to the corporation to kill and maim its servants without any legal responsibility is known as the doctrine of "assumption of risk." In England away back in 1837, in what was known as the Presley case, the doctrine of assumed risk was first enunciated. It was not such bad law then, because few men were working together, each knew the other, each knew whether the other men employed were careless or drunken, and consequently they could be vigilant and guard against any negligence. This doctrine of the Presley case appeared in Massachusetts in 1844, in the Farwell case. It was like the English sparrow, insignificant when it arrived from England, but it has multiplied greatly. The assumption of risk has been used by the corporation lawyers, inducing judges to add a little in this case and a little more in some other case, always growing in the direction that causes the rights of the individual to be decreased, until it has taken upon itself such proportions that it is stronger than the rights of the individual; yes, even stronger than the acts of the legislature.

Another judge-made law is known as the "fellow servant rule." It was first enunciated in England, and it had its first application where not to exceed fifteen men were employed in a common enterprise. The doctrine

of fellow servant was then based upon good logic and justice—that where each man worked so near to every other, and so few men are employed that each, in the exercise of ordinary care, can protect himself against the carelessness of his neighbor, then under the law, if he is injured by reason of the act of a co-employee, his master does not have to respond in damages. This judge-made defense has been ad'led to by innumerable judges, and the addition meant the diminishing of the rights of the individual, so that today the reason and logic of the rule have long ceased to exist. Take our big mills at Youngstown, where there are six or eight thousand men engaged in each mill. There is no opportunity for one of the men so employed to keep any supervision over any other, because, with the complicated machinery there used, the servant who may cause injury may be a long distance removed from the place at which the accident occurred. Yet if one of these men is injured by reason of the negligent act of any other the judge-made law exonerates the corporation. It must be understood that I am not in any way referring to the statutory law, but to the common law. Apply this doctrine of the fellow-servant to steam railroads. A telegraph operator, by reason of his inexperience—and no set of men, considering the responsibility resting upon them, are paid so poorly as telegraph operators—may cause injury to some brakeman who lives hundreds of miles from the place of work of the telegraph operator, but the judges hold that the negligence of the telegraph operator is the negligence of a "fellow servant" and the railroad company is innocent of any blame.

No judge-made law was ever repealed by any other judge-made law. Consequently, to try to escape from the rigors of the common law relief was sought through the lawmaking body instead of the law-interpreting body, and the result was that a number of protective acts were passed. I believe that the number in Ohio is from thirty to thirty-five. When a remedy, therefore, is sought by an individual against corporate interests, if you permit the interpretation of these protective statutes to be lodged in the court of last resort then you permit the statutory laws that take the place of the judge-made law to be interpreted by those who have applied the judge-made laws to the same conditions that are sought to be remedied by the statutes, and that is just what is accomplished under the Worthington amendment. It is urged that no statute would go to the court of last resort upon interpretation more than once, but the national safety appliance act has been taken to the federal courts for interpretation more than fifty times. Consequently, if the Worthington amendment becomes a part of this proposal it in a very large measure nullifies it.

I have here some reported cases that I looked up this afternoon and I believe they will be interesting to you. If there is any question as to any of them I have the Supreme Court Reports in front of me to prove the statements I am about to make. I was desirous of knowing the number of cases where the individual interest came in conflict with the corporation to determine to what extent a different result would have been had provided the Peck proposal had been the law for the last ten or fifteen years. When a case goes to the supreme court it is decided with or without report. In other

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words, if it is decided without report it is disposed of in very few words, the court stating whether the plaintiff in error or the defendant in error wins. If it is reported, then one of the judges writes the opinion. It is published in the Supreme Court Reports, and that becomes, on the particular legal question involved, the determining factor in other cases of the same nature. Consequently the great importance of reported cases will at once be seen. I understand that within two or three years past a law was enacted stating that the supreme court should give written reasons in all cases whether the case was affirmed or reversed, but the supreme court, not being in the same department with the lawmaking power, did not see fit to obey the law. I do not want any mistake made in reference to just what I mean, for I have only examined the reported cases where the individual was on one side and the corporation on the other, and where the circuit court was reversed by the supreme court. They are as follows:

- Railroad Company vs. Ehlert, Admr., 63 O. S. 320.
- Railroad Company vs. Marsh, 63 O. S. 236.
- Railroad Company vs. Fox, Admx., 64 O. S. 133.
- Railroad Company vs. Aller, 64 O. S. 183.
- Railroad Company vs. Skiles, 64 O. S. 469.
- Railroad Company vs. Gaffner, 65 O. S. 118.
- Railroad Company vs. Shaffer, 65 O. S. 414.
- Railroad Company vs. Osborn, 66 O. S. 45.
- Pennsylvania Company vs. McCurdy, 66 O. S. 120.
- Railway Company vs. Cox, Admx., 66 O. S. 276.
- Railway Company vs. Kistler, 66 O. S. 326.
- Railway Company vs. Workman, 66 O. S. 509.
- Railway Company vs. Little, 67 O. S. 91.
- Railway Company vs. Lake, Admx., 68 O. S. 101.
- Railway Company vs. Kinz, 68 O. S. 210.
- Kelley Island Lime & Transport Company vs. Pachute, Admx., 69 O. S. 442.
- Railway Company vs. Rigny, 69 O. S. 181.
- Railroad Company vs. McCormick, 69 O. S. 45.
- Railway Company vs. Ludtke, 69 O. S. 384.
- Railway Company vs. McClellan, Admx., 69 O. S. 142.
- Railway Company vs. Lockwood, 72 O. S. 586.
- Railway Company vs. Hubbard, 72 O. S. 302.
- Railway Company vs. Loftus, 72 O. S. 288.
- Railway Company vs. Chambers, 73 O. S. 16.
- Railway Company vs. Forrest, 73 O. S. 1.
- Railway Company vs. Stephens, Admr., 75 O. S. 171.
- Terminal Company vs. Hancock, 75 O. S. 88.
- Railway Company vs. Ropp, 76 O. S. 449.
- Railway Company vs. Johnson, 76 O. S. 119.
- Railway Company vs. Harvey, 77 O. S. 240.
- Railway Company vs. Cappel, 80 O. S. 128.
- Railway Company vs. Kessler, 84 O. S. 74.
- Railway Company vs. Addison, 84 O. S. 259.

It will be noticed that I started with 63 O. S. and end with 84 O. S., the 84th being the last volume. I made this examination of these cases with the object in view of finding the cases that had been won by the individual in the circuit court and where, if the Peck proposal had been in effect, those cases would have ended and I find that of these reported cases thirty-three which would have ended in the circuit court in favor of the individual were reversed by the supreme court and re-

ported. These cases, because they were reported, make the standard by which all inferior courts in the state of Ohio are to be guided—not only guided, but controlled. Therefore, it is quite important to those interested to have the law determined in their favor, because not only does the establishing of law control the lower courts in like cases, but when a similar case is brought into an attorney's office and he is consulted concerning it, he, in examining the Supreme Court Reports, will be compelled to advise his client in accordance therewith. There are thirty-three cases in those fourteen books [pointing to the books on the desk] which were won by the individual in the circuit court, but all of them, except those where judgment was rendered against the individual, were reversed and sent back to the common pleas court, compelling the individual to start his litigation all over again. In every one of these he had to wait for some years before a reversal was had in the supreme court, and it means, therefore, that he will have to wait an additional number of years before the case will again reach the supreme court, and in many instances the litigants were surrounded by abject poverty. The thing that is demonstrated by the examination of these reports is the fact that of the cases such as I have described, where the legal rights of the individual and of the corporation were in conflict, and where the circuit court was reversed by the supreme court and the cases reported, that one of such cases, within the fourteen volumes mentioned, was where the decision of the circuit court was in favor of the individual against the corporation. It means, therefore, that thirty-three cases were determined and established in favor of the corporation and one in favor of the individual. So there can be no mistake about the importance of reported cases and their far-reaching effect, let me give you another illustration: For many years it was held that where a railroad company owned a turntable and children were in the habit of congregating about the turntable and playing with it, it was the duty of the railroad company to exercise ordinary care to the end that the children should not, by reason of their playful instincts, receive injury. But we find, in 77 O. S., p. 235, in *Railroad Company vs. Harvey*, that the railroad company is not liable to an infant who is injured while playing with a turntable. The circuit court had held that the railroad company was responsible, and this is one of the cases among the thirty-three mentioned. This reported case being controlling upon all accidents of a like nature that would happen after its determination, it means that for all time, no matter how many children may be injured by the lack of ordinary care on the part of the railroad company in and about its turntable, yet no recovery can be had. This is the judge-made law in Ohio. The courts of the United States, Minnesota, Nebraska, Missouri, Kansas, Iowa, California, Washington, Tennessee, Illinois, South Carolina, Georgia and Texas hold that where a railroad company failed to exercise ordinary care it would have to respond in damages. The one case of the thirty-four where law was made for the individual is *McGarvey vs. Railway Company*, 83 O. S. 73.

Mr. WATSON: May I here make one suggestion to the gentleman?

Mr. ANDERSON: Yes.

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Mr. WATSON: You will have no objection if I use that later on for the recall of judges?

Mr. ANDERSON: No I am not in favor of the recall of judges, nor am I in favor of the recall of decisions, but I do want to recall the court back to the people, and you do recall the court back to the people with this Peck proposal, for then you will have an opportunity of personally knowing all of the judges. The judges will be in closer contact with the people and the people with the judges; for judges who are nominated and elected in the state as a unit must be, of necessity, unknown at the time of the nomination and election to over ninety-five per cent of the voters. I am not one who believes that a judge suddenly becomes greatly more learned upon being transported from the common pleas or circuit bench to the supreme court. I do not believe that any judge on the supreme bench is any better qualified than such men as Judge King, Judge Norris and Judge Taggart. I would trust them with all great questions as willingly as I would the judges of the supreme court.

Mr. KRAMER: I want to understand you—

Mr. ANDERSON: I am trying to explain to men who are not lawyers.

Mr. KRAMER: Well, I want to understand too. Do you mean for us to infer that the supreme court was wrong in those thirty-three cases that were appealed from the circuit court and won by the railroads?

Mr. ANDERSON: Well, they are not always right are they?

Mr. KRAMER: How do you know?

Mr. ANDERSON: I have read some of the cases and I believe I can prove it to you. I have some of them here.

Mr. ROEHM: You have not included hundreds of cases that have gone unreported where the supreme court reversed similar cases.

Mr. ANDERSON: No; I could not do that. I did not have time and it would mean the examination of more than a thousand cases, and not only the examination in the supreme court, but you would have to go back, because they are unreported, to the court below.

Let me suggest this to you: That certainly the rights of the individual had as much reason to be safeguarded by the supreme court as had the rights of the corporation. Then how can you in any way explain that in thirty-three out of thirty-four cases, where the circuit court was reversed and the cases reported, only one such case was favorable to the individual and thirty-three in favor of the corporation when it is understood that the reporting of a case means that the law which controls is thereby made?

Mr. HALFHILL: Were there any more cases carried up by the individual than the one you referred to?

Mr. ANDERSON: I have tried to make that plain. I only had time this afternoon to find these cases. I suppose I could have found a great many more by hunting longer. These are the cases the supreme court reported where its action is different from the circuit court and where it reversed and found in favor of the corporations.

Mr. TALLMAN: Is it not a fact that the circuit court deciding against the individual often report their cases?

Mr. ANDERSON: The circuit court?

Mr. TALLMAN: Yes.

Mr. ANDERSON: Nobody pays any attention to those decisions.

Mr. TALLMAN: Don't they often report cases in favor of corporations?

Mr. ANDERSON: They certainly ought to and also in favor of the individual.

Mr. TALLMAN: Now if they decide any cases in favor of the corporation and the case is reported and then it goes up to the supreme court and the case is affirmed, does not that make the law as announced by the circuit court the decision of the supreme court?

Mr. ANDERSON: No; I wish it did, but it does not—a non-reported case does not.

Mr. TALLMAN: It does to a number of bars.

Mr. ANDERSON: It does not to courts before which I practice.

Mr. TALLMAN: If the circuit court decides a case and reports a case, and that case goes to the supreme court and is affirmed, doesn't that adopt the opinion of the circuit court?

Mr. ANDERSON: No, sir; the supreme court has made that very plain and has decided that in no way do they adopt as part of their findings that which the lower court reported. Ex-President Roosevelt, when he was here, said that which seemed very familiar to me, and I am afraid he did not use quotation marks. I will read from the case and tell you where he obtained it and I will read the whole paragraph. This is found in *Railway Company vs. Taylor*, 210 U. S. 295:

When applied to the case at bar the argument of hardship is plausible only when the attention is directed to the material interests of the employer to the exclusion of the interests of the employee and of the public.

Where an injury happens through the absence of a safe drawbar there must be hardship. Such an injury must be an irreparable misfortune to some one. If it must be borne entirely by him who suffers it, that is a hardship to him. If its burden is transferred, as far as it is capable of transfer, to the employer, it is a hardship to him. It is quite conceivable that congress, contemplating the inevitable hardship of such injuries, and hoping to diminish the economic loss to the community resulting from them, should deem it wise to impose their burdens upon those who would measurably control the causes, instead of upon those who are, in the main, helpless in that regard.

Now keeping that decision in 210 U. S. in mind, I want to call your attention to what the supreme court has held, and I read from the case of 49 O. S. 607:

The servant, in order to recover for defects in the appliances of the business, is called on to establish three propositions: 1, That the appliance was defective; 2, That the master had notice thereof, or knowledge, or ought to have had; 3, That the servant did not know of the defect, and had not equal means of knowing with the master.

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An employe injured by reason of defective machinery has to establish, before he can recover, that he did not have equal means of knowing with the master. In other words, if he had equal means of knowing with the master then that would be a complete bar. In answer to this judge-made law I want to again quote from a decision by Judge Taft:

But the degrees of care in the use of a place in which work is to be done, or in the use of other instrumentalities for its performance, required of the master and servant in a particular case, may be, and generally are, widely different. Each is required to exercise that degree of care in the performance of his duty which a reasonably prudent person would use under like circumstances; but the circumstances in which the master is placed are generally so widely different from those surrounding the servant, and the primary duty of using care to furnish a reasonably safe place for others is so much higher than the duty of the servant to use reasonable care to protect himself in a case where the primary duty of providing a safe place or safe machinery rests on the master, that a reasonably prudent person would ordinarily use a higher degree of care to keep the place of work reasonably safe, if placed in the position of the master who furnishes it, than if placed in that of the servant who occupies it.

But in Ohio not only must the injured servant establish that he did not have equal means of knowing with the master, but this Ohio judge-made law states that the servant must further establish that he, the servant, did not know, nor in the exercise of ordinary care could he have known, of the defective machinery, but where a defect in the machinery or appliances caused the death of the servant, yet, under this judge-made law, the widow suing as administratrix must establish that her dead husband, before she can recover damages for herself and children, did not know, or in the exercise of ordinary care could not have known, that the machinery was defective.

Since the language used by one of the common pleas judges, in passing upon this holding, is stronger than any language that I would care to use, I will quote it:

I undertake to say that in a case like that of Clark, where a dead man is called upon to prove that he did not know a certain thing, that it is a substantial foreclosure of his cause of action. How is he going to prove that fact, that he himself had due notice or knowledge? * * *

Taking the 49 O. S., and have this man prove that he did not know of that existence, when he was in his grave, it simply bars him from the right of action. You can't do it; you might as well save your paper and pen in drawing that petition.—6 Nisi Prius. N. S. 451.

Mr. HALFHILL: Would you have the Convention believe that the legislature could not change it?

Mr. ANDERSON: Certainly they can change it, and they did do it in the Norris law, which I helped to pass and which I drafted.

Mr. HALFHILL: Didn't your law simply construe the law?

Mr. ANDERSON: Where do you find that?

Mr. HALFHILL: That is the common law you are speaking about, is it not?

Mr. ANDERSON: Yes; I am talking about the common law or judge-made law.

Mr. HALFHILL: Does not the judge apply the rule of the common law in all proceedings unless a statute changes it?

Mr. ANDERSON: Yes, but the judges make the common law.

Mr. HALFHILL: That is what I understand your proposal is for.

Mr. ANDERSON: That is it exactly.

Mr. HALFHILL: Then you can consistently criticize the judge if he is not furnished with the law by the legislature and the rule of evidence and substantive law is not changed by the legislature? That is the question I want to get at.

Mr. ANDERSON: I am afraid I put it awkwardly, my friend. The point I am trying to emphasize is this: I am trying to draw a distinction between the judge-made common law and legislative enactment, and I am trying to show the foolishness, as in the Worthington amendment, of putting up to the judge who makes the judge-made law (that kind of judge-made law that makes you go down into the grave to get evidence before you can recover) the right to interpret the legislative enactment which is supposed to take the place of his judge-made law.

Mr. HALFHILL: In the case in the United States court that you referred to there was a decision under the federal safety appliance act?

Mr. ANDERSON: Yes, a drawbar.

Mr. HALFHILL: There was no set act under consideration by the supreme court of Ohio, was there?

Mr. ANDERSON: Section 8 of the federal safety appliance act was written into it as an inhibition against assumption of risk as a defense.

Mr. HALFHILL: But in these cases in the supreme court of Ohio, which you criticize, the supreme court was not passing on legislative acts?

Mr. ANDERSON: No, sir.

Mr. HALFHILL: They were announcing the rule of the common law?

Mr. ANDERSON: That is their common law because it does not exist as statutory law.

Mr. HALFHILL: Is not that a rule of common law?

Mr. ANDERSON: Of the judge who made it. It never was the statutory law and never will be.

Mr. HALFHILL: Let me ask you a question: Instead of attempting by fundamental law to control the supreme court in those matters of personal injury, is it not a fact that the best economic thought today teaches us that we should pass some laws that would distribute on the employer the burden?

Mr. ANDERSON: Workmen's compensation laws?

Mr. HALFHILL: Something of that kind, instead of leaving it to the court that we ought to get out of it by passing a proper workmen's compensation law; is not that the burden of the argument today, rather than put it into the fundamental law as you are arguing here?

Mr. ANDERSON: That is beside the particular question we are now discussing, but let me answer it, for

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I have had some experience along that line. For some years my efforts have been directed toward just such an act as you suggest—workmen's compensation. I do not care how much it reduces my business. I am heartily in favor of it, because no crippled man or widow, where her husband has been wrongfully killed, ought to be compelled to employ a lawyer and pay him a contingent fee of a fourth or a third to obtain money which is honestly and legally due, but because of the practice that now exists, and for which the corporation is entirely responsible, such amount must be paid as contingent fees. I do not believe the so-called "damage lawyer" is to blame, for he certainly ought not to be expected to try the case without compensation, but the corporation, with its extremely able attorneys and active co-operation of many claim agents, is to blame. The individual certainly needs some legal assistance, and if individuals cannot employ attorneys upon a contingent fee, then, by reason of their poverty, they would be denied the right of being represented by counsel. But let us examine the history of workmen's compensation in Ohio, and see whether the corporations are in favor of it.

Some years ago we introduced the so-called Norris law, defining employer's liability, in the house of representatives and you, Mr. Halfhill, are familiar with it, and you know that it has worked no hardships, but it has been an extremely just law, and you further know that what the Norris law did was to correct the abuses that had grown up under judge-made laws. Remember that the corporations had never suggested that they wanted a workmen's compensation law, but when we began to have some success in the lawmaking body with the Norris act—thanks to the Ohio Federation of Labor—then the corporations developed a great friendship and interest for and in the workmen's compensation act, so much so that Mr. Brenner, of Springfield, who, by the way, failed of election for his second term, drew a substitute for the Norris bill. He and Mr. Cobb, who also failed of being elected for his second term, wished this substitute looking toward the establishment of workmen's compensation law to take the place of the proposed Norris law, and this substitute providing for a committee to be appointed to examine into workmen's compensation law was substituted in the house and such substitute was then sent to the senate, where Senator Matthews, of Cleveland, there had substituted the original Norris bill for the substitute sent over from the house. Then upon the Norris bill coming back to the house, it carried by practically a unanimous vote. It was indeed a little hard on the corporations, for in their attempt to escape from the liability law they had succeeded in getting started a demand for workmen's compensation, and we have it today by reason of the fact that they tried to kill all laws which would supersede the judge-made law.

And let me ask you this, Mr. Halfhill: If the corporations are so much interested in workmen's compensation, why do they not take advantage of the law now on our statute books?

Mr. TALLMAN: Don't you agree that all the crudities and injustices arising out of the extension of the rules of the common law which pertain to property and necessarily, under the advance of civilization, from the original common law of England where every employe associated with the man he worked with—the law of

fellow servant—cannot all of those crudities and injustices be remedied by legislation, clear, plain and simple, that would be absolutely binding on the courts?

Mr. ANDERSON: I have a lot of matter that later on will answer that question.

Mr. TALLMAN: Do you agree with that?

Mr. ANDERSON: No; I can prove just the opposite.

Mr. TALLMAN: If the judges go according to the intent of the legislative enactment, won't that be the result if a legislative enactment is sensibly drawn?

Mr. ANDERSON: Well—

Mr. TALLMAN: Answer yes or no.

Mr. ANDERSON: I will answer you. If the judges interpret according to the intent of the law that would produce the desired result, but unfortunately they seldom have done that.

Mr. TALLMAN: They are supposed to do it.

Mr. ANDERSON: But the supposition is in many cases wrong.

Mr. TALLMAN: You say you are not casting any reflections on the supreme court when you say that; aren't you casting reflections?

Mr. ANDERSON: If the statutes were not interpreted as their spirit indicated then let that fact be a reflection. I have the proof.

Mr. TALLMAN: Men may go wrong—

Mr. ANDERSON: I don't say they go wrong. I will read these cases and let you decide.

Mr. TALLMAN: If the legislature could remedy that and a legislative act goes to the supreme court for interpretation, have we not then with the interpretation of that statute one general rule applicable to all counties and districts of the state which everybody knows?

Mr. ANDERSON: Hypothetically it is true. That has to be true because your statement makes it such.

Mr. TALLMAN: If the case stops in the circuit court and there is no review by the supreme court, haven't we as many different rules of law, or may we not have, as there are circuit courts?

Mr. ANDERSON: Have you read the Peck proposal?

Mr. TALLMAN: Yes.

Mr. ANDERSON: You can get the answer in it.

Mr. TALLMAN: I would like to have you answer.

Mr. ANDERSON: The Peck proposal answers it.

Mr. TALLMAN: But I want you to answer it.

Mr. ANDERSON: There is a rule in the Peck proposal that those decisions can be made uniform.

Mr. TALLMAN: How about the poor fellow going there—he has to go to the supreme court to get uniformity?

Mr. ANDERSON: But there will be only one "poor fellow" to go, not hundreds as under the present system.

Mr. TALLMAN: The short route is to remedy by legislation.

Mr. ANDERSON: But legislation does not remedy it.

Mr. TALLMAN: That is with the legislature.

Mr. ANDERSON: No; it is not.

Mr. TALLMAN: Then we ought to have a referendum applied to these laws.

Mr. ANDERSON: Well, we can have it. Let me answer the gentleman. I did not intend to take this up

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at this time. Your position is this: Go to the legislature and get the legislature to pass certain laws, clear and distinct, and that will be such a check and control upon the supreme court that it will have to do the decent thing and quit making so-called judge-made laws. That is your statement, is it not? That is, you would correct the evil of judge-made laws because the judges do not correct it themselves, and because from year to year the judge-made defenses of contributory negligence, assumed risk and fellow servant are becoming more and more in favor of the corporation—you would correct them through the legislature?

Mr. TALLMAN: Yes.

Mr. ANDERSON: Then you are saying more severe things against the supreme court than I.

Mr. THOMAS: Is it not a fact that it kept the labor organizations of Ohio busy amending the safety laws to meet the misconstruction placed upon them by the supreme court of Ohio?

Mr. ANDERSON: It seems that I cannot make that which might be called a speech. I will have to make myself understood through the medium of answering questions.

To illustrate what I mean, in stating that you can obtain the proper remedy through legislative made laws, I wish to call your attention to a number of cases. A man by the name of Naramore was working in the railroad yards at Cincinnati, if I remember correctly, and he was coupling and uncoupling cars in the night time, and although the rules of the company provide that a brakeman must not go between the cars while they are moving, yet the employe would be discharged if he insisted upon obeying the rules. The coupling or uncoupling has to be made while the cars are moving, and in 1884 or 1885 the legislature of Ohio did as Mr. Tallman suggested. It passed a law so clear, so far as construction is concerned, that there could not be any mistake about it, stating to the railroad companies that they had to block their frogs and guard rails, because railroad employes walking between the cars in the night season, busily engaged, under the old link-and-pin system, in attempting to uncouple cars, might step into the unblocked frog or guard rail and be caught, and these unguarded frogs and guard rails were largely of the same nature as traps that we as boys used to use to catch muskrats. They would hold a foot and when a foot was fastened the moving cars would cause the brakeman thus held to be injured for life or he would have his life crushed out. The legislature, therefore, to guard against this destruction of life and limb, passed a law requiring the railroad companies to block the frogs and guard rails. Naramore's foot was caught in one of these unguarded places and his foot was cut off. He started his suit in the state court and by reason of diverse citizenship and the amount involved being more than \$2000, the railroad company removed it to the United States court at Columbus or Cincinnati and the case was there tried. The United States circuit court held that Naramore assumed the risk of the unblocked frogs and guard rails and could not recover. The case was then taken to the United States circuit court of appeals, composed of Judges Taft, Lurton and Severance, one of the ablest courts that ever rendered a decision. Judge Taft in his opinion said—

Mr. TALLMAN: Judge Taft held otherwise?

Mr. ANDERSON: Yes, and he was right. So that men who are not lawyers may understand this allow me to explain that assumption of risk grows out of contract, express or implied, and cannot arise in any other way. In other words, it is part of a contract of employment based upon the supposition that the man remains in the service of the master after he knew, or in the exercise of ordinary care might have known, of the dangers incident to the employment. The assumption of risk always sounds in contract, express or implied. Judge Taft said:

If, then, the doctrine of the assumption of risk rests really upon contract, the only question remaining is whether the courts will enforce or recognize as against the servant an agreement, express or implied, on his part to waive the performance of a statutory duty of the master imposed for the protection of the servant, and in the interests of the public, and enforceable by criminal prosecution. We do not think they will. To do so would be to nullify the object of the statute.

The only ground for passing such a statute is found in the inequality of terms upon which the railway company and its servant deal in regard to the danger of their employment. The manifest legislative purpose was to protect the servant by positive law, because he had not previously shown himself capable of protecting himself by contract; and it would entirely defeat this purpose thus to admit the servant to contract the master out of the statute. It would certainly be novel for a court to recognize as valid an agreement between two persons that one should violate a criminal statute; and yet, if the assumption of risk is the term of a contract, then the application of it in the case at bar is to do just that.—37 C. C. A. 502 (opinion by Taft, circuit judge).

That is a good, commonsense, humane and confidence-inspiring opinion, is it not?

Mr. TALLMAN: I thoroughly agree with just what he said there and if the statutes had added that failing to put in that guard they would be liable for damages, or if they had made the act something similar to employers' liability, the court could not have made the decision they did.

Mr. ANDERSON: You are getting in a little too far. You apparently are not familiar with what our supreme court did later. A man named Johns, in the night season, in the railroad yards in Cuyahoga county got his foot caught in an unguarded guard rail and the moving cars crushed his life out. I suppose the lawyers for the widow knew about the Naramore case. She as administratrix brought suit against the railroad company for illegally killing her husband. The corporation, in attempting to save a few dimes, was a wilful lawbreaker, subject under the laws of Ohio to a fine, and by reason of its failure to spend a few dimes the head and support of the Johns family was taken away. The corporation and the servant being citizens of the same state, the case could not be removed to the federal court. There being no diverse citizenship there could be no right predicated on the federal statutes, and it had to remain in the state court and the supreme court held that as a complete defense to the widow's right to recovery the railroad company could set up the doctrine of assumption of risk.

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Mr. TALLMAN: That was before the passage of the switch-block law.

Mr. ANDERSON: It certainly was not before the passage of that law. You are not familiar with it. I will give you the case. The accident happened after 1885.

Mr. TALLMAN: Did that take place while the employers' liability act was in force?

Mr. ANDERSON: It was under exactly the same circumstances and the same statute as applied in the Naramore case where Judge Taft held that recovery could be had. In other words, the United States circuit court of appeals held that where the master was a lawbreaker and the lawbreaking propensity proximately caused the injury to the servant, then in a suit by the servant for damages the corporation could not set up as a defense assumption of risk.

Mr. TALLMAN: I fully understand you and fully agree with you.

Mr. ANDERSON: Then you do not agree with the supreme court?

Mr. TALLMAN: But no decision could be made under the employers' liability as passed—

Mr. ANDERSON: You mean the Norris law?

Mr. TALLMAN: Yes.

Mr. ANDERSON: No; I took care of that when I drew it, but the point I am making—

Mr. TALLMAN: If there were equal care in the passage of laws by the legislature could not that remedy all the ills of which you complain?

Mr. ANDERSON: I am not advancing the argument for that purpose. Your position is that the lawmaking body, the legislature, must say to the lawinterpreting body, the supreme court, that it must not continue in using judge-made laws.

Mr. ROCKEL: How will the Peck proposal prevent the supreme court in the future from rendering such decisions?

Mr. ANDERSON: It will not if Judge Worthington's amendment prevails, for if upon interpretation of the statute it would then go up to the supreme court we would have the same conditions. I am trying to make it plain to those who are not lawyers—and I think I will have less trouble with them than with the lawyers—to show them the necessity of killing the Worthington amendment.

Mr. TAGGART: You find no such difficulty in the substitute I offered for the Worthington amendment.

Mr. ANDERSON: No; I am thoroughly satisfied in that respect with yours. Mr. Halfhill and Mr. Tallman have been anxious to know, judging from their questions, whether the harm arising from judge-made law cannot be minimized by acts of the legislature, or, in other words, have the statutory law take the place of judge-made law, but it has been demonstrated that the great trouble is that the judges, by interpretation, practically nullify the statutory law which was made to nullify judge-made law, as the following will demonstrate:

The coal miners of the state, being compelled to work under ground, where to a large extent they are unable to protect themselves, and such work being extremely dangerous, the legislature, believing that some protection was needed, enacted a law, but this protective law was not enacted until after years of hard work upon the part

of the miners' organizations. This very just and humane law provided that mines should have proper outlets—cages should be fitted with safety appliances; should have proper ventilation; that working places should not be driven more than sixty feet in advance; that such working places should be examined every morning; that safety appliances should be supplied; have covers over the hoods of cages; that boilers should not be nearer than sixty feet to shaft or slope and that safety lamps should be provided. Then to enforce the law it was further provided:

For any injury to persons or property occasioned by any violation of this act, or any wilful failure to comply with its provisions by any owner, agent or manager of any mine, a right of action shall accrue to the party injured for any direct damage he may have sustained thereby; and, in any case of loss of life, by reason of such wilful neglect or failure, as aforesaid, a right of action shall accrue to the widow and lineal heirs of the person whose life shall be lost, for like recovery of damages for the injury they shall have sustained. Sections 298 to 301, inclusive.

Thousands of miners in Ohio, after they caused this law to be placed on the statute books, believed, and rightly so, that they had obtained something of substance; something that provided, if a mine owner should become a lawbreaker and by reason of such disregard to the law the miner received injuries, that he would receive reasonable compensation for such injuries, or if by reason of the disregard of the law by such mine owner his life would be crushed out, that his family would receive damages for illegally causing his death, but the judge-made law and the statutory law came in conflict, and this conflict was resolved in favor of the judge-made law. For we find in 53 O. S., at page 26, in the case of Krause vs. Morgan, the following, which was the decision of the supreme court in that case:

One who voluntarily assumes a risk thereby waives the provisions of a statute made for his protection. And where a statute does not otherwise provide, the rule requiring the plaintiff in an accident for negligence to be free from fault contributing to his injury is the same, whether the action is brought under a statute or at common law.

It seems that it would be impossible to state in plainer and more forcible language than was stated in this statute that a right of recovery shall accrue to the injured person, yet the supreme court, in this decision, by reason of the judge-made defense of assumption of risk, so far as any benefit to the thousands of miners in Ohio was concerned, wiped the statute from the books.

Mr. TALLMAN: That decision was made long before the passage of the mining act, the section of which you just read.

Mr. ANDERSON: Certainly not. The supreme court in this case refers to this particular law in their decision. Will one of the pages please take this book to the gentleman [giving to the page the 53 Ohio State Report]? I advise him for his own information to read it.

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Mr. TALLMAN: This was decided in 1890, and the mining act or section to which you refer was passed in the revision of the act later than that.

Mr. ANDERSON: No, sir. The code was passed some time ago, but the law upon which this decision was predicated was the same before the passage of the so-called miners' code. It is in sections 203 and 204. If you will consume some of the time in reading the decision that I have sent you instead of devoting so much time to questions you will find that I have correctly informed you. Laws of this same nature have been passed for the protection of children, and every father ought to be interested in these laws. Our legislature, some years ago passed a law on this subject and the same kind of a law was enacted in Pennsylvania and New York and is today the law in those states. Pennsylvania is supposed to be corporation-ridden. In fact, one of the law writers in Pennsylvania employs this language:

The law-interpreting and the law-creating power of Pennsylvania are run by the Pennsylvania Railroad Company with as much regularity as the trains on its tracks.

It has recently been said that when the lawmaking body of Pennsylvania was about to adjourn a member arose and said: "Mr. President, if the Pennsylvania Railroad Company has nothing further for us to do, I move we do now adjourn." But this supposedly corporation-ridden state of Pennsylvania has this law in reference to children, stating to the corporations that they must not employ in and around dangerous machinery children under fourteen or sixteen years of age. Let me read to you a decision of the courts of Pennsylvania, growing out of the disobedience of the law, and where a child, by reason of its immature age, not being able to protect itself, was injured:

It is within the power of the legislature to fix an age limit below which children shall not be employed in dangerous kinds of work, and an employer who violates the law by engaging a child under the statutory age does so at his own risk, and in an action of trespass for personal injuries sustained in such employment, the master cannot set up as a defense either the assumption of risk or the contributory negligence of the child servant. — *Stehle vs. Automatic Machine Co.*, 220 Pa. St. 617.

Then let us see what the corporation-ridden state of New York has done upon this same subject:

Laws of 1897, c. 415, sec. 70, prohibiting the employment of a child under the age of fourteen years in any factory, is a determination, in effect, that a child of that age does not possess the judgment and discretion necessary for the pursuit of a dangerous work, and is not, as a matter of law, chargeable with contributory negligence or with the assumption of any risk of the employment. — *Marino vs. Lehmaier*, Court of Appeals, N. Y. 66 N. E. 572.

You notice that in these states the supreme court, instead of attempting to put up judge-made laws in opposition to the express will of the legislature, assisted in enforcing, to its very letter, the law as passed. Let us

find out what the courts of Ohio hold in similar cases. It must be remembered that all of these states — Pennsylvania, New York and Ohio — upon this question of employment of children have in all respects the same statutory law, and so that the harm that the Worthington amendment will work, if adopted, may be fully understood, I now read to you from 67 Ohio State, p. 76:

The employment of the plaintiff, when he was under sixteen years of age, was not the proximate cause of the injury, and it could not in any degree tend to show that the defendant was negligent in not giving or causing to be given, to the plaintiff, proper instructions as to operating the machine.

Mr. ROCKEL: I understand that you believe the circuit court is better able to interpret laws than the supreme court?

Mr. ANDERSON: The circuit court does not make judge-made law.

Mr. ROCKEL: Why could it not, and why would it not just as likely do that as the supreme court?

Mr. ANDERSON: It could, but does not and I will tell you why.

Mr. ROCKEL: Well, I want to know why.

Mr. ANDERSON: Because you have recalled the courts back to the people. The courts are not now close to the people, for not five per cent of the voters of Ohio know the candidates for judge of the supreme court at the time of the nomination and election.

Mr. ROCKEL: You said a moment ago you believed the members of the supreme court were honest.

Mr. ANDERSON: I do. Do you mean to say that what I have read indicates that they are not?

Mr. ROCKEL: If they are honest in their opinions the circuit court might render the same kind of an opinion.

Mr. ANDERSON: They might.

Mr. ROCKEL: I don't know about that.

Mr. ANDERSON: I do.

Mr. ROCKEL: Do you mean to say that the supreme court is influenced in some way?

Mr. ANDERSON: I certainly do not mean to say that they are affected in any way by any outside influence, but I do want to say — for if I do not answer you it might be said that I could not — I have represented individuals for twenty years, in all kinds of courts, and in ninety per cent of such cases I have been on the side of the individual, fighting corporations. I do not deserve any credit for it; I got paid for it. My environment has necessarily caused a habit of thought and I admit that I am prejudiced. It could not be otherwise, and I could not divest myself of that habit of thought or that prejudice by being elected judge and going upon the bench. I would be inclined to see all of the circumstances in a favorable light to the plaintiff's interest, or in trying to be fair, knowing my prejudice, I would lean too far the other way. But I believe, notwithstanding my habit of thought and my prejudice, notwithstanding my over twenty years of service on the side of the individual, I could be as fair on the bench as any man who had twenty years or more training on the side of the corporation.

Mr. ROCKEL: Then we have put the wrong kind of man on the supreme bench?

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Mr. ANDERSON: If you agree with me that I would be the wrong kind of a man to be placed on the bench, then you must agree that men of long corporation training, men who have specialized in favor of corporations, are also the wrong kind of men to place on the bench.

I have spoken from the money standpoint, or as to recovery of money damages that ought to be received by the individual in cases of this nature, but there is a bigger and better side to it, for just as soon as we commence making corporations obey the law, just so soon you will largely prevent accidents, and that is the big thing to be accomplished—make the corporations responsible in damages every time that they disobey the law which is passed for the protection of the individual, and the corporations, through their officers, will commence to obey the law, but so long as the corporation can save itself through the defense of fellow servant, contributory negligence or assumption of risk—the judge-made defenses—it will not obey the law. Take the laws I have mentioned, which were passed for the protection of children. If the corporation does not have to respond in damages the corporation will pay no attention to obedience of the law, for only a small fine is imposed. A child is employed around dangerous machinery by a lawbreaking corporation, and if it is crippled the corporation pays a fine of \$25. But if you say to a corporation that if it becomes a deliberate law-breaker then it will have to pay thousands of dollars to that child so that the child can be educated, so that he can make a living by the use of brain instead of brawn, that corporation will quit employing children under the age limit.

William H. Tolman, the director of the museum of safety and sanitation, New York, in representing the United States Steel Company, in a lecture before the chamber of commerce at the city of Youngstown, in January, 1910, said:

The most conservative estimate of the loss, in cash, to the wealth of the United States through preventable accidents in the various industries is \$125,000,000 a year.

It is worth while for employers of American labor to adopt the safeguards which shall preserve to the nation the lives and limbs of the 500,000 workers now annually incapacitated or killed, whose wage-earning capacity, estimated at the low average of \$500 apiece, means a loss to the country of \$250,000,000 each year.

Here I have a statement from Mr. Davis, the factory inspector of Illinois, and I call your attention to this because the law to which Mr. Davis refers is like our factory act, passed in 1900, which through judge-made law and judge-made interpretation, has been very largely nullified. Mr. Davis said:

This danger device could be recast into a safety device for thirty-five cents; the projecting top of the set screw could be sunk flush with the rest of the whirling shaft, and then no sleeve could be caught by it, no human body could be swung or thrown by it, no father or mother could be made to grieve for a son, no woman could be widowed by it.

What remote consequence of long and lonely years may be in a quarter and a dime! More than once it must have happened that a widow had her rent paid by a charity society to which yellow-backed bills were contributed by a manufacturer who could have prevented her from being a widow by the proper expenditure of a quarter and a dime.

From these statements it will be seen that no hardship whatever rests upon the corporation if it be made to obey the law and the preventable accidents will be largely done away with.

For the purpose of demonstrating that the enforcement of laws will compel the corporations to obey, and by obeying greatly reduce the number of injured and killed, I wish to read from a report made by Mr. Mosely, secretary of the United States interstate commerce commission, page 57 of the report of 1902:

The gratifying results of the law of 1893, requiring the use of automatic car couplers and of power brakes, were spoken of in the Fifteenth Annual Report. The benefits of the law have been increasingly evident during the last year in particular. The number of persons killed and injured in coupling and uncoupling cars during the year ending June 30, 1912—the first entire year reported since the law went into full effect—shows a diminution as compared with 1893, the year in which the law was passed, of 68 per cent in the number killed and 81 per cent in the number injured.

Mr. TALLMAN: That was a statute?

Mr. ANDERSON: A federal statute.

Mr. TALLMAN: And a good one.

Mr. ANDERSON: Yes. The courts of Ohio practically nullified a similar state statute, until in 1906 it was amended, in reference to assumption of risk and contributory negligence.

Mr. LAMPSON: Was not a similar statute passed in Ohio before that?

Mr. ANDERSON: Not containing assumption of risk and contributory negligence clauses. That statute was passed in 1906.

Mr. LAMPSON: It was introduced by myself in the senate and became a law before that.

Mr. ANDERSON: Yes; that was the law. But recently in reference to a safety-appliance clause, where a locomotive crane was involved, the supreme court, even with a statute containing the assumption-of-risk and the contributory-negligence clause, held it to be null and void, and this case came up from your county, Mr. Lampson.

I wish to say a few words in conclusion in reference to the proposed amendment by the delegate from Fayette [Mr. JONES]. If this amendment carries it permits all cases where there is a disagreement in reference to the law or the facts in the circuit court, or in the new court of appeals, to go to the supreme court. It is my opinion that the court of appeals ought to be required, before they reverse a case coming from the common pleas court on questions of fact, to be unanimous. I am not so sure that this would be the just rule on questions of law. I at one-time had a case where a man

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by the name of Alburn had a son injured. The injured son was a brother of Assistant Attorney General Alburn. The young man was injured while driving a wagon in the country across the tracks of the Pennsylvania Company, which were constructed at grade, and before we finished the case it was tried before eighty-four jurors, and all of the eighty-four jurors held that the company was guilty of negligence, that Alburn was free of contributory negligence and should recover damages. Yet the judge set his judgment up—upon purely questions of fact, and denied a recovery, where it is supposed that the average juror is as good, if not a better, judge of fact than the judge himself—against the judgment of the eighty-four jurors. The supreme court of the United States has given a beautiful description of the jury and its duties. This is taken from the 17th Wallace, 657:

Certain facts we may suppose to be clearly established, from which one sensible, impartial man would infer that proper care had not been used and that negligence existed. Another man, equally sensible and equally impartial, would infer that proper care had been used, and that there was no negligence. It is this class of cases and those akin to it that the law commits to the decision of a jury. Twelve men of the average of the community, comprising men of education and men of little education; men of learning and men whose learning consists only in what they themselves have seen and heard; the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven and draw a unanimous conclusion. The average judgment thus given, it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts; thus occurring, than can a single judge.

One more quotation and I have finished, and since this is from a certain ex-president of the United States, I especially request the attention of Mr. Fackler:

The special pleaders for business dishonesty, in denouncing the present administration for enforcing the law against the huge and corrupt corporations which have defied the law, also denounce it for endeavoring to secure sadly needed labor legislation such as a far-reaching law, making employers liable for injuries to their employees. It is meet and fit that the apologists for corrupt wealth would oppose every effort to relieve weak

and helpless people from crushing misfortune brought upon them by injury in the business from which they gain a bare livelihood. The burden should be distributed. It is hypocritical baseness to speak of a girl who works in a factory where the dangerous machinery is unprotected as having the "right" freely to contract to expose herself to dangers to life and limb. She has no alternative but to suffer want or else expose herself to such dangers, and when she loses a hand, or is otherwise maimed or disfigured for life, it is a moral wrong that the whole burden of the risk necessarily incident to the business should be placed with crushing weight upon her shoulders, and all who profit by her work escape scot-free.

Let us take the courts back to the people. Let us have speedy and inexpensive trials in the ascertainment of the rights of the individual. Let us make the poor man understand that he, in the courts, can get justice. Let us make him understand that they will afford him full legal protection. I say to you that you can accomplish this by passing this Peck proposal.

The president recognized the delegate from Noble.

Mr. THOMAS: Will the gentleman yield for an amendment?

Mr. TAGGART: There cannot be any more amendments to the Peck proposal. Mr. Worthington's substitute strikes out all of the previous amendments, and it has to be an amendment offered to my amendment.

Mr. THOMAS: I have it drafted that way.

The amendment was read as follows:

Amend by striking out the of Taggart proposal the words "adopted by the general assembly" in line 25, also the words "except by the concurrence of the five judges of the supreme court." Place a period after the word "court" in line 26.

Mr. THOMAS: I want to explain that so that the members can understand it. It simply means that no statute can be held unconstitutional and void by any proceedings of this court.

Mr. WATSON: I want to offer an amendment.

The PRESIDENT PRO TEM [Mr. Dory]: The chair would like to acquaint himself with the parliamentary status.

[After being informed by the secretary] The chair will rule three amendments are now pending and that is all we can have under the rules. The member from Guernsey [Mr. WATSON] will withhold his amendment.

The chair recognized the delegate from Noble.

The delegate from Noble yielded to a motion to recess until tomorrow morning at ten o'clock, which was carried.

FIFTY-THIRD DAY

(LEGISLATIVE DAY OF APRIL 2)

MORNING SESSION.

TUESDAY, April 9, 1912.

The Convention met pursuant to recess, was called to order by the president and opened with prayer by the Rev. T. L. Lowe, of Columbus, Ohio.

The gentleman from Noble [Mr. OKEY] was recognized.

Mr. OKEY: I shall endeavor to make my remarks on this subject brief.

I am in favor of the Peck proposal, with some of the amendments that have been offered. It has been the sincere desire of your committee to correct by this proposal some of the objectionable features of our present judicial system. I believe that this proposal, if adopted, would be beneficial to the people and remove some of the evils that now exist in our judicial procedure. There is much complaint about the law's delay and it does not require one of deep discernment to see that such complaint is well founded. The end of all judicial investigation is the ascertainment of truth and the wise and just determination of the rights between litigants. Long delays are not conducive to the correct determination of the legal rights of parties, nor are the number of courts through which parties must pass in order to have their rights finally and authoritatively adjudicated a criterion of justice. Neither is the number of courts an evidence that the legal rights of parties will be better or more accurately determined than if there was only a designated number of courts to pass on the same question.

In passing on a proposition of this character, we should consider what will best subserve the interest of the people as a whole, and not what will best please a class. It is doubtless true that there are some in the legal profession who look with jealousy upon any attempt to adopt an innovation in our legal procedure or to limit the jurisdiction of any court. But if by adopting a change in our courts we can best meet the ends of justice and at the same time have the rights of litigants determined more expeditiously and reach a finality quicker, then all true lawyers who want to exalt the profession and ennoble the calling will hail such a change with delight. It is only those who look upon the profession of the law as a purely financial business and not as a high calling, and who look upon a trial for the adjudication of right as a trick, who will oppose measures tending to correct defects and evils in our judiciary. The more courts through which they can drag their clients, the more fees.

Is the financial question the governing question in determining whether we will adopt a change in our judicial system? What is the best system for the people? What will correct the delay in the trial of cases and prevent litigants being dragged from court to court before the matter is finally determined? These are matters that we ought to wisely consider. It is necessary that there be a court of last resort and it would seem that

the sooner parties can reach that tribunal the better. It is designed by the proposal before us to bring a court of last resort down close to the people and clothe it with the powers of a court of last resort, except as to certain expressly excepted matters. Under the proposal now under consideration, we will have a trial court, and one court of review, called a court of appeals, with power to hear cases on appeal or upon the evidence de novo as amended.

It seems to me that this proposal would be of great benefit to the people in our smaller counties, where a great majority of the cases involve a small amount. While the rights involved in this class of cases are just as sacred as when large amounts are involved, yet the burden in this class of cases is too great on the litigants if they can be taken from court to court in order to get a final determination of the rights of the parties. The great bulk of the litigation among the people is of such character that it ought to be finally determined in two courts. The people would be satisfied with this and the ends of justice would be better subserved than they now are. As soon as the people would know that there was one court only above the trial court clothed with power to finally adjudicate their rights that court would meet with favor among the people, because they would then see an end to litigation. The circuit court as now constituted is a court through which every one must pass in order to get to the supreme court, the court of last resort.

The people in general would be satisfied with the court of appeals as is provided for in the proposal. They are not asking for more courts; they are asking that justice may be administered more expeditiously. Now what would be the situation if this proposal were adopted and become a part of the organic law of this state? There would be two courts for the trial of cases. In the trial court we would have a judge and twelve men who would hear the evidence and pass upon the law and facts; the jury to pass upon the facts, and the court to announce the law. We would have in this case in effect the judgment of thirteen men upon the controversy in question. If the case should go to the court of appeals it would there be heard by the three judges. So that before the case would be finally determined it would have been passed upon by sixteen men. It would seem that every phase of any case would be sufficiently considered after it has passed in review and been heard and considered by four judges learned in the law and the twelve laymen. Litigation ought to stop there; there must be a limit somewhere to the end that delays in litigation may be reduced to the minimum.

As a matter of fact seventy-five per cent of the cases stop in the circuit court even under our present system. This shows that the people as a rule are content to stop at this intermediate court, although it is not a court of last resort. And a very large per cent of the cases that go to the supreme court are affirmed in that court. If

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we would take the time to examine the class of cases that are taken to the supreme court we will find that a large majority of the cases concern corporate rights and big interests and the questions involved do not concern or grow out of the common transaction of the people in common life.

It seems that there are some bar associations who do not indorse this proposal. However, I take it that we have not met here to please a bar association, but to adopt a judicial system that will be beneficial to the whole people. Our present judicial system has existed, with slight modifications, for sixty years. Conditions then were different from what they now are. The world has moved since then and new conditions exist today, but our judicial system has remained the same. The people demand that our system of court procedure be changed to meet the new order of things, and if the bar is not willing to move, the people will. Seventy-five years ago the farmer reaped his grain with the sickle, later on he cut it with the cradle, but today he reaps it with the reaper. The farmer has accepted the improved machinery and has utilized it in his business.

Is the bar to be a barnacle upon the body politic? I take it that this does not meet the approval of the great body of the legal profession in this state. I believe that the great bulk of lawyers in this state are in favor of a reform in our judicial system.

Now we come to one more phase of the proposition that I wish to discuss before I close. This proposal provides that no statute adopted by the general assembly shall be held unconstitutional and void except by the concurrence of all the judges of the supreme court sitting in the case. To this provision there seems to be some objection. I am in favor of this provision of the proposal for the reason that a court in declaring a law unconstitutional is nullifying a legislative act that presumably expresses the will of the people acting through their chosen representatives. The effect is to defeat the will of the people.

Another reason for favoring the concurrence of all the judges in declaring a law unconstitutional is that a court in so doing is exercising an assumed power and one that has not been given to it by the constitution.

Let me remark that there is not a civilized country upon earth that ever permitted its judiciary to declare a legislative act unconstitutional, and yet we, the boasted nation of freedom, where we say the government rests upon the consent of the governed, have permitted our courts to exercise and assume power that was never given them under the constitution.

Mr. LAMPSON: Is not the constitution a higher expression of the will of the people than an act of the legislature?

Mr. OKEY: I think it is. I think that is true.

Mr. NYE: Suppose the legislature, both senate and house, pass a law by a bare majority of one in each body; does it give the law any more authority than simply of that bare majority and why should not the supreme court by a majority declare it unconstitutional?

Mr. OKEY: I will touch on that as I go on.

Mr. HALFHILL: Do you think the reasoning in the case of *Marbury vs. Madison*, 1 Cranch, 137, has ever been answered by anybody who opposes or sustains the position you take?

Mr. OKEY: I will admit that it is a great argument; as to whether it has ever been answered would, of course, be a mere matter of opinion.

Mr. FACKLER: What would be the purpose of a written constitution if acts of the general assembly could not, under any circumstances be set aside?

Mr. OKEY: I would not see any use for it.

Mr. LAMPSON: Is it not one of the very highest functions of a court to sustain the will of the people as proposed in their constitution?

Mr. OKEY: I think it is. Personally I do not believe a court has the right, and I am quite sure it has no inherent right, to declare an act of the legislature null and void, but if the assumed power is to be retained by our courts it ought to be guarded as much as possible. You know they have told us here, some of them, when we ask that the people be given a right to govern themselves, that that right ought to be safeguarded. Now, if we are to give the supreme court of our state authority to declare a statute null and void, I believe that the same right, the same guarding of power, should be imposed upon the court that they ask to be imposed upon the people, and for that reason—that the exercise of the power may be guarded—I want a unanimous decision before they can say that an act of the legislature is null and void.

Even after John Marshall had assumed the power—that is where they got it—John Marshall was the first judicial legislator in this country—

Mr. FACKLER: Is it not a fact that Alexander Hamilton was arguing in the *Federalist* directly for the existence of this power, that it must be lodged some place, with somebody to declare that something passed by the legislature was against the constitution, and the place to lodge it was with the judiciary? Was not that Hamilton's original position and argument?

Mr. OKEY: He may have been the originator, but John Marshall is the judge who was the first to exercise that power. I say even after John Marshall had assumed the power to nullify legislative acts, great judges and jurists regarded the annihilation of a law as an exceedingly grave act. Justice Chase in 1796 said:

If the courts have such power I am free to declare that I will never exercise it but in a very clear case.

Mr. NORRIS: Is not that the rule now?

Mr. OKEY: It ought to be the rule, but I think there have been many decisions made without observing that rule. I do not believe they have given the benefit of doubt to the law.

Justice Waite in 1878 said:

Every possible presumption is in favor of the validity of a statute and this continues until the contrary is shown beyond a reasonable doubt.

That is the rule, is it? It ought to be, but the question is, is it observed? One branch of the government can not encroach upon the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule. Listen to the voice of the great jurist of modern time, Justice Harlan, who in 1905 said:

If there be doubt as to the validity of the statute that doubt must therefore be resolved in favor of

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its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation.

Mr. Jefferson, in a letter to a Mr. Jarvis in 1820, said:

You seem to consider the judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed, and one that would place us under the despotism of an oligarchy.

The courts have gone too far in declaring laws unconstitutional.

Now these are the opinions of some of the great jurists in this country upon the question we have been considering.

Mr. NORRIS: I understand that you oppose anything but the unanimous opinion of the court on constitutional questions?.

Mr. OKEY: Yes.

Mr. NORRIS: If there are six judges of the supreme court and five of them want to declare a statute unconstitutional, you would have it so that the five could not declare it unconstitutional?

Mr. OKEY: I would.

Mr. NORRIS: Then the tyrant you speak of is the sixth man, is he not?

Mr. OKEY: No, sir; not at all: The reason for my position —

Mr. NORRIS: The opinion of the sixth judge outweighs the opinion of the other five, and he is in fact arbitrary.

Mr. OKEY: No; that is not true.

Mr. PECK: Behind that sixth judge, do you not have the general assembly and the governor and all the other officers?

Mr. OKEY: Yes; we have that law considered by a great number of men before it comes up to the court of last resort. I was going to say that my reason for insisting on unanimity is that I believe there has never been any man who has been able to explain why the court declares a law unconstitutional unless it has assumed power; and they all admit it. Justice Marshall admitted it himself, and I say, therefore, you have one department of government legislating — a judicial body nullifying the laws, having the same effect as if the legislature were to repeal the law. It is repealing a law that has been enacted by the legislature, whose sole function was to enact the law — a repeal of that law by another branch of the government.

Mr. KNIGHT: Is it not true that no enactment of the legislature is law unless it is in accordance with the constitution under which that legislature is proceeding?

Mr. OKEY: That is true.

Mr. KNIGHT: Then it is not the law if it is in conflict with the constitution?

Mr. OKEY: It is the law until declared unconstitutional.

Mr. KNIGHT: Is it not true that the judges are nullifying something which is not and cannot be the law if it is not in accordance with the constitution?

Mr. OKEY: It is a law until it is otherwise declared. Every law provides that an act of the legislature shall take effect at a certain time and if it has taken effect, the people act under it and it is a law whether it is in accordance with the constitution or not.

Mr. PECK: Does not the presumption of validity always accompany every law?

Mr. OKEY: Yes, the assumption of validity accompanies every law.

Mr. KNIGHT: I grant that, but if there be a conflict between a statutory law and the constitution is it not evident that somewhere in every constitutional government there must be a power lodged to reconcile that conflict or to declare the inferiority of the statute law?

Mr. OKEY: Yes, but we are not trying to take away that power under the proposal.

Mr. KNIGHT: But haven't you said "nullify the law."

Mr. OKEY: They do.

Mr. KNIGHT: No; they simply declare that certain so-called enactments are things which the legislative body had no right to enact to start with. Is not that true?

Mr. OKEY: No.

Mr. KNIGHT: Why not?

Mr. OKEY: You are assuming the law was nullified from the beginning.

Mr. ELSON: Is it not true that the men who make the laws are possibly as familiar with the constitution as the judges who sit in judgment on the law?

Mr. OKEY: They may be.

Mr. ELSON: Is it not true that this is the only country in the world in which the highest court can pronounce a law unconstitutional?

Mr. OKEY: That is right.

Mr. ELSON: And it did not originate with John Marshall and Alexander Hamilton, but in the colonial courts presided over by British judges?

Mr. OKEY: I did not know it went back that far.

Mr. DWYER: But the court is vested with the authority now to declare the law unconstitutional?

Mr. OKEY: Yes.

Mr. HARRIS, of Hamilton: The practice in criminal cases is that a man is arraigned on a criminal charge and his innocence is presumed until he is proved guilty?

Mr. OKEY: That is the law.

Mr. HARRIS, of Hamilton: Then the presumption of innocence does not make him innocent any more than the presumption of the validity of the law makes it valid.

Mr. OKEY: No.

Mr. PECK: But the presumption must be beyond reasonable doubt.

Mr. FACKLER: Would you give the court power in case of conflicting laws to decide which one should prevail?

Mr. OKEY: In case of conflicting laws — what do you mean by that?

Mr. FACKLER: Suppose there are several laws passed by the general assembly and one conflicts with another, what we call conflicting laws, or conflict of laws. Would you give the supreme court authority to decide which law applied in cases of conflict of law?

Mr. OKEY: Yes.

Mr. FACKLER: Then you give that authority to the court in case of a conflict of laws, but you would not give it in case of a conflict between a law and a constitutional provision?

Mr. OKEY: I might not.

Mr. WATSON: Suppose that the supreme court of the United States had been held down by the unanimity

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rule, would we have had fastened on us the legality of the patent cases?

Mr. OKEY: No.

Mr. ANDERSON: Does not the history of the acts, where they have been declared unconstitutional, prove beyond any doubt that if all of the judges had been required to agree before an act of congress or an act of the legislature should be declared unconstitutional that the whole country would have been away ahead of where we are now in progress? As a matter of fact has not progress been stopped along the lines of humanity and along the lines of individuals by reason of a divided court declaring acts of congress and of the legislature unconstitutional?

Mr. OKEY: I think that is right. You will notice, as I believe Mr. Thomas, the gentleman from Cuyahoga, showed me last night, that the supreme court of Ohio in the last seven years has declared fourteen statutes unconstitutional. And the sad part of the whole thing is that many of those decisions related to matters that primarily affect the people, and those laws might have been beneficial to the people had not the judiciary, growing with that power, encroached, as it has continued to encroach, on the right of the people. As Thomas Jefferson said, it moves like gravity, a little here today and a little there tomorrow, and it would go noiselessly and noiselessly as the tread of a thief at midnight until it was spread all over the fields of jurisdiction, and that is so with our courts at the present hour.

Now I believe in courts. I believe in the dignity of courts. I am not one of those who want to rail out against courts, but I only want courts so constituted that the high and the low can approach those tribunals on an equal footing, but I do not want them so constituted that the great common people can not approach them as the rich approach them. I want justice handed out from them in the same way and with the same degree of equality that it is handed out to corporations of this country, and I believe that this proposal that Judge Peck and this committee have considered and now present to this body will be the means, as Mr. Anderson has said, of bringing the supreme court down to the people's door, and then the people will have their rights adjudicated at home and in that way the rights of the people will be subserved better than they are now subserved.

Mr. LAMPSON: Suppose that some selfish interest — some powerful corporate influence — should secure the passage of a law which nullifies some important provision of the constitution. Would it not be much easier for the same influence to control one member of the supreme court than to control a majority and thus maintain the unconstitutional provision?

Mr. OKEY: Well, of course, you are putting an assumed case —

Mr. LAMPSON: I am putting the other side of the case.

Mr. OKEY: Yes, on the other side.

Mr. ANDERSON: Is not this the fact, that every constitutional provision in every constitution — the federal constitution and every state constitution — is in favor of the people as drawn and put in, and have they not been made against the people by the interpretation of some court, some times a divided court?

Mr. OKEY: Yes, a judicial construction.

Mr. ANDERSON: And does not that answer the question of the delegate from Ashtabula [Mr. LAMPSON]?

Mr. HALFHILL: If I understand you correctly, you said this was the only country in the world where the supreme court had the right to declare an act of the legislature unconstitutional. Did you make that statement?

Mr. OKEY: As I understand it, that is so.

Mr. HALFHILL: Do you not know that the British North American act, which permitted the creation of the federation of Canada as a constitutional branch of the English parliament — that the high court of Great Britain can and does declare unconstitutional any act of the Canadian parliament which conflicts with the British North American act?

Mr. OKEY: I did not know that. I am not disputing it; I simply do not know.

Mr. HALFHILL: I will say that is the fact. Now do you not know that from the very theory of the creation of written constitutions, in which this country undoubtedly excels, it is a necessary power to reside somewhere to declare laws unconstitutional?

Mr. OKEY: Personally I do not think so. Of course this proposal allows them to declare laws unconstitutional, but personally, I do not favor such a power. I do not think there is any written constitution in all the governments of the world where they have permitted courts to assume legislative powers.

Mr. HALFHILL: Then where would the restrictive powers of a constitution be, and what would be the prime purpose and function of a constitution as fundamental law if there were not powers somewhere in the government to declare unconstitutional statutes and legislative acts which transgress the constitution?

Mr. OKEY: The constitution is to prescribe the limitations upon legislative bodies.

Mr. HALFHILL: That being so, is it not true and does it not follow as a logical consequence that there must be some power in the government which can say when the legislature does transcend the constitution?

Mr. OKEY: No, sir; it amounts to this: The way we have it under our present system we have the legislature enacting a law, that is, the people enacting a law through their representatives, and after that law is enacted the people say "Here is our law." The supreme court comes along and says "That is not your law. It is not a law at all. You don't know what you are doing. Your chosen representatives can not enact such a law and they never did enact such a law. It was null and void from the beginning."

Mr. HALFHILL: Is not the fundamental law of the constitution the highest expression of the people's will?

Mr. OKEY: Undoubtedly it expresses the will of the people.

Mr. ANDERSON: I want to ask if the gentleman will permit me to ask a question of the gentleman from Allen [Mr. HALFHILL]?

The PRESIDENT: Does the member from Allen [Mr. HALFHILL] yield to a question from the member from Mahoning [Mr. ANDERSON]?

Mr. HALFHILL: Yes.

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Mr. ANDERSON: Is it not true that practically every law before the passage of the so-called Norris law that was passed for the protection of the individual was nullified by the interpretation of our supreme court?

Mr. HALFHILL: It is not true.

Mr. ANDERSON: Name one.

Mr. HALFHILL: I can not name you one now, but I know your statement is not true.

Mr. ANDERSON: You are very radical.

Mr. HALFHILL: I know by the records of the supreme court that your statement is not true.

Mr. ANDERSON: I hate such statements as "not true."

Mr. HALFHILL: Oh, I merely used that word because you used it in your question.

Mr. ANDERSON: I will challenge you to produce one that I can not show has been nullified by the supreme court.

Mr. HALFHILL: I only used that word "not true" because you used it in your question, and my belief is that the supreme court of Ohio has decided those questions in accordance with the law, and if there were anything wrong with the law the legislature or the people should rectify it.

Mr. KNIGHT: If the governors have gotten through with their discussion I would like to ask the speaker a question, perhaps a series of questions, and the first is this: Does not the constitution of every state stand as the highest expression of the people of the state as to their government?

Mr. OKEY: Yes.

Mr. KNIGHT: Did you not make the statement a moment ago that the people in framing that constitution put in it certain limitations upon the power of their own legislature?

Mr. OKEY: Yes.

Mr. KNIGHT: Now if the legislature oversteps those limitations which the people have put there, what are you going to do about it according to your theory?

Mr. OKEY: Would you have a court that did not enact that law tell the people the legislature overstepped the boundary?

Mr. KNIGHT: Did not the people elect the court?

Mr. OKEY: Yes.

Mr. KNIGHT: Did not they put them there for that purpose?

Mr. OKEY: Did the people elect the court as judicial officers or legislators?

Mr. KNIGHT: They elected them to decide when the administration of any other department oversteps the power given to that department.

Mr. OKEY: Did they not elect them to do a little interpreting once in a while themselves?

Mr. KNIGHT: That is what they are doing when they declare an act of the legislature unconstitutional—they have to declare that the legislature oversteps a constitutional limit.

Mr. ELSON: I want to ask a question of the member from Franklin [Mr. KNIGHT].

Mr. KNIGHT: The member from Franklin is himself only questioning. He has not the floor.

Now I want to ask the speaker a question, if I may, and it is this: Ought you not, to be perfectly consistent,

to require that the legislature in enacting a statute should enact it by a unanimous vote?

Mr. OKEY: No, sir.

Mr. KNIGHT: It often happens; does it not, that a minority, amounting almost to a majority of the legislature, vote against a proposed measure because in the judgment of that minority it is unconstitutional?

Mr. OKEY: It sometimes happens.

Mr. KNIGHT: The record of congress shows that over and over again. Therefore, you have a divided legislature on questions of constitutionality to start with.

Mr. OKEY: That is true.

Mr. KNIGHT: Then is it proper to say that you have the whole legislature behind you affirming the constitutionality of a measure when it may have been passed by a mere majority?

Mr. OKEY: No, sir; and nobody is claiming that.

Mr. WATSON: Is it not a fact that the province of a court is to apply the law to adjudicated cases?

Mr. OKEY: Yes.

Mr. WATSON: Is it not a fact that the constitution is applied to the general assembly in the enactment of law? Is not that for their guidance rather than for a court overturning what a legislature may do?

Mr. OKEY: Yes.

Mr. NYE: If this Constitutional Convention proposes a constitution to be submitted to the people and the constitution submitted to the people is adopted by the people, is it not of more force than a legislative act?

Mr. OKEY: Oh, yes; it is the supreme law of the land.

Mr. NYE: Is there any qualification for a member of the legislature as to his legal ability or any other ability?

Mr. OKEY: None that I know of.

Mr. NYE: Then would you not say that a law passed by the legislature was inferior to a constitutional provision adopted by a constitutional convention and passed upon by the people?

Mr. OKEY: I think so.

Mr. NYE: What tribunal is to determine those questions if it is not the supreme court?

Mr. PECK: Will you let me ask you a question, Judge Nye?

Mr. NYE: Yes.

Mr. PECK: I think this whole discussion is academic. This bill does not provide for anything of the kind suggested. It provides a mode of passing on constitutional questions and does not forbid the court from passing upon them. But to come to your question, To whom shall the question be left? Suppose your supreme court decides wrong? "Quis custodiet ipsas custodes?" Who will guard the guardians? Who will take care of the supreme court?

Mr. NYE: If the supreme court elected by the people for their supposed ability and legal learning—

Mr. KING: I rise to a point of order.

The PRESIDENT: The delegate from Erie [Mr. KING] will state his point of order.

Mr. KING: The gentleman from Noble [Mr. OKEY] has the floor, and this discussion between two members not on the floor is out of order.

The PRESIDENT: The point of order is sustained.

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Mr. PECK: I think this whole discussion is off of the proposal under consideration.

Mr. THOMAS: Will the gentleman from Noble [Mr. OKEY] yield for me to ask a question of Judge Nye?

The PRESIDENT: Does the gentleman yield?

Mr. OKEY: One more time.

Mr. THOMAS: I want to ask—

Mr. DOTY: I rise to a point of order.

The PRESIDENT: What is your point?

Mr. DOTY: The president just ruled on a point that this same thing was out of order, that the member from Noble [Mr. OKEY] has the floor.

The PRESIDENT: The point of order is not well taken. The president did not so rule.

Mr. DOTY: You ought to have so ruled then.

Mr. THOMAS: I want to ask Judge Nye a question.

Mr. FESS: I would like to ask the speaker as to a matter before the Convention. It seems to me that none of these questions that have been asked are in order. All the questions seem to be that the supreme court has no right to pass upon the constitutionality of a law. Is that question before the Convention?

Mr. THOMAS: Yes.

Mr. FESS: I didn't ask you, but the speaker.

Mr. OKEY: It was not before the Convention until Mr. Thomas offered an amendment to that effect.

Mr. THOMAS: The last amendment was an amendment offered by me of that character and that is the subject before the house.

The PRESIDENT: The member from Cuyahoga has been recognized to ask a question.

Mr. THOMAS: I want to ask a question of Judge Nye.

Mr. DOTY: I ask a ruling on the point of order as to whether this cross controversy is to be allowed or are we to have a regular debate by the man at the desk? I think we are a little off of the subject under discussion.

Mr. OKEY: We are somewhat off of the subject, I admit.

The PRESIDENT: The president will rule that this is the way we have been doing and the speaker has yielded to the member from Cuyahoga [Mr. THOMAS] to ask a question of the member from Lorain [Mr. NYE] and the question is in order and the member from Cuyahoga [Mr. THOMAS] will put his question.

Mr. THOMAS: Is there any legal requirement now for the election of judges of the supreme court?

Mr. NYE: There is not, but it is in the power of the people to elect the judges if they choose and it has been the universal custom to elect judges upon the supreme court who are learned in the law, and it is up to the people of Ohio to elect men distinguished in their profession and that has been the practice in Ohio.

The PRESIDENT: Now the member from Noble [Mr. OKEY] will proceed.

Mr. THOMAS: Mr. Kramer, of Cleveland—

Mr. OKEY: Gentlemen, I want to close. There has been a good deal of outside discussion.

Mr. ROCKEL: Will the gentleman yield to let me ask him one question?

Mr. OKEY: No, no more. I just want to say in conclusion that the courts of this country have gone

entirely too far in declaring laws and statutes of the legislature null and void, and for that reason I want to see the matter guarded well, as is done in this proposal. If you will examine the decisions of the supreme court you will find that very frequently courts have nullified laws for the alleged reason that the laws were in conflict with some provision of the constitution, but that was not the real reason that caused them to declare for the unconstitutionality. The real reason was that they didn't like the policy of the law and were not bold enough to come out and say they didn't like the policy of the law and they found an easier way by simply saying it conflicts with certain provisions of the constitution. That thing has gone entirely too far, and it has given far too much power to the court to nullify an act of the legislature, and therefore I hope the proposal of the eminent jurist from Cincinnati, Judge Peck, will be adopted with such amendments as will be necessary to make it suit a majority of the delegates to this Convention.

Mr. DOTY: I move that discussion during the remainder of the time be limited to ten minutes on each substitute and five minutes on each amendment.

The motion was carried.

The chair recognized the gentleman from Erie.

Mr. KING: Mr. President and Gentlemen of the Convention: This proposal has been so ably discussed that at one period in the discussion I thought I would best serve my position here by remaining quiet, for I am in accord with most of the provisions of the proposal, but I was not able in committee nor am I now able to agree that it shall require a unanimous decision of all the judges of the supreme court of Ohio to declare that an act of the general assembly is in conflict with a provision of the state constitution, nor am I able to agree with the proposition that a case appealed from the trial to a reviewing court must receive the assent of all the judges of the reviewing court in order to reverse or modify the judgment of the trial court. Still these objections of mine would not have been deemed by me important enough to break silence in this discussion had it not been for some of the notions expressed, which are peculiar to this day and age and based, I believe, on woefully false premises, and I believe I shall not have performed the duty which devolves upon me as a delegate if I do not express my emphatic protest against these arguments. More particularly I refer to the speech of the gentleman from Cincinnati that in his judgment the judicial authority of the state or nation had no power to decide that an act of the legislature was in violation of the supreme law of the land. That statement has been made repeatedly in this Convention by gentlemen who have been invited to express their views upon constitution making. Some of these gentlemen are very able; for instance, I recognize the ability as a scholar and lawyer of the distinguished mayor of the great city of Cleveland, and he gave forth the opinion that courts could not interfere to determine whether the constitution or a law of the general assembly should prevail where the two were in direct conflict. I can not understand the education or environment that produced that kind of state of mind in an educated lawyer. I do not believe that the history of this country for more than one hundred and ten years has all been at fault, and yet it is grievously

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at fault if the statements of these gentlemen are to be taken as sound argument. The gentleman from Hamilton county made the statement that courts had usurped the right to decide upon these questions. The most efficient argument that has ever been made upon this subject and the most efficient answer that can be made to the remarks of the gentleman from Hamilton county are found in a quotation which I shall make from the opinion of the greatest judge and chief justice of the supreme court of the United States when and where he asserted the existence of this power.

A gentleman has been nominated by the president of the United States and his appointment made by that president by and with the advice and consent of the senate to an office provided by law, which, under the provisions of the federal constitution, it was the duty of the president to fill. His commission had been prepared and signed and executed by the president, so that all steps had been taken to give the office except the delivery of the commission, when the secretary of state of the United States, an executive officer appointed by a president of the United States, refused to deliver the commission in question and suit was brought in the supreme court of the United States to compel the delivery of this commission. This is the preliminary statement of the great case of *Marbury vs. Madison*, decided in February, 1803, and reported in 1 Cranch, page 137. Chief Justice Marshall decided the case and he held that the questions to be decided were:

First, Has the applicant a right to the commission he demands?

Second, If he has a right and that right has been violated, do the laws of his country afford him a remedy?

Third, If they do afford him a remedy, is it a mandamus issuing from this court?

Having found the first two in favor of the plaintiff, he said that there remained the question of whether he was entitled to the remedy which he sought, and this he said depended upon, first, the nature of the writ applied for, and second, the power of the court. The court squarely decided that the case was one for mandamus, either to order the delivery of the commission or a copy of it from the records, and that there only remained to be decided whether it could issue from the supreme court; and having further discussed the question, they found that the act of congress establishing the judicial courts of the United States provided the power in such courts to issue writs of mandamus to public officers, but that the authority was not given by the constitution to the supreme court to issue such a writ, and the question arose whether the act of congress conferring jurisdiction upon the supreme court was sufficient to authorize the supreme court to issue such a writ notwithstanding that the provision of the constitution as to jurisdiction provided that "the supreme court shall have original jurisdiction in all cases affecting ambassadors or other public ministers and consuls and those in which a state shall be a party. In all other cases the supreme court shall have appellate jurisdiction." So that the question appeared in this way: The constitution had defined the original jurisdiction of the supreme court and had also gone further and said that in all other cases its juris-

diction should be appellate. The definition of its original jurisdiction excluded writs of mandamus and congress had undertaken to provide that all federal courts should have the right to issue writs of mandamus, and upon this Chief Justice Marshall gave forth his great decision, which has never been disputed or denied authoritatively, but has been followed by both federal and state courts since its utterance, in the following language:

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designated to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those interested to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative is true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation.

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and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

That is too extravagant to be maintained.

In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any state." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? Ought the judges to close their eyes on the constitution, and only see the law?

The constitution declares "that no bill of attainder or ex post facto law shall be passed."

If, however, such a bill be passed, and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and the equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as . . . according to the best of my abilities and understanding agreeably to the constitution and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his govern-

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ment? If it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.

It is not true that the foregoing decision was the first utterance of a court upon this subject, for the same doctrine was enunciated in *Van Horn vs. Dorance*, 2 Dallas 304, in 1795, and Chief Justice Marshall mentions in his opinion in the foregoing case, page 171, that the circuit courts had held an act of congress unconstitutional in 1792, and it is laid down in every work on constitutional law to which I have had access, without question or limitation, that the right and duty of the judiciary to take jurisdiction and decide cases when constitutional questions are presented, are both imperative and inseparable. I presume a thousand cases can be cited in the different courts of the United States and of the various states of this Union unqualifiedly supporting that doctrine, and I make the assertion that no well-considered case can be found to the contrary. I therefore deny that it was a usurpation. It arose from the very nature of litigation, as the sacredness of the legislative power is not greater than that of the executive. The three departments of the government are in some respects independent of each other and in other respects interdependent, but if the governor of a state shall violate a plain constitutional provision shall not the court be called upon to decide the question where one's rights have been impaired in an unconstitutional manner, determine whether the act of the governor was constitutional or not? For instance, by section 2 of article III the governor is authorized to grant a pardon for all crimes and offenses except treason and cases of impeachment. Suppose that in a case of impeachment he grants a pardon and that act is called in question and it reaches a court for determination as to the validity of the pardon. Must the court dodge and refuse to decide because it involves a decision by the judiciary upon an act of the executive? But it is more a limitation of legislative power than it is of executive power. The provisions in relation to executive power are affirmative mainly; in other words, the powers of the governor are defined, but all through the constitution is written the limitation upon legislative power. Take the bill of rights; nearly all of its twenty sections are in some respect limitations upon legislative power. All kinds of cases might be imagined and cited as instances wherein the question would arise as to the conflict between a law and the constitution.

Suppose that the general assembly should provide that a certain offense, perchance not greater than a misdemeanor, should not be bailable when the constitution provides that all offenses shall be bailable except capital offenses in certain cases. A man is arrested for the commission of the particular offense defined in the statute and demands that he be given an opportunity to secure bail, tenders sufficient surety, and objection is made that the act of the general assembly prohibits bail; the accused makes up the formal parts of his case and brings an action in mandamus to compel the proper authority to accept his bail. Here is a very fundamental right which belongs to every citizen — whether he can be indefinitely confined in a prison before he is tried without an opportunity to give bail. This is the very fundamental principle of a despotism, or they shall provide for imprisonment for failure to pay a civil debt in plain violation of a section of the bill of rights, or, being unjustly imprisoned, one applies for a writ of habeas corpus which has been refused by an act of the general assembly. These are strong cases, but they only illustrate by their strength the proposition that these questions must necessarily arise in courts, where there is put the question whether the provision of the constitution or the provision of the state law shall prevail when the two are in direct conflict. It is, therefore, as true now as it was in the beginning of constitutional government in the United States that the determination of that is vested somewhere and that it is vested in the courts, because the courts are provided for the determination of private rights as well as the enforcement of public duties. A court would be no longer a court that would refuse to determine that question when properly presented before it, and I am astounded that any citizen of the United States, and doubly so that any lawyer presumed by the nature of his profession to have an education upon the principles of law, should assert that the legislative power and authority created by this constitution is higher than the constitution which created it, and that it can, in violation of the terms of the very charter which produced it, ignore it and violate it with impunity and there be no method by which an individual thereby injured orderly and in due course of law can have his remedy in the courts which that constitution provides "shall be open and that every person for an injury done him in his land, goods, person or reputation, shall have a remedy by due course of law." This being so, what legal or constitutional reason exists here when a court is created composed of more than two judges that their opinion on such a question shall be unanimous when not required to be unanimous on any other question? What is the ground of the distinction? No person discussing this question in this Convention has yet seen fit to tell us why this distinction should now for the first time be engrafted in the fundamental law of our state. It is not even argument, but a mere statement of a fundamental legal principle, that all acts of public authority, whether executive or legislative, are presumed to be regular and constitutional. It is but another axiomatic statement to say that they should not be held to be unconstitutional unless clearly shown to be such, or, as some courts have expressed it, shown beyond a reasonable doubt, which simply means that the conflict shall appear plainly and distinctly, in which event no court should hesitate to

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declare the fact of the conflict, which is all that a decision of unconstitutionality means. So again when a case, involving any question of constitutional or other law is carried to an appellate court, consisting of three or more judges, for the review of the decision of a single judge in another forum, what reason exists for saying that the court, before it may even modify the judgment of the inferior of trial court, must be unanimous in its conclusion?

These arguments and these declarations which are proposed to be established in our amendment to the constitution are not based upon any legal reason in my judgment, and I shall not support them.

There is the direct grant of authority and no conflict as to the propositions, and that the conflict between the law and the constitution must be clear, must be plain, let me use the language of the gentleman from Mahoning [Mr. ANDERSON], as has been said in a number of well considered cases, it must be beyond reasonable doubt. All of those things mean practically the same thing, as very well suggested by a gentleman on the floor asking the question this morning. It is true that a man charged with an offense, from the stealing of a yellow dog up to the commission of murder, is presumed to be innocent until he is proved guilty and his guilt must be proved beyond a reasonable doubt, and that presumption of innocence surrounds him until finally the jury has brought in its verdict. So that same presumption protects the law and surrounds the law as it progresses. After all the English language is not so hard to understand that an ordinary individual may not determine this conflict, unless the legal principle is so deeply involved that it is not readily seen. You have to trust somebody to determine whether that conflict exists. If it is the courts, then it is the opinion and judgment of one man at least that determines that. I do not mean if a court is composed of seven or eight men that one could render judgment, but it rests upon the opinion of each individual judge. It ought not be true at least that one judge with somewhere in his mind a lesion, I might call it, that does not enable him to logically pursue an argument, should control the court and prevent a proper decision, where the conflict is plain and beyond a reasonable doubt.

As to the appellate court, there is no use arguing how many judges decided it before. That is an absolutely independent tribunal. If it goes to your appellate court and your constitution prescribes that that appellate court shall consist of three judges, no reason in the world exists why that court shall not act as all courts have hitherto acted in this country, by a majority, nor that two out of the three, constituting a majority, should not be entitled to render any decision, I care not what.

I have made this argument based only upon the proposition found in one or the other of these proposals, more particularly the Taggart amendment, which I am in favor of. I am willing to concede that for the argument in favor of clearness or plainness I would permit or require a decision of the unconstitutionality of a statute should be by a five out of six or seven vote of the court. I would not let one man determine its constitutionality alone in a court consisting of six or seven men. I said before the committee, without undertaking to find fault with this provision, and I still think, that there ought to be a loophole to let out our one crank on the court

whose mind might not work right, but if five men agree as to the unconstitutionality there is no reason in law or morals why that judgment should not go into effect as the judgment of the court.

Mr. BOWDLE: I would like to ask a question.

The PRESIDENT: The time of the gentleman was extended to finish his speech, and in view of the limit and that others desire to speak I do not think that would cover questions to be propounded to him.

Mr. KING: I have finished, but with this appeal, that this Convention shall not from a desire for mere novelty overturn established judicial principles that have always and everywhere been recognized.

The delegate from Hamilton [Mr. HARRIS] was recognized.

Mr. HARRIS, of Hamilton: Before speaking the few words that I intend to say upon this subject I would ask indulgence of the Convention to obtain indefinite leave of absence for Judge Worthington, who is detained at home on account of illness.

The leave was granted.

Mr. HARRIS, of Hamilton: I shall say a few words to you on this subject from the view point of a layman. You have heard much from the lawyers and it might be interesting to you to know what the merchants think of the Peck proposal.

In the last month whenever I have gone home I have made it a point to ask the merchants what they think of the proposal, and I am glad to report that I do not find a single banker or business man who takes any exception to the fundamental proposition of Judge Peck's proposal, namely, that the circuit courts shall be made courts of appeal, courts of final jurisdiction.

There has been considerable difference of opinion as to the advisability of compelling a unanimous decision of the court of appeals in overruling a decision of the lower court, and there was also considerable opposition to the demand that the supreme court of the state shall be unanimous to declare unconstitutional a law passed by the legislature.

With the first proposition I am in hearty accord, and I believe it will be the experience of this Convention that business men—the average man on the street—will accept the fundamental principle of Judge Peck's proposal, because it will expedite justice and it will lessen the cost of securing justice.

With the second proposition, and I am now addressing only the laymen of the Convention and I can speak only in lay terms to them, I disagree entirely.

We are supreme within the walls of this Convention, but, gentlemen, the moment we step beyond these walls we cease to be supreme. We are dependent on the point of view that the people outside of the walls of this Convention take, and I believe it is a safe proposition to say that the people outside of the walls of this Convention will be exceedingly slow to accept such a fundamental and radical change in the administration of the civil law as requiring a full court to overrule a lower court. Is not that contrary to our theory of higher courts? It may be a violent presumption, but nevertheless it is a presumption, that the higher court represents a higher degree of intelligence than the lower court. Therefore, when you say that you demand a unanimous decision of the circuit court to overrule one of the judges

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of the common pleas court—because if you do not do so, it leaves two judges on the circuit court disagreeing with one of the circuit court judges and one of the common pleas judges—it seems to me the scales are not evenly balanced, because those two judges of the circuit court are supposed to have more learning proportionally than the judge of the common pleas court plus the one judge of the circuit court, just as the judges of the supreme court are supposedly picked out by reason of their superior knowledge and training in the law.

Now it is a serious matter to us laymen when you make us think that somehow or another you are depriving us of our civil rights under the law. A lawyer, with his trained legal mind, of course may quickly determine that there is no material hardship, that the scales are finally equally balanced, but you have not to do with the lawyers, you have to do with the average man in the street and the average man on the farm, and the moment he begins to think that the lawyers have proposed something which takes away some of his rights (and one of his rights is that it shall only require a majority of the upper court to determine the justice or injustice of his cause), you are arousing suspicion and distrust. I concede that the average business man will be governed by the advice of his lawyer, but it is the vast mass of people who will not come in contact with their lawyers who, in my judgment, will question the wisdom of this proposition.

In reference to requiring a unanimous supreme court to override a statute, I must think that is fraught with great danger. We are all here agreed that no special interest would attempt to get anything through a constitutional convention if for no other reason than that the work of the convention must be submitted to the people as a whole, and the people are Argus-eyed when they have an opportunity to use their eyes. Therefore you will never find special legislation secured through a constitutional convention any more than you will ever find special legislation secured through the initiative and referendum. Where will special legislation be secured? You do not dream for a moment that any action of this Convention will change human nature. You do not suppose for one moment that the special interests will become virtuous merely by laws or proposed fundamental laws suggested by this Convention. The fight will go on between the special interests and the public interests hundreds of years after the youngest member of this Convention has been buried and has been forgotten. Where can the special interests secure their advantage? The question answers itself. In the legislature. There you may expect to find special legislation. There you will find it. Now this provision requiring a unanimous supreme court to override a legislative statute gives "special interests" all the advantage, and it has been so clearly explained by other speakers who have preceded me that it is not necessary for me further to detail it. One judge out of the seven, I will not say corrupt, but with a "lesion in his brain" as Judge King calls it, can declare some special act constitutional by refusing to agree with the other six judges. That I consider an element of great danger. I cannot see why you want to give such sanctity to a legislative act when the whole theory of what you have done in the last few weeks is against trusting the legislature. If you trust the legisla-

ture you do not need the initiative and referendum. The whole theory of the initiative and referendum is based on mistrust of the legislature. Now to show you how strongly that is the opinion of some of our greatest authorities on the subject I am going to read you a few lines from Dr. Borgeaud's remarkable work "Formation and Amendments of Constitutions," edited by Professor Vincent, of Johns-Hopkins University. Ordinarily you would not find a professor of law in Johns-Hopkins University charged with ultra radicalism, but listen to what Professor Vincent said in 1896 in editing this book:

Dr. Borgeaud might have pointed to the state constitutions of the American Union as eminent examples of the mixture of statute fundamental law. The reasons for this will not be found in European influences, but in the gradual resumption by the people of powers formerly delegated to the legislative or executive branches of the governments. The people have become afraid of their legislatures. The full representative functions, which in earlier times were granted to the delegate, have been little by little withdrawn. Legislatures no longer elect the executive and judicial officers, but are even restricted in legislative duties, for many states fix in the constitutions the earliest possible date for adjournment.

To counteract the mistakes of the lawmakers the governor has been given the power to arrest temporarily the progress of legislation by means of the veto, and the people obtain indirectly an opportunity to express their opinion.

In the original proposition requiring a unanimous court to override or overrule statutory law you ride right in the teeth of Professor Vincent's wise observations.

The time of the delegate here expired and on motion of Mr. Halfhill was extended.

Mr. HARRIS, of Hamilton: You ride right in the teeth of this declaration, and, as I have said before, right in the teeth of that principle which you adopted here two weeks ago by a vote of 97 to 21, or something like that, in which you declared for the principles of the initiative and referendum, which are based mainly on distrust of the legislature. In my judgment the benefit of the doubt in every instance should be given to the courts that construe an act of the legislature. I recognize the fact, however, that if we want to succeed outside of the walls of this state house when we go to the people we must take into consideration the mental attitude of those people, and, rightfully or wrongfully, I am not able to determine which, the people generally have a prejudice against "four to three" decisions that affect their political rights. It does not seem to affect them when only their civil or personal rights are concerned, but the conviction seems to be firmly fixed in their minds that a greater number of the supreme court should unite in a decision overturning statutory law than in a decision affecting purely personal rights, and in deference to that feeling I accept the amendment of Judge Taggart requiring five members of the supreme court out of seven to unite in declaring a statute unconstitutional, and I call the attention of the lay members of the Convention to the fact that if you vote away your sacred rights by demanding a unanimous decision of the supreme court to overturn a statutory law, you may be chaining your-

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selves and your posterity to something you do not dream of now. It is not difficult to foresee that in the not far distant future some particular sect may be dominant in the legislature and may secure the enactment of a statute which deprives all other sects of certain rights or burdens them, and yet by this original proposal you would make it impossible, unless you were strong enough to get a constitutional amendment by means of the initiative and referendum, to shake off those fetters. That point of view has not been carefully considered and you ought to consider it. You ought to know whether or not you are possibly forging chains for yourselves and your children.

Mr. BOWDLE: I would like to ask the gentleman a question.

Mr. DOTY: I rise to a point of order.

The PRESIDENT: State the point.

Mr. DOTY: The gentleman's time was extended for him to conclude his remarks.

The PRESIDENT: As the time has been fixed to vote upon this matter and as the gentleman's time was extended to conclude his remarks the point is well taken.

Mr. HARRIS, of Hamilton: In view of the short time left for further discussion and in recognition of the rights of others I shall finish my remarks now. I thank you.

Mr. EARNHART: Mr. President and Gentlemen of the Convention: May I presume to speak for the farmers of the state of Ohio? It is well that lawyers shall take the lead in this matter because they are better able to determine rights, but at the same time I believe that the farmers of the country, being amenable to the laws, should have some opportunity at least to give consideration to what they believe is right in the matter.

In the first place permit me to say I believe there should be a greater affinity between all classes. Now I have no objections to the lawyers whatever. I am glad to know that the difference is fast passing away between persons of different vocations. I believe that cases should be determined upon right and justice and not so much upon the ability of counsel to take advantage of and enforce technicalities of a complex law. That being the case, laws should be made more plain by the legislature and more simple, so that the courts would not differ so much in their interpretation of them. Most cases should be settled in the common pleas court. If judges are incompetent to determine the rights of the people we should elect better judges. That in my opinion would diminish litigation, because it would eliminate technicalities and would engender a greater respect for the court. It is a lamentable fact that the most of the people do not hold the court in as high esteem as they should because there have been cases where individuals have not secured their rights. The whole trouble is with the great corporations. Individuals are intimidated by the corporations sometimes and will not sue for damages. It is a well known fact that farmers having animals killed on the railroad often conclude that they had best not enter suit at all because of the delay and of the many questions that corporations every now and then are able to interpose and the corporation will wear them out before they can ever get a judgment. That is altogether wrong. The citizen should have his rights inviolate. I believe the courts should have more respect for legislative enactment. That is, I am in full accord

with the Peck proposal that no legislative enactment should be declared unconstitutional by less than the unanimous consent of all the judges. The argument may be produced in the case of an individual who has carried a case up to the highest court that one judge may be corrupt and now and then the individual not get his rights, but taking the whole matter and all the cases the argument certainly holds good, and a unanimous decision should be had at all times. I am in full accord with the Peck proposal to allow the court of appeals to settle matters finally and not go on to the supreme court. I believe it will simplify matters and it will insure justice, and, as the venerable judge said, if a man cannot get justice in the appellate court he never will get it anywhere.

I have no objection to the supreme court deciding upon the constitutionality of acts of the legislature; that is their province, and I do not think anybody here has even by inference attempted to show that they should never do that, but I want them to go slowly and carefully so that justice may prevail between individuals at variance in the courts. I think we can safely depart from the old rule because of new conditions that have taken place in the last few years.

Therefore, I want to say in conclusion, and I intend to be brief on everything, that it is my firm conviction that this is a long step in the right direction, and I ask every farmer in the Convention to take the matter seriously and see if he cannot reconcile his views with those that I have expressed in the matter.

Mr. DOTY: A matter of business. If we recess until one o'clock there is only one hour left for consideration. There are four or five members yet to speak and there is no desire to crowd anybody out, and I move that the time for voting upon this proposal and pending amendments shall begin at half-past three instead of two o'clock.

The motion was carried.

Mr. ANDERSON: I suggest that we commence to vote on the amendments at two o'clock and pass on those. Of course nobody is trying to take advantage of anybody else in this matter. There is not very much disagreement. For instance, Judge King is in favor of the Taggart amendment. So am I. I believe that the whole thing can be worked out in a friendly way to the satisfaction of everyone so that there won't be ten votes registered against it, and that is an end to be desired, but it cannot be done under parliamentary usages as it is now.

The PRESIDENT: The gentleman from Mahoning wants the time to be two o'clock to begin voting on the amendments and three o'clock on the proposal.

Mr. ANDERSON: And that half an hour be given for the discussion of each amendment offered after that.

Mr. DOTY: The member from Mahoning [Mr. ANDERSON] and I are trying to arrive at the same results. I think if you will let the discussion go on and let those who desire to talk, speak until three-thirty that we can then handle the matter.

Mr. ANDERSON: I will withdraw my amendment.

Mr. DOTY: It is merely a matter of getting some place where we will start on the finish. I think three-thirty will accommodate everybody.

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The motion of the gentleman from Cuyahoga [Mr. Doty] was carried.

The member from Auglaize was recognized by the president and yielded to a motion by Mr. Doty.

Mr. Doty moved to recess until one o'clock.

The motion was carried.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

On motion of Mr. Knight a recess was taken until 1:15 o'clock p. m., at which time the Convention again met and was called to order by the president.

Mr. HOSKINS: I demand a call of the house.

The PRESIDENT: A call of the house has been demanded and the secretary will call the roll and the sergeant-at-arms will close the door.

The roll was called; when the following members failed to answer to their names:

Antrim,	Hahn,	Norris,
Brown, Lucas,	Halfhill,	Partington,
Cassidy,	Henderson,	Peck,
Cody,	Jones,	Price,
Crites,	Keller,	Rorick,
Doty,	King,	Stewart,
Eby,	Kramer,	Wagner,
Evans,	Kunkel,	Walker,
Fackler,	Leslie,	Weybrecht,
Fluke,	Marriott,	Worthington.
Fox,	Mauck,	

The president announced that eighty-seven members had answered to their names.

Mr. KNIGHT: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. HOSKINS: Mr. President and Gentlemen of the Convention: What I want to say upon this proposition I can say in a very few minutes and it is just upon one or two phases of the proposition.

Before talking upon the questions that have already been discussed I want to state that at the proper time; on my own initiative and at the suggestion of several other members, I am going to offer an amendment to strike out of section 1 the words "justices of peace." While that probably is not an important matter in connection with general principles involved in the proposition, I would like to explain to the members of the Convention—I presume all will understand it, but it will bear repetition, at least—that the office of justice of peace has been since 1852 a constitutional office. There is a general demand for the abolition of this office over the state. I think it is fair to assume that in many counties the office of justice of peace, as it now exists, is considered more or less of a nuisance. By offering this amendment and striking it out of the constitution, it would not have the effect thereby of instantly dispensing with the office in the state. The office would remain, but it would be taken out of the constitution, so that future legislatures may hold or create an inferior court or keep the present system if they so desire, but they would not be compelled to keep it because it is a constitutional office. The office

itself, or a court of that description, can be created by the legislature under the provisions of section 2, that provide for the creation of inferior courts. A great many persons practicing law believe instead of having this system of justices over the state divided, two or three to a township, and many of those elected being persons not well qualified to administer the provisions of the office, that the jurisdiction should be given to some other court either to the probate court in the country counties or by the creation of a county judge, or something of that sort. I have no proposition along that line, but I desire to take this out of the constitution and let the legislature create an inferior court of that kind in which this jurisdiction may lodge. In more than half the counties in the state this jurisdiction could be lodged in the probate court and in more than half the country counties that would be the proper place to lodge this jurisdiction.

Now upon the main proposition, I think this is the most important proposition that this Convention has probably had before it. Some have assumed that I am opposed to the proposal. I am not opposed to it, but there are some changes in the original proposition that I feel ought to be made in the interest of making this constitutional provision a workable provision. I want, however, in the face of all this denunciation, more or less severe of the processes of the court to say this: That many of the evils complained of in the administration of justice, and particularly in personal injury suits, have been and are gradually being cured by the law. We all know that the law of assumed risk and of contributory negligence and the rules of evidence relating to them have been changed so that the old arbitrary rules of the courts defeating actions for personal injury upon the ground of contributory negligence no longer prevail. The question of damages, etc., is a matter for the jury. Just that much in passing.

Now one other proposition on the question of the delay. Much complaint has been made about the delays, but that has been cured by the statutes in the last three years by which all of these personal injury cases in the supreme court are, upon motion, advanced for hearing and they don't await their regular call or turn upon the docket as they did in former years. So that to a very great extent that will cure the complaint about the long delays of the court.

I do not believe, gentlemen of the Convention, that we ought to dispose of this proposition from the standpoint of the personal injury cases alone, or from the standpoint of delays that may have occurred in personal injury cases. In most counties of the state personal injury suits are the very smallest percentage. We do not have two of them per year in the county from which I come. The great mass of litigation is between individuals, although once in a great while someone is injured upon a railroad passing through a county or some one is injured in a manufacturing establishment, and we have a personal injury suit, but that is an exception and not the rule. I do not think we ought to approach this proposition and judge it from a standpoint that may have heretofore prevailed in the personal injury suits and which difficulties I think have already been very largely removed.

The question for consideration here is, what should

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be the jurisdiction of this appellate court? I feel that we must preserve to litigants the present powers of what we call the circuit court in this appellate court, and I mean by that we must preserve the right of trial in an equity suit *de novo* in that court of appeals.

What is the situation? I bring an action to set aside a conveyance of real estate on the ground of fraud, or for some other reason that invokes the jurisdiction of an equity judge. That case is tried by the common pleas judge. We have no right to have a jury pass on it. Only one man passes on it, the common pleas judge. He passes upon the fact and he makes his decision and it may be unsatisfactory to one or the other party. Most surely it will be unsatisfactory to one side. The person aggrieved by the decision of the common pleas judge has a right to appeal to the circuit court by which he can have that case tried upon its merits in the circuit court, and that is a right we exercise in all the country circuits. It was exercised during all the years that Judge Norris was judge. The aggrieved party exercises his right to appeal to the circuit court and there is a trial of that equity case *de novo* in that court, but here that right is taken away. Now we want the right to bring witnesses into that court upon the hearing of an equity case and have that heard as an original proposition in that court, and we want that trial not upon the cold transcript, not by that court as a reviewing court, but as a trial court, to decide the merits of that case from hearing the witnesses if the litigant so desires.

It is a well known fact, and I think one that will not be disputed by any one, that no man, be he judge or juror, can be a competent judge of facts unless he comes in contact with the witnesses, unless he observes their demeanor and is able to judge of their character from the statements they make. Some witnesses might be able to make a smooth statement that would read well in print, and yet if you heard the story from their lips you would not believe it for a minute, and we have a right, owing to the fact that we can not have a jury pass upon the fact in our common pleas court in equity cases, to insist on the right to have a trial *de novo* in the court of appeals.

I favor the provisions of Judge Taggart's proposition, and I favor the provision that says the court shall have such other jurisdiction as may be conferred by law. There is not a single thing in the Peck proposal, I believe, that could not be enacted into law now by the legislature. It is a mistake for this Convention to believe or to assume all future legislatures are going to be controlled by improper motives. We have no right to assume that. If we must assume such a proposition as that, our representative government is a failure. We ought not to presume it and we ought not to tie up the jurisdiction of our courts and fix the jurisdiction by any hard and fast rule.

I have no objection to the final jurisdiction of this appellate court in the ordinary cases if you will open the door wide enough, as provided in the Peck proposal, that exceptional cases may be taken care of and if these cases and some others I would like to suggest are incorporated in it I will agree to it.

Mr. BROWN, of Highland: I would like to ask the gentleman a question.

The PRESIDENT: We have not been allowing questions under this limited debate.

Mr. FESS: I want to echo what the member from Auglaize [Mr. HOSKINS] has said, that this is one of the most important questions that has come up before us for consideration.

I believe that this Convention will do nothing that will bring a warmer support to the work that it is doing for the general public than the reform of the judiciary. I notice when I have been in conversation with different people there seems to be a universal demand that something be done that will expedite a final ending of disputes in the courts and it has been suggested if that could be done it will meet with almost universal favor. I deplore that someone has read into this proposal an attack upon the judiciary. It certainly is not such. It certainly does not reflect upon the personnel of the courts. This proposal, as I read it, is simply to cure a bad system, to eliminate the faults that have made it impossible under our practice today for a litigant to see the end of a lawsuit, whether in two or twenty years. There is not anything today so certain as the uncertainty of the time of the ending of a suit and the expense of it. This proposal is not an attack upon the principle of the adjudication of cases, but simply to remedy the faults of our present system so we can see the end of a dispute or of a lawsuit. I would be the last man in this Convention to deny the right of the judicial department to sit upon the constitutionality of a legislative enactment, and if it finds that the enactment is not in keeping with the constitution to pronounce it unconstitutional.

I wonder whether you have noted that the one distinction between our own government and the governments of all the remainder of the world lies in the position we give the judiciary. It is not in the fact that our government has three departments and other governments have not, because all governments have three departments. All governments, whether they be monarchies, despotisms or limited monarchies, or whether they be republican or pure democratic—all governments recognize the three functions, intelligence to make the laws, good will to interpret the laws and power to enforce the laws. And in that respect we are not different from Turkey; we are not different from England. But wherein we differ from all the governments of the world is that we recognize the three departments as interdependent and yet in a degree independent. That is the difference between our government and any government in the world up to the time ours began. And we do not want to destroy that. We want to hold to that unique feature, and when a statute comes from the legislative department and there is a question of doubt as to its constitutionality in the opinion of someone suffering from its operation, that man should be permitted to take it to the court for final decision, and that court ought to be absolutely independent, sitting upon the case, to speak as to its constitutionality. The only point of difference is, should that decision be unanimous or may it be by a divided court?

So far as I am concerned I will vote for this proposal that it shall be unanimous rather than see the proposal defeated. I would much prefer a decision of five to one if I could have my own way about it.

It is not quite right to say it is one department setting

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aside another, because every law that comes from the legislative department is by a divided vote. It is not unanimous. And so when it goes to the supreme court it may be divided up there. It would be a divided court passing upon the legality of a law that has been passed by a divided legislature, and it is not one department divided overcoming another department united.

I will vote for the Peck proposal requiring a unanimous concurrence rather than see it defeated, but if we keep the court as it is now I would rather have it five to one.

Now, in regard to the purpose of this proposal, I know you will all admit that we need something to prevent delays. There is nothing so abominable in our system as to allow a case to be drawn out until there is absolutely no end to it. That means that the poor man who has a case has no chance to fight it to the ultimate limit. He will simply be impoverished by a system that admits of delay made possible by appeals and writs of error and various motions of all sorts until he can see no chance of ending the thing. What we want today is to give to the least prominent individual citizen in our state just as much right to adjust his differences with another as it gives to the richest man or to the corporation, and you can not reach that until you make it possible for him not to be impoverished by continuances of his case that keep him in court until he is worn out by sheer force of not having enough money to keep on. Why can't the legal fraternity see that if you make it impossible for unlimited delays in cases that the lawsuits would be multiplied, for men then will not be afraid to go into court? As it is now men are afraid to go into court because they can not see the end of the litigation. What we want is to make even the common pleas courts' decisions final in some things. I do not feel that my friend from Auglaize has raised a question that is serious. If I had my way there would be a certain class of cases that never would go beyond the common pleas court. That court should be final in some litigation, and when we come to the court of appeals we must make its decision final in many cases. We don't want to abolish the circuit court, for that would make every man who has a case to be heard in the higher court come to Columbus, under heavy expense, to sit and hear all sorts of motions for delays and never know when his case can be heard. That would be unfair to him as much as the other. We want to supersede the system of circuit courts by a system of appellate courts which will have final jurisdiction, and which will sit not in Columbus, but at the door of the litigant, so that he can see the finality of his lawsuit right near his home. I have been told if this proposal passes at least forty per cent of the cases that now reach the supreme court will stop in the circuit court, and some say more than forty per cent.

What objection is there to such a plan, making the circuit court or its substitute, the court of appeals, final in certain matters? Some people say it will reduce the supreme court, it will leave them nothing to do and that court will be reduced in dignity and service. It certainly will not do either. The supreme court has an open door in this proposal and one that I was afraid of, until certain members assured me that there is no danger. That door is by writ of certiorari, by which the supreme

court can order the record sent up from the court of appeals on certain cases for the review of the cases in the supreme court. I am sure there is a door that will open up to the supreme court much work.

Now I am a little afraid of the provision in Judge Taggart's plan, where it says "And such other appellate jurisdiction as may be prescribed by law." Gentlemen of the Convention, that is the proposition that in general terms I would support, but what we are trying to do in this Convention and in this proposal is to make that one thing impossible, viz., to increase unlimitedly appellate jurisdiction of the supreme court. What is the limit under this wording, and what will prevent the lawyers in the legislature from providing a law to send up all sorts of cases? My only plea is that we shall make it possible to stop cases near home; that we shall have final jurisdiction near home, instead of having to go to the supreme court except in cases involving constitutional law, cases arising under the constitution and the other cases defined as felony.

I would hesitate a long time to vote upon the proposition that gives to the supreme court jurisdiction of questions involving the interpretation of statutes. How many cases would not, and how many lawyers here could not convince the lower court that the case did involve the construction of a statute? If we are here to make it possible that a litigant without money can have a final hearing without having to go to the expense of trials without limit in the supreme court, why should we question the feasibility of giving this court of appeals or appellate court final jurisdiction? It seems to me that here is the most important measure that we shall have before us. I now recapitulate because my time is up.

I want to say in the first place, in my judgment, here is the most popular measure that the Convention will give to the people of Ohio.

Secondly, it is not an attack upon the judiciary. If it were I would vote against it, for I recognize the necessity of lodging that power in somebody. It is not an attack upon the personnel of the courts. It is simply trying to cure the faults of a bad system that are not corrected under our present system; and if we want to retain the respect of our judiciary which we must maintain if we hope to ever have the dignity in the law respected; if we want to maintain that respect, we must remove these faults and make it possible for the court to adjudicate cases without so much unnecessary expense. This proposal is not in the interest of a particular class. It is wrong to hold out that it is in the interest of any class or against the interest of attorneys. I respect the opinion of attorneys here in the Convention, because they have studied the technicalities of the law, but hear me, gentlemen of the Convention, it is the undue importance that is placed upon the technicalities of the law, rather than going to the merits of the case, that has brought us into disrepute. Is it not possible to make laws so free of technicalities that more importance and value may be placed upon the merits of a case? Then if that can be done I am sure this proposal will not hurt any lawyer, and it will not make it impossible for a litigant to have a case adjudicated fairly and with expedition.

I hope this proposal, with a few minor changes Judge Peck will offer, that have already been suggested and that do not especially go to the merits, will pass this Con-

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vention by almost a unanimous vote. It will mean so much when it comes to the people that we are trying to place before them a measure that they should and will approve. Gentlemen, let us make every man equal under the law, and make it absolutely impossible that the poor man shall be under any disadvantage when he is trying to redress his grievances against a man of great power; and if we do that you will have the approval of the citizenship when we go to the people this fall.

Mr. ANDERSON: I have received a telegram that I believe by reason of the standing of the gentleman who has sent it ought to be made part of the record. The gentleman is an ex-judge of Cincinnati. The telegram reads:

Cincinnati, Ohio, April 9, 1912.

D. F. Anderson, Esq.,

Constitutional Convention, Columbus Ohio.

I congratulate you upon your demand for justice to the poor man. Although the lawyers favor making it easy for courts of error to reverse, the people are against it. Except in extreme cases the legislative enactments should stand and the verdicts of juries should stand. Keep up the good fight.

WM. LITTLEFORD.

The delegate from Cuyahoga [Mr. THOMAS] was here recognized.

Mr. THOMAS: Mr. President and Gentlemen of the Convention: Coming from that class of citizenship of Ohio, the working class, which has suffered chiefly from the delay of the courts, from among the poor people who have been mentioned here so much in the discussion of this proposal, I will say on behalf of the workers and laboring men who are in this Convention that we are giving our hearty approval to Judge Peck's proposal for reform in our judiciary system. We believe that with the adoption of this proposal there will be an opportunity at least for getting justice for the poor man within a reasonable time. I am of the opinion that there is no necessity of increasing the supreme court to seven instead of six judges. Now that the work of the court has been cut down about one-half, it seems to me instead of increasing the number we should lessen the number to five, and if, as Judge Taggart and some of the other speakers suggested, we need a chief justice to have charge of the work of the supreme court, we are satisfied to vote for a chief justice.

Judge Nye, in answering my question a short time ago in reference to the qualifications necessary for a supreme judge pointed out the fact that these judges were elected by the people because of their legal attainments and qualifications and because of their exceeding ability to deal out justice from the supreme bench. The workers of Ohio have been in somewhat of a Rip VanWinkle sleep on that subject for about a quarter of a century, imagining really that our old party conventions were selecting judges because of the facts stated by Judge Nye, but we came to the conclusion some three or four years ago that instead of being selected because of their legal attainments they were picked by the corporate interests of this state who went to the conventions for

the particular purpose of selecting judges who would serve them. And they have served them well, particularly in cases of personal injury, where the poor cripple or the widow and orphans have had no opportunity to contest with them because of the delay of the courts. And the reason we are in favor of this judicial reform is because of the impossibility now and in the past of the workers securing justice, because we have been unable to carry our cases up or present them properly in most of the appeals that have been made. We have had to depend upon that class of lawyers who out of their generosity to the workers and the poor men, if you like, were willing to take our cases on a percentage and maintain our widows and orphans and the cripples themselves, occasionally, during the periods when those cases were going through the courts, and where it has been impossible for attorneys to do these things for us our widows and orphans and cripples have had to stay in the poor house while trying to secure justice.

The delegate from Mahoning made reference in one of his answers to questions to the fact that the Ohio supreme court, previous to the passage of the Norris and Metzger acts, practically nullified every safety law made for the protection of the workers in this state by their decisions on assumed risk, contributory negligence and fellow-servant rule. As a verification of his answer all you have to do is to refer to the nullification of the Sanford act, passed in 1890, by the decision of the supreme court on the fellow-servant rule; the Dunlap law on assumed risk, that was practically nullified in the same manner; the provision of the miners' safety law referred to; the miners' right of action where laws are not complied with by the company, section 3365; the guarding of rails and frog safety laws; providing guards for machinery in factories and workshops; the Norman case; the law that no child can be employed around dangerous machinery; the Jacobs case.

In reference to other laws passed for the benefit of the workers it is only necessary to call attention to the fact that the eight-hour law for public work was declared unconstitutional, the ten-hour law for train men declared unconstitutional, the law passed to regulate the sale of convict-made goods declared unconstitutional, the right of the poor litigant to attorney fees in appealed cases declared unconstitutional, the law weighing coal before screening for the coal miners; and the mechanic's lien law.

A bulletin recently issued by the New York state library shows that four hundred and sixty-eight statutes have been declared unconstitutional by supreme courts of various states in this country, fourteen of them in Ohio. Among those in Ohio were the ones I have just enumerated. In the campaign that the organized workers of Ohio undertook against some of the members of the supreme court—some of whom we didn't think fit to serve any more were defeated—we showed that there were some twenty-four personal injury cases that had been passed upon by the supreme court where the decisions had been secured by the individual in the circuit court and had been reversed in the higher court. There were also some eighty-seven unreported similar cases, within a period of a few years, that our investigators found in going over the record.

Mr. SHAFFER: How many of those were affirmed?

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Mr. THOMAS: Our record does not show that. It simply shows the number of cases that were passed upon unfavorably.

My amendment provides that the supreme court shall have no right to pass upon questions of constitutionality of statutes enacted by the legislature, and it is the opinion of the workers that each department of government should be responsible for its own act, and that no department of the government should overlap or override the work of the other. We have provided in this Convention for the the initiative and referendum as a means whereby legislative acts that may be in contravention of the constitution shall be passed upon by the people, and no other power should have the right to determine that question other than the people themselves. The people elect the supreme court, the people elect the legislature, and in the legislature we have judiciary committees supposed to be composed of the best legal minds in those bodies, as we have them in this Convention, and I do not think any one here believes for a moment that there is any better legal ability on the supreme court than we have right here in this Convention to determine whether the work we are doing is within our powers or not. The same thing applies to legislative bodies.

Judge Wanamaker, of Akron, I understand a candidate for the supreme bench, according to his announcement in the papers, had this to say in a speech made not long ago in the city of Akron:

There is too much judge-made law these days. When judges rightly understand and faithfully observe the law as it is, giving rightful force and effect to the plain, clear and complete terms and provisions of the act, in accordance, not merely within the letter, but the spirit of the law, they will add much to confidence in the courts, the safety of society and security of the state.

Let them leave lawmaking, law-modifying and law-repealing to the legislative bodies, which are sworn to support the same constitution and laws the judges are sworn to support.

Abraham Lincoln said:

If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the supreme court, the instant they are made the people will have ceased to be their own rulers; having to that extent practically resigned the government into the hands of the eminent tribunal.

It seems to me that we have done just as Abraham Lincoln predicted, and it is time we were going back to those fundamental principles of our government in establishing three departments to do our governmental work.

Judge Taggart's amendment and both proposals submitted, for the first time in Ohio, in my opinion, and I think I am correct, write into the constitution of Ohio the right of the supreme court to pass upon the constitutionality of a law and it seems to me that the members should stop and consider that phase of the proposition, that you are giving rights now never given before by any constitutional convention.

The delegate from Franklin [Mr. KNIGHT] was here recognized.

Mr. KNIGHT: Mr. President and Gentlemen of the Convention: I am in a peculiar position with reference to the pending subject. Perhaps I may properly be classed as a layman who has had the advantage of a legal training; or as a lawyer who has never been a practitioner. At any rate I am one who has been a teacher of constitutional law for a decade and a half, attempting to train students, not as special pleaders, but to know the relationship of constitutions, state and national, to statutory law, and the proper functions of judiciary, legislature and people; above all I have always tried to inculcate in their minds the fact that the judicial department is one of the co-ordinate departments of government. It does not seem to me to be serving the people of the state or our own purposes here to bring into this question, directly or indirectly, attacks upon the judiciary. All such attacks in the last analysis come down to this, that we are making an attack upon human nature. No one supposes for a moment that judges placed upon the bench cease to be human beings. They are liable to error as the rest of us are. I do not know that we should impute it to our courts as a crime to commit an error which in the rest of us would be merely an error of judgment. No one for a moment supposes that our courts are omniscient or omnipotent. It seems to me that we shall best serve the people of this state by making such modifications in the judicial system as shall reduce to a minimum the liability to errors of judgment on the part of the court that work to the disadvantage or detriment of the rest of the people. That, it seems to me, is the real problem.

Now the pending proposal and the substitutes have many good features. In the main the Peck proposal is excellent, and this fact is recognized by the two substitutes, for each of them accepts the frame work of the Peck proposal and modifies that proposal in a few particulars. I may say parenthetically that the Franklin bar, at a meeting which I understand unofficially was not attended by more than a small percentage of the membership, resolved against the Peck proposal, but as the fifteen or twenty men who attended the meeting are only a small minority, I beg leave to represent the majority of this county and I am in favor of the Peck proposal with modifications.

The important features upon which there is division and upon which I wish to speak are—

1. What shall be the constitution of the supreme court? Shall it consist of five, six or seven judges?

It seems to me there is a decided advantages in an odd number, and a decided advantage in having a chief justice elected as such for the entire term for which he is elected. On this point I am distinctly in favor of the modifications contained in both the Taggart and the Worthington substitute providing for a supreme court of seven with a chief justice elected as such. I do not regard the fact that it requires one additional judge above the number now constituting the court as an objection that should have weight if thereby we make a more valuable court, and one whose opinions will command the respect which seemingly in the minds of some of us it does not now.

2. Shall the supreme court have authority to declare laws unconstitutional? Yes, emphatically, unless we are to break down the barrier between statutes and constitu-

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tion. The constitution is the supreme law of the state. Under it we have the legislature and the courts and the executive department. It is a rule of conduct by which we are to live together and by which we are to know what each of our agents has a right to do. By that same organic law we put in the hands of the judiciary the power to act as umpire and hold the rest of us to our duties. I am distinctly opposed to taking from the courts that power.

3. If the supreme court has the power to declare a law unconstitutional, by what proportion of its membership shall this be done?

It seems to me that all purposes and all interests, personal and individual, large and small, are sufficiently conserved by a provision, having a court of seven, that no law shall be declared unconstitutional by less than five of those seven judges. I do not think it is wise to require the unanimous opinion of the court upon this subject, for reasons that have been more than once explained here in the last few days.

4. What should be the general jurisdiction of the supreme court? It seems to me that this ought to be fixed absolutely in the constitution. Therefore, I am distinctly opposed to the provisions of lines 18 and 19 of the Taggart substitute which add "such other appellate jurisdiction as may be conferred by law." If there comes a time when we are obviously at a disadvantage because the supreme court has no jurisdiction in some matter, we have a way of amending the constitution; and there are few cases that are so vital that we, for the sake of those few cases, should leave the door as wide open as it is now so that the legislature may confer all jurisdiction on the supreme court. If the emergency arises we can handle the situation in two ways, by the initiative and referendum, and, second, through the legislature, for I apprehend an easier way will be provided for us to amend the constitution without resort to the initiative and referendum. It seems to me that the Taggart substitute takes us back and holds us where we are on that point.

5. As to revisory jurisdiction of the proceedings of administrative officers, it seems to me that this should be added, and in this regard the Worthington amendment, lines 17 and 19, is distinctly wise, that the supreme court should have such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. The public utilities commission and other commissions now undertake to make rates on matters under their control. Those bodies are not courts, and therefore the legislature can not under the present constitution, nor can it under this proposal unless we provide it here, confer appellate jurisdiction on the supreme court over what is not a judicial body. Therefore, the provision must be inserted here so the supreme court can have that jurisdiction and that we may have speedy decisions of matters promulgated and announced by these administrative officers.

6. In the next place, line 27 of the Worthington substitute proposes that the supreme court may have jurisdiction in cases involving the construction of a statute. I am distinctly opposed to that. That is another door by which we shall get back to the situation where we now are. Under this the supreme court would acquire appellate jurisdiction over almost every subject, for

there are very few cases that can not be made to involve the construction of a statute.

7. As to the appellate court it seems to me to be wiser to keep the number of districts at eight rather than to increase to nine, as provided for by the Taggart substitute, as that would necessitate a rearrangement of the districts and would add one more court, perhaps necessary and perhaps unnecessary; but the same thing would be accomplished by giving to the legislature power to increase the number of districts if it becomes necessary rather than fix it by the constitution. As to the jurisdiction of the appellate court, it seems to me, at present at any rate, that the reversal of the decision of the common pleas court should be allowed by a majority vote of the court rather than that it should require unanimity of the court.

8. Lastly, I am very strongly of the opinion that an amendment should be introduced somewhere into these proposals before one is finally adopted, requiring that every case heard in court, both supreme court and court of appeals, shall be reported. That can not be left to the legislature because if the legislature were to undertake to enact a statute upon that subject the court would rightly say it was an invasion of the territory of the court, whereas if in the constitution we confer the power upon the legislature to order that cases shall be reported such objection can not be raised, and we shall have a proper provision on that subject. I wish to offer an amendment when the time comes that the decisions in all cases of the supreme court and court of appeals shall be reported, together with the reasons therefor.

It seems to me we are in a situation where neither proposal is exactly right and therefore it may be necessary for us to override our technical rules a little to whip one of these proposals into such form as to embody the best in all, and I agree most heartily that there should not be, and I do not believe there will be, any difficulty in the way of our getting together and giving practically an unanimous vote in this body on the main principles on which the report is based, of which the substitutes are merely modifications.

Mr. SHAFFER: Mr. President and Gentlemen of the Convention: It is with extreme diffidence that I arise to address you on this proposal. Because of the learned jurists who are present and who have spoken upon and who have lent a hand in the making of this proposal and the amendments thereto I feel that I speak as a layman. However that may be, I desire to raise my voice in favor of the general principles and the ideas that are embodied in this Peck proposal. I take this position without casting any reflections on the past history of the courts of Ohio, and without finding any fault with the decisions of the courts or with the courts themselves. In the development and progress of civilization there comes a time when all minds meet on the proposition that there should be a change. We live in such an age of evolution and development. While the principles of justice and righteousness are eternal and remain always, the application of those principles must meet the requirements of our present environment. All agree that there is too much technicality in the administration of justice. All of us realize this. All agree that there is too much delay in the administration of justice. We all realize this. And to that end this representative body

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is practically of one mind, that the judiciary system of Ohio should be changed, and it should be changed in such a way that while the principles of justice and equity shall remain the same as they always have been, courts should be so provided by this Constitutional Convention that they can administer those principles with celerity and with justice to all who come before them. I hold that this is the most important proposal this Convention has considered. As the last resort, as the final arbiter of the rights of the people of the state of Ohio, the courts must be respected. All of us have that in our make-up, in our very nature, which makes us willing to submit to an impartial tribunal the determination of our rights. We are here to try to remedy the defects of our judicial system and to get together on something that will restore to the courts and to all the officers of the courts that dignity and respect which they deserve.

Now, I make these introductory remarks with the idea of going over this proposal of Judge Peck and reviewing with you the different amendments and suggestions that have been made so it will conform with the idea which all of us have, but upon which we are somewhat at sea as to the way they should be expressed.

Now I will ask your attention to this Peck proposal and to the suggestion made by Judge Worthington and Judge Taggart in their substitute proposals presented to this Convention.

Section 1 is practically the same all the way through, except that Judge Worthington changes the words "court of appeals" to "appellate courts," and — perhaps I had better read it:

Section 1. The judicial power of the state is vested in a supreme court, appellate courts, —

Instead of courts of appeals as in the original Proposal No. 184

—courts of common pleas, courts of probate, justice of the peace, and such other courts inferior to the appellate courts as the general assembly may from time to time establish.

I think that change is wise and should be adopted.

Now, going on to section 2, Judge Worthington suggests that there be a chief justice. Therefore I suggest that section 2 be amended so as to read:

The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges and the judges now in that office shall continue," etc.

I think it is the consensus of opinion of the conservative as well as the radical members of the Convention that while we do not want to change the present number of judges, there should be an uneven number of judges of the supreme court. The election of the chief justice would remedy that difficulty, besides giving to the chief justice, elected as such, the responsibility for the execution and administration of that court. There is no other suggested change in the section except the writ of prohibition. I do not think there is any question but that word should be added. It seems to be agreed upon.

Then there is a more important change at the end of the period in line 17, where provision for added jurisdiction of the supreme court is made in the words "and

such revisory jurisdiction in the proceedings of the administrative officers as may be conferred by law."

We are, as stated in the beginning of my remarks, in an age of evolution and it seems that in the legislation of other states they have evolved the idea of commissions having charge of public utilities, taxes and other matters in which we are all interested. Those are all administrative officers of the state, and those administrative officers are getting to be very important officers; in fact, the most important we have in the state today, and the suggestion is that the supreme court should have supervisory and advisory power over them.

Mr. TAGGART: Revisory.

Mr. SHAFFER: It is the same thing. Wherever a commission makes a ruling, if anybody is aggrieved he can take it to the supreme court and the supreme court would revise or modify the judgment of the commission on that question. I hope that will be adopted.

If we adopt the chief justice idea, suggested in line 26, I would strike out the language that no statute should be held unconstitutional except by a concurrence of five judges of the supreme court, eliminating the word "all" and striking out the words "sitting in the case." I take the middle ground on this much disputed question as to the court having authority to declare an act of the legislature unconstitutional and to answer Mr. Thomas' objection that there never was such a provision in any constitution I refer him to our present constitution of Ohio section 2, which provides for dividing up of the court into two divisions for the adjudication of cases, where he will find the following language:

A majority of each division shall constitute a quorum, and such an assignment of the cases to each division may be made as such court may deem expedient, but whenever all the judges of either division hearing a case shall not concur as to the judgment to be rendered therein, or whenever a case shall involve the constitutionality of an act of the general assembly or of an act of congress, it shall be reserved to the whole court for adjudication.

That has been the law in Ohio since 1883, so that this is not an innovation to put this provision in the constitution.

In line 28 we have brought up to us the much mooted and much argued question as to the requirement of unanimity in the reversal of a judgment of a common pleas judge.

The time of the gentleman here expired and on motion was extended.

Mr. SHAFFER: Mr. Jones offered a suggestion in his argument which appealed to a great many of us. It was to the effect that we add to the cases of public and general interest which the supreme court might affirm, modify or reverse, cases where the decision of the court of appeals is not unanimous, in which, upon the application of either party, the supreme court shall direct the court of appeals to certify the record up to the supreme court, which may review, affirm, modify, etc.

Mr. HALFHILL: Which proposal are you quoting that language from?

Mr. SHAFFER: The original Judge Peck proposal, and this is a suggestion in line 29. No amendment was

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offered, but Mr. Jones, who is now absent, asked me at the proper time to present an amendment covering that ground. However, he has modified his original suggestion. His original suggestion was that in cases where the decision of the court of appeals is not unanimous the supreme court shall upon application of a party of interest direct the court of appeals to certify its record to the supreme court. He has changed that to read "in all cases where the decision of the court of appeals is not unanimous for reversal of the judgment of an inferior court." That would set out a class of decisions where the court was not unanimous in affirming the decision of the courts below. This amendment has merit and I shall introduce it at the proper time as an amendment to this proposal.

Another amendment that was practically agreed upon in the wording of the proposal is in line 39. This was a change of the word "after" to "before" and was accepted by the committee. Now we come down to line 45, at the end of the word law, "the court of appeals shall hold one or more terms in each year at such places in the district as the judges may determine upon." That I approve of and I think a majority of the delegates do.

In Judge Taggart's amendment, at line 50 of the Peck proposal, that the general assembly shall provide for the rotation of such judges throughout such districts, I do not know anything that will add uniformity to the decisions and certainty to the law upon different questions more than by a visit of one circuit judge to another district, thus getting the views, not only on questions of law, but on questions of practice. It seems to me it is of the utmost value, not only to the judiciary of the state, but to the litigants and to the lawyers, that that should be embodied in this proposal.

Now there is but one more suggestion that I wish to make and that is also embodied in a suggestion by Mr. Jones that the provision at the end of the word "case" in line 65 of the present proposal should be added to the end of line 31, so that it would read that in all cases where the judgment of a court of appeals is in conflict with the judgment pronounced by another court of appeals of the state upon the same question, the supreme court shall upon application of a party in interest, made within such time as may be prescribed by law, direct such court of appeals to certify the record to the supreme court for review, final determination, etc. That is in line with Judge Worthington's proposal and also with Judge Taggart's proposal, so as to give jurisdiction to the supreme court in all cases where there is such conflict of decisions between the different courts of appeals of the state. Then the period after the word jurisdiction in line 63 should be stricken out and the words "and in cases hereinbefore excepted" inserted. That makes it logical, so that the jurisdiction of the supreme court will all be contained in section 2. I thank you for your attention and sincerely hope that this proposal will go through substantially as it has been offered.

Mr. BROWN, of Highland: I want to serve notice on the Convention now of an amendment which I have written which I believe will cure some of the objections to the original proposal. I do not know that the amendment will be in order now, but I think a notification of the fact that the amendment will be offered will not be out of order.

The PRESIDENT: It may be proper to call attention to it.

Mr. BROWN, of Highland: There seems to be a difference of opinion between Judge Peck and other members of the legal profession regarding the restraint upon the circuit court or court of appeals in trying cases de novo under this proposal. It has occurred to me that all of that should be cured by inserting after the word "procedendo" in line 57 these words: "And the right to try de novo any case not tried by a jury sent up from the lower court." Then let it proceed just as it does, defining the jurisdiction and the final judgment of the appellate court. I believe this amendment would relieve the apprehension of many of the lawyers about the injustice that this proposal would impose on litigants who might not be satisfied with the judgment of the lower courts.

Mr. TALLMAN: Mr. President and Gentlemen of the Convention: I am in favor of a great many things that have been said and a great many of these amendments, but I am heartily opposed to others. I do not think there is any question in the minds of this Convention as to the supremacy of a constitutional provision over an act of the legislature, and I shall not discuss that at all. I think it is a matter of detail largely for the legislature instead of the Convention to define questions as to the number of supreme judges and the number it would require to reverse or affirm. I am not particular about that, but I do think there is one matter that has escaped the observation of this Convention and one that is material, and the reason why I allude to it is that the member from Mahoning [Mr. ANDERSON] made it a special ground of attack in one of his very able speeches made to this Convention. I might not have mentioned it had it not been for the further fact that it was given emphasis and importance by the member from Franklin [Mr. KNIGHT]. It is that in no case should the court have jurisdiction to declare the meaning or pass upon the meaning, of an act of the legislature—not as to its constitutionality, but to pass upon or determine the actual meaning or construction of that act of the legislature.

Now, gentlemen, I want to point out to you some of the difficulties there are in that rule if adopted. It is true that under the section here defining the judges of the supreme court and defining their authority it says "such other jurisdiction that may be given by law," but Judge Worthington of Cincinnati, has insisted that it was important to provide—in the constitution itself—that in every case involving the construction and meaning of a statute, the supreme court should have jurisdiction to determine its construction in every case where its construction is involved. I want to illustrate and explain to you the importance of this.

In 1908 there was a commission appointed consisting of three miners, three operators and the chief mine inspector of Ohio. Previous to that appointment the members appointed to frame the General Code—to codify our statutes—put all of the mining laws together, and the next legislature, in getting out volume 101, repealed every section of the act that was in the General Code but re-enacted it largely, with some changes. Now, bearing that in mind, I want to make another statement for the benefit of the lay members of this Convention, and

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that is that under the common law in a personal injury case there was no right of recovery except to the person injured.

The common law was adopted in this country and it was only by means of legislation that the right of action was extended to the wife or children or next of kin of a person killed. Now, without an extension of that right by statute, the rule of construction would be that the damages for an injury would be confined to the party injured. I want to call your attention to one section of the law adopted by the mining commission, section 972, page 86 of volume 101, which in substance reads as follows:

In case of an injury to person or property occasioned by a violation of the provisions of this act, or any willful failure to comply with any of the provisions of this act by the owners or operators of a mine, a right of action shall accrue to the person injured for any direct damage he may have sustained thereby, and in case of loss of life by any such willful negligence or failure a right of action shall accrue to the widow and lineal heirs of the deceased.

That means, in the first place, the right of action shall accrue to the person injured. That is all right. Second, in case of death it will accrue to the wife and to the children who are the lineal heirs. But it does not give any right of action to the next of kin of an unmarried man who is killed in a mine, who has no wife or children.

Now I want to call your attention to another thing. In the common pleas court of Belmont county an action was brought by a mother as administratrix of her son, a minor sixteen years of age, who was killed in the mine by a violation on the part of an operator of some of the provisions of this mining law. I have not the time to tell you what they were, but it was a violation of the mining law. The minor had no wife or children. The common pleas court there said, he being dead, and having no wife or children, there was nobody on earth that had a right of action and sustained a demurrer to the petition.

Now I want to call your attention to another thing, and right here I want to give a little credit to my worthy friend from Mahoning county [Mr. ANDERSON].

He claims to have had much to do with the employers' liability act. That is a good act. Remember now, before the passage of this mining act the law had been for thirty or forty years that in case a person was killed in a mine his administrator had a right of action, and that right of action would be for the benefit of the next of kin, who was his wife and his children if he had any, and if he didn't have any his next of kin would be his father and mother and his brothers and his sisters. Therefore the law for forty years before this mining act was passed was that a party injured could recover, and if he died his wife and children could recover, and if he had none, then his father and mother and his brothers and sisters as next of kin could recover. The construction of this section of the mining act by the court deprived the father and mother and brothers and sisters of any right to recover because they were not named in the statute.

The time of the delegate here expired and on motion of Mr. Redington was extended.

Mr. TALLMAN: Now in the passage of this employ-

ers' liability act, remember that the general act giving the right of recovery to the next of kin had been in force for forty years, and it was very properly repealed in this employers' liability act, volume 101, page 194. The employers' liability act, passed after the miners act, repealed the old law that had been in force forty years, but reenacted it in practically the same terms, thereby putting it out of the power of the court to say that the old statute had been repealed by implication, because it was repealed by the legislature and reenacted later in the same session, showing that the legislature intended to give a right of action to the next of kin in case there was no wife or children surviving the decedent.

That being the case, after the passage of the mining act and the passage of the employers' liability act, on August 23, 1910, a boy sixteen years old, a trapper, was killed in the mine by reason of a violation on the part of the mine owner of some of the provisions of the mining act, and a suit was brought in the common pleas court of Belmont county in the name of the administratrix, who was his mother, to recover the damages sustained by the next of kin—herself and husband, who was an invalid, and some children, some younger than the boy who was killed and some older, but the boy who was killed was her chief support. She brought an action, after the passage of both statutes alluded to, to recover. A demurrer was filed to that petition and for the benefit of the laymen in the Convention I will say that a demurrer raises a question of law—that is, even if all said in the petition is true, there is no right to recover. The court, admitting that everything in the petition was true, yet, under the mining law framed by three miners, three operators and the chief inspector of mines of Ohio, and passed by the legislature, refused a right of recovery to that mother for the death of her child, her only support, because the son had no wife and children.

Now, gentlemen, the case went very promptly to the circuit court. It went there on the 4th of December, 1911, and on the 8th of December, 1911, the circuit court affirmed the decision of the court below sustaining that demurrer, and the case is now in the supreme court. I want to ask my neighbor from Mahoning [Mr. ANDERSON], or I want to ask any other lawyer in the Convention, under those circumstances, if there were no appeal by petition in error or otherwise to the supreme court where a demurrer has been sustained to the petition by the common pleas court and circuit court or court of appeals, as it may be, asserting that the law gave no right of recovery to the mother and her other minor children, and that case could not be taken on review to the supreme court, I ask you what remedy have we? I ask you if we would have any remedy? Absolutely none whatever. This demurrer involved the construction of a statute.

Now, gentlemen, you heard the gentleman for Mahoning [Mr. ANDERSON], and the principal part of his speech was made in favor of preventing the court from passing upon the construction of or meaning of any law. Here they passed upon the construction and meaning of not only one but two laws, and they held that the law passed after the mining law had no force or effect. The liability law reads that when a death of a person is occasioned by wrongful act or negligence for default, there is a right of recovery in the next of kin, which in-

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cludes father, mother, brother and sister if there is no wife or children. Then it says such action shall be for the exclusive benefit of the wife or husband and children, but if there be neither of them, then the parents or next of kin. Taking those two statutes together, the common pleas and the circuit court held that the mining statute as passed, although in direct violation of the language of the statute that was last passed, gave no right of recovery to the father, mother, brother or sister at all.

If the supreme court has no right to declare the construction or meaning of a statute you cannot go there by petition in error in cases like this, no matter whether your case is important or not. It may not be important to the general public, but it may be immensely important to you. Are we going to permit this folly? I remember when the gentleman from Mahoning [Mr. ANDERSON] was urging eloquently and earnestly that the supreme court should not have the right to construe or determine the meaning of any law, that when he finished you clapped your hands and cheered the sentiment expressed by him. Now why don't you clap your hands and cheer when this widow and her minor children are deprived of the right to recover for the death of that minor boy?

Mr. WINN: If the supreme court sustains the judgment of those two lower courts you will still be convinced that they are all wrong?

Mr. TALLMAN: There will simply be no remedy.

Mr. WINN: Then your argument would be that all the courts are wrong?

Mr. TALLMAN: It would amount to that.

Mr. WINN: Then you will be in favor of going on to the supreme court of the United States?

Mr. TALLMAN: It might amount to that, but it would not amount to what you contend for, giving the poor a quick and speedy justice.

Mr. WATSON: If the supreme court sustains that, it would have been better for the case to have stopped below?

Mr. TALLMAN: I leave that to you. I have given an instance and that is a case that I have a record of. There is a case where the poor were deprived. That widow had other minor children. They might all work in that mine and all be killed and there would be no remedy under the law if the supreme court has no right to construe or interpret the statute where it has been wrongly construed by the lower courts.

Mr. HAHN: Mr. President and Gentlemen of the Convention: In substance I approve of the proposal of Judge Peck, of Cincinnati. I consider it a masterpiece of judicial provision.

I am glad to find reproduced in it my two proposals that the present circuit courts be abolished and that the supreme court be required to report its opinions. Both amendments were at first recommended for indefinite postponement. Our present circuit courts have no respectable law—that is to say, their decisions need not be respected everywhere in the state; the decisions of one circuit court may be disregarded by any other court.

Judge Peck's proposal, if adopted by the state of Ohio, will not only make the law of the circuit court respectable, but it will, at the same time, do away with a great many delays that have been the objects of so many

complaints, and it will remove many an obstacle in the way of the present administration of justice.

A remark was made here that if we had so many circuit courts of final jurisdiction no work will be left for the supreme court of Ohio. Last week a gentleman, not a member of this Convention, in his address before you claimed that cases of *procedendo* do not exist in Ohio. We do not use the term "*procedendo*," but we have *mandamus* proceedings, meaning in the state of Ohio the same thing that *procedendo* means in England. Look up the reports of the state of Ohio and you will find that our supreme court resorted several times to such proceedings, but even if the supreme court of Ohio should not have to be so busy under a new constitution as it has been heretofore, it stands to reason that in a commonwealth consisting of eighty-eight counties there will always be constitutional questions and other litigation enough to necessitate a supreme court. We must have a supreme court of our own. We cannot send our cases for decision to Michigan, Kentucky or any other state.

There is another question before us: Shall the decisions of the supreme court be unanimous, or shall an uneven number answer better the purpose? That question implies a great principle. Those members of this Convention who think that the decisions of the supreme court should be unanimous, start with pre-supposition of the principle that a general assembly is fully equal in judicial qualification to the supreme court, and, therefore, only a unanimous supreme court should be authority to the legislature, while they who are in favor of an uneven number of judges in the decisions of the supreme tribunal cherish the idea that a supreme court is supreme *eo ipso*, even if not unanimous.

I am in favor that the supreme court's decisions should not be required to be unanimous. My first reason is that the supreme court, like any other court, must have occasion to correct or reverse itself. No court is expected to be infallible. It is the privilege of any court to err.

Now, gentlemen, if the court has to be unanimous, will it not be more difficult for the supreme court to correct or reverse itself than if there be only a majority required? My second reason is, I am not afraid that the supreme court will allow itself to be influenced by politics. Every supreme court finds it a matter of dignity and duty to repress politics as much as possible, and if a judge through his past connections should—and I say that with the highest regard and respect for the judiciary in general and the supreme court in special—have something to do with politics, will it not be better in such a case if unanimity is not required? The necessity of unanimity often makes the issue a matter of one man's power and would block the course of justice. Thirdly, let me say the supreme court is always expected to be the highest body in point of knowledge of law. It was here remarked that there are in any general assembly men fully as able and learned as supreme court judges are in general. Gentlemen, I am not positive of that. In this Convention we have lawyers and judges that might be an ornament to the supreme court of any state, but you must not forget that this assembly is an exceptional body of men. It is above the average, and is at the present time, while in session, the most august body in the state, but can we say as much for the average legislature? Some times there may be a legislature of

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men, excellent in character, excellent in talent and excellent in knowledge, but a supreme court must always have men great and profound in the knowledge of law. There may be a great many in a general assembly who have knowledge of law, but in many cases the fine points of law, the higher spirit of jurisprudence, comes with the experience on the supreme court bench.

Remarks were here made to the effect that a supreme court often decided in favor of the plutocracy and the interests. Gentlemen, I am not aware of any such cases, and I am, therefore, very careful in criticising the supreme court's decisions concerning modern questions and problems not definitely provided for in the old constitution.

Fifty years ago, when the present constitution was made, a great many burning questions of the present day, connected with labor, private and public corporations and other movements of the modern age, were unknown. It is our duty to first make provisions for such questions; and such amendments are expedient, necessary and imperative in the new constitution that is to be furnished by us. Such a work on our part will enable the supreme court of Ohio to decide more in accord with the present social, commercial and economic conditions of the state.

I repeat, as to the appellate court I approve of Judge Peck's proposal, but I dissent from it regarding the unanimity of the supreme court in its decisions.

Mr. NYE: Mr. President and Gentlemen of the Convention: I had not intended to speak on this proposal until my name was unfortunately brought before the Convention because I asked some question. I believe the question that is before the Convention at the present time is one of the most important questions, if not the most important question, that has been or will be brought before the Convention during its session.

I regret very much that there has been so much reflection cast upon our courts. I believe the courts and personnel of the judges of the courts as a general rule are above reproach. I believe that the judges as a rule have been honest, upright men, men who wanted to do what is right as they saw it. Though we may have had some men that have been elected to the bench who could be justly criticised, the great body of the judges of the courts throughout the state have been honorable, upright, intelligent men.

In speaking now on this question, there has been so much said about corporations and the advantage that a corporation may get over the individual that I want to say I am not now and never have been an attorney for corporations. I have at times represented a bank, but corporations that are sued for personal injuries I have never represented. It has been said in this Convention and by my friend from Cuyahoga [Mr. THOMAS] that the rights of the people are taken from them because of the great power of the corporations. I am afraid the gentleman has forgotten that the individual may be the one sometimes that may want to take his case to a higher court. To adopt this Peck proposal would, in my judgment, put a millstone about the necks of the poorer classes so they could not take their cases to a higher court and get the wrong that has been done them righted. My friend from Greene county [Mr. FESS] argued at some length that it was important to have cases decided quickly and ended. If the gentleman, or

any one upon this floor, will tell me what advantage it is to a man who has had his case tried in a court to find, when it is tried and decided wrongly and he has no remedy, that it is ended, he will confer a favor upon this Convention. If the case is decided rightly it may be well to have it ended, but the poor man is just as liable to have the case decided against him wrongly in the lower court as the other side, and if he is cut off from a review in the higher court he is deprived of the right he ought to have: When you put into the constitution a provision that prevents a litigant from reviewing his case in the court of last resort you are doing a thing that will do injustice, in my judgment, to the poorer classes as well as to the corporation or the richer class. The proposal provides a court of appeals for final jurisdiction in almost all cases. In my opinion that will give you as many supreme courts or courts of last resort as you have courts of appeals in the state. It will be more difficult for the litigant, be he rich or poor, to get his just rights if a case is decided wrongly than it would be if you had the old rule or the one proposed by Judge Taggart's substitute.

It has been said upon this floor that it might be for the interest of attorneys to have the constitution one way or the other. I want to say in behalf of the attorneys in this Convention that the attorneys are the servants of the litigants. The only interest they have in a case is to have the case of their clients decided rightly, and if not decided rightly in one court to take the case to another court and have it reviewed. I say this in behalf of the farmers and laboring man and every other known business man in the state of Ohio. The very fact that you now have many cases taken to the supreme court and reviewed by that court and reversed is an indication that at least some cases have been decided wrongly. It is at least an indication that somebody has been wronged in the lower courts. I know, as has been said by men upon this floor, that courts are human. I concede that they are, but they try to do right and they are as apt to make a mistake against a corporation as they are against a poor man. Again, I say, if there is a tendency upon the part of courts to favor corporations, you are just as apt to find it in the lower courts as in the higher courts, and if the lower courts deprive the individual as against the corporation of his rights, the individual ought to have a right to appeal to the next court, and if it is not decided rightly there, let him have a right to go to the highest court. Let the poor man have a right to have his case decided by the highest court in the state.

I am in favor, as has been said here by others, of having a right to review an equity case tried in the common pleas court in the court of appeals de novo, so that the court of appeals may hear it upon the evidence and decide whether the one man acting as judge and jury decided it rightly or wrongly.

It has been argued that you have a right to review the decision of the jury on the evidence. The common pleas judge reviews the case on the weight of the evidence that was given to the jury. The litigant ought to have the right to have the court of appeals review the equity case on the weight of the evidence when it is decided by one man instead of twelve men.

Mr. PECK: Why can't you review it upon the record?

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Mr. NYE: The reason you can't review it upon the record is this: The higher court frequently says that if they had the case originally to decide they would have decided it the other way from which the lower court decided it, but the decision is not so manifestly against the weight of the evidence that they ought to disturb it. I remember very distinctly of having a case after I left the bench where the common pleas court decided an equity case one way, and I took the case to the circuit court on appeal and they were unanimously of the opinion that it should have been decided the other way on the evidence and so decided. I think you farmers and business men and everybody who has a lawsuit have a right to have your case decided in the court of appeals on the weight of the evidence.

Now, just another question. If you will look over the records of the trial cases you will find that very few men ever have more than one lawsuit. That lawsuit is very important to that man, and if he is unjustly beaten he ought to have a right to have it reviewed in the highest court of the state.

The gentleman's time here expired and on motion of Mr. Stilwell was extended five minutes.

Mr. NYE: I will only take a minute. I am in favor of the Taggart substitute with one or two changes. We ought to have the right to review cases in the circuit court or courts of appeals on the evidence in equity cases. We ought to have an odd number of judges on the supreme bench so they cannot evenly divide in the supreme court. It seems to me that with these changes the courts will be perfectly satisfactory to all the people, the litigants of the state and to the bar generally. The Taggart substitute, with these changes would meet with the approval of the people.

Mr. DOTY: It is now three minutes to the time when, according to the rule adopted, we will vote. Judge Peck wants fifteen minutes to close and I move that the time for taking the vote be extended to 3:45.

The motion was carried.

Mr. PECK: Mr. Chairman and Gentlemen of the Convention: I want to say at the outset that I am very much pleased with the spirit in which this proposal has been received and discussed by the Convention. The friendly spirit in which it was received and thoroughly discussed by my colleague from Hamilton [Mr. WORTHINGTON] was a delight to me. The same with reference to Judge Taggart. He, too, took hold of the matter in a kindly and friendly way, and both of these distinguished gentlemen so far agreed with the original proposition of the Judiciary committee that there really is not a great deal before us to discuss. There are three or four points around which all the discussion has been turning and about which we have been differing, and they are points of some importance, but they do not touch the essence of the bill. The essential thing in this bill is the proposition to make what is now the circuit court a court of last resort for the great bulk of litigation. That is the important point. That is the reform which I regard as essential and of great importance to the people of this state.

Mr. friend who has just taken his seat, Judge Nye, seems to think it will be something of a hardship to the bar to be denied the right to take their cases up to the supreme court. Of course you cannot have a right to

continue litigation unless the other party to the case has the same right, and you may know that in a great majority of the cases that right is going to operate in favor of the longest purse, as the one best able to endure continuous litigation, so that the man with the short purse is the man who wants a speedy trial and a prompt conclusion of his case. The conditions are not equal and call for a change.

The first question is whether the supreme court shall decide a law unconstitutional and void by a mere majority of the court. When we were considering that matter in the Judiciary committee it struck us all that it was a remarkable thing that one or two men in a court could upset a law passed with all the due solemnity with which a law is usually passed. Assuming the court is divided and you have a majority of one or two in favor of declaring a law unconstitutional, perhaps two or three more judges on the other side viewing that situation, it struck us as remarkable that one or two persons under such circumstances should have that power, and everybody agreed that no court ought to declare an act unconstitutional without great consideration and perfect certainty of mind that what they are doing is correct.

There is a presumption in favor of every law put upon the statute book. Every lawyer knows that. Any act passed by the general assembly is presumed to be valid, and the man who attacks it must show the invalidity so plainly that there is no logical escape from the conclusion.

Now when the judges of a court who hear an argument upon that question differ among themselves, and if they are pretty evenly divided, it seemed to us that it indicated a doubt as to the propriety of the reversal and that it would be better to require unanimity than to allow a reversal under such circumstances.

I admit the custom has been otherwise, and it is now the fixed law of the country that the supreme court of any state can decide a statute unconstitutional whenever they conclude that it conflicts with the constitution of the state, but there has been a good deal of murmuring and discussion about it. Yet it is a part of our system and we are not trying to take it away by this proposal. I would not take the power away and that has not been advocated here. There was a good deal of academic discussion this morning, but that was not the real question. The question is, how many judges should it require in order to declare an act unconstitutional? Judge Worthington made a point against it that the action of the court is a unit, that the court is one, and the majority is like that which we used to say at common law, that man and wife were one and the husband was the one. His argument was that the court is one and the majority of the court is the court. It seems to me that is crowding a legal fiction too far. A court is one just as this Convention is one. There can be but one action by this Convention and that is controlled by the majority of the Convention, and what the minority thinks makes no difference after the vote is taken. So it is with each body that is acting as a unit by vote. It is presumed to be one, but that is nothing but a legal fiction. The court is composed of five, six or seven, whatever number is fixed. This Convention is composed of one hundred and nineteen members. So a corporate body is composed of a number of directors, but if you

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consider it carefully you will find it is nothing more than a legal fiction, just as we say a corporation is a body created by law. An established doctrine with reference to legal fictions is that they shall not be pressed so far as to cause them to operate unjustly. When they are pressed beyond what is right they cease to be of use, and a court of equity will disregard them, as the supreme court of Ohio held in the Standard Oil Company case. They held that they would disregard the fiction of the corporation and would go back and take hold of the directors, the individuals. The fiction was sought to be interposed that the corporation did the thing, but the corporation can not act unless the people in it act, and whenever a corporation begins to break the law wilfully the fiction will be disregarded.

Now it seems to me pressing the legal fiction of a unit court too far to say you can not require unanimity with respect to anything done by that court. I do not see any more difficulty in requiring unanimity from a court than in requiring unanimity from a jury. Different ways can be devised so that the exact state of opinion of each judge can be shown, and there is no necessity for any concealment or mystery about it. And it is to be noted that when the court acts unanimously or by the required majority the court acts as a unit as clearly as in any other case, and the same is true in case of a failure to act for want of the necessary number.

Mr. FACKLER: I want to ask one question?

Mr. PECK: Certainly.

Mr. FACKLER: Suppose a case has been decided by a court of appeals and judgment has been rendered for the defendant, the basis of which judgment is that an act is unconstitutional, and that case comes to the supreme court; would you allow one of the judges of the supreme court to reverse the court of appeals?

Mr. PECK: Yes, if they are so equally divided on that—if the court is so equally divided as to be only a majority, I would.

Now there is another proposition of somewhat kindred character. Judge Taggart has in his proposition changed a little as to this constitutional question and he requires five-sixths of the court to declare a law unconstitutional. There is very little difference between unanimity and five-sixths, but as a matter of principle Judge Taggart disposes of the claim that the court is a unit in his proposition as much as does mine. There is not a great deal of difference between them, but I hope the original proposition rather than the modification proposed will be adopted.

Another proposition is as to appeals in equity cases. I do not see why a man should have the right to two trials in an equity case any more than a case at law. I simply can not understand that. Under our practice in the state courts equity cases are always promptly and easily handled. The judge hears the testimony and the testimony can be taken down in shorthand and used in that court or in the court above. It is heard by the judge himself, and in that respect it differs from the practice in the federal court, where a case is sent to a master commissioner and the commissioner takes the testimony and after a while reports to the court. This is often a source of delay and expense. The master commissioner has to be paid. But under the practice in our courts we do not do that very often. Occasionally

a case which is very elaborate may be referred in that way, but it can not be avoided in cases which are very long and involve voluminous accounts.

Mr. HOSKINS: On the question of the right of appeal in equity cases, in view of the fact that in an equity case we only have the judgment of a single man, the common pleas judge, upon the fact, and after being prevented from having a trial by a jury ought we not have a right to present the original facts in an appellate court?

Mr. PECK: You have a right to have your questions of fact tried by a judge of the common pleas court and they are so tried, and if they are tried with as much care as you try a case before a jury your evidence will be all presented and reported, and it can be carried up just as easily on a record as a jury case is carried up on a record.

Mr. HOSKINS: Do you contend that the appellate court can get a true view of the facts of the case from a cold typewritten record as well as from witnesses?

Mr. PECK: It can get quite as true a view of the facts as in a jury case.

Mr. HOSKINS: But in the jury case you have had the judgment of twelve men on the facts, and in the other case you have only had the judgment of one.

Mr. PECK: There has never been a time since law was practiced in England or this country that an equity case was tried before more than one judge. It is so in England, it is so in the federal court and should be so in Ohio, except about the rules of appeals which Judge Worthington has shown to be an anomaly that does not exist in any other state, and which is a tremendous stumbling block in the administration of justice, if carried out as you want it carried out. But some of the circuit courts avoid it by adopting a rule that has been spoken of, and other courts which have not adopted it as a rule are practically operating on the same line and nobody seriously objects. Lawyers try their cases in that way right along.

Mr. HOSKINS: By what right do you say nobody seriously objects? Is it not a fact that the circuit court has no right to adopt such a rule?

Mr. PECK: If anybody seriously objected they would carry it to the supreme court and not work under it. That is the reason I say nobody seriously objects. Nobody objects because nobody cares enough to take it up.

Now I have not much time to talk and I would like to be allowed to talk without interruption.

About this matter of appeals in equity cases, they are tried before a judge sitting as a chancellor. The testimony is heard by him. He makes his finding and the testimony is in writing. What objection is there to that? In England the testimony is taken by a master and no judge ever sees the witnesses in England or in the federal court here. The testimony is all taken in writing and all courts decide upon that testimony in England and in the federal court, but here in the first court our judge sees the witnesses and hears their testimony and his hearing is certainly as good or better than that of a master or commissioner.

Mr. DWYER: And may not the important matters of fact be sent by a judge in the chancery court to a jury if he desires it?

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Mr. PECK: Certainly. Judge Dwyer calls my attention to the fact that the chancellor can frame an issue and send it out to be tried by the jury. That is not infrequently resorted to. I have participated in several such trials. It is not at all unusual where there are questions requiring consideration which involve conflict of testimony such as we have in cases at law, that they are sent to a jury for a trial of those issues of fact.

Equity cases do not generally involve the fierce conflict as to facts that are generally involved by cases tried by a jury.

Mr. PETTIT: I have not been here during the discussion and I would like to ask this question: Is it not a fact that in equity cases, after the proofs shall have been taken, there is often newly discovered evidence that changes a case entirely?

Mr. PECK: Not very often.

Mr. PETTIT: Is it not frequently the case?

Mr. PECK: I don't think I ever knew of any case, either in law or in equity, in which newly discovered evidence changed the result. I have known counsel to come into court and claim it might, could or would, but when we came to consider the newly discovered evidence it nearly always frittered out and turned out to be a new witness who knew something that was stated by other witnesses, and under the rule that a court will not consider merely cumulative evidence it is ruled out. I would not think there was much in that newly discovered evidence of matter any more than in a law case.

I call your attention to the fact that that may happen in any case after it is tried and determined by a jury, and it is the misfortune of the party who did not get the evidence or it is due to the neglect of himself or his attorney.

This matter of taking the time of three judges to sit on the bench and listen to the taking of testimony in an equity case from day to day when they ought to be considering questions of law and deciding real questions is to me very wrong. It is a great waste of time and it is one of the drawbacks to practicing law in Ohio, and it has been. When a man comes here from an outside state he can not understand it. He will say "We don't have anything like that in our state," and you have to explain it to him to get him to understand what you mean by an appeal of that kind. It is a matter peculiar to this state and one of the stumbling blocks that we want to get rid of.

Judge Worthington called your attention to the fact that this is one of the most beneficial reforms in the proposal. A man can try a case and try it properly. The trouble is that where they have this appeal as we have it now they do not try their cases properly the first time. They skim around the trial in the case below and they rely upon the trial in the circuit court as their real trial. If they tried the case properly in the common pleas court they would not have to do that. Equity cases, since the earliest institution of law, have been matters on paper instead of oral testimony largely.

Mr. DWYER: Will you be willing, when the time comes, to change the organization of the court if it is the wish of the Convention?

Mr. PECK: My own idea is that it had better be left alone. We are cutting down the jurisdiction of the supreme court and we are relieving it of a lot of work, and

what is the use of increasing the personnel? If they have not enough work now, why put another judge in there?

Mr. SHAFFER: Then reduce it to five.

Mr. HALFHILL: I am a little in doubt as to the meaning of this proposal so far as it relates to raising a constitutional question. Can we raise a constitutional question in the common pleas court or in the circuit court?

Mr. PECK: You can raise it anywhere.

Mr. HALFHILL: In the appellate court can we raise a constitutional question and have it decided?

Mr. PECK: Yes, of course; but the final decision is the supreme court. That gives the supreme court jurisdiction of the case—the very fact that there is a constitutional question involved.

Mr. HALFHILL: But if it is a question of statute do you think you could raise a constitutional question in the trial court?

Mr. PECK: Certainly; why not? But nobody would agree that an act should be merely decided unconstitutional by the common pleas court. Nobody would agree that that is conclusive. Nobody would be bound by it. It is only the decision of the supreme court in a case of that kind that is effective as to anybody but the parties in the particular case.

Mr. WINN: Suppose there is a suit pending in the common pleas court involving the constitutionality of some act of the legislature and the law is held to be constitutional and it is affirmed by the circuit court and that comes up to the supreme court; how many judges in the supreme court must agree to affirm the judgment of a circuit court?

Mr. PECK: You said that the law was held to be constitutional?

Mr. WINN: I mean unconstitutional. Suppose the law is held unconstitutional in the common pleas court and affirmed by the circuit court and taken to the supreme court; how many judges of the supreme court must agree to affirm that case?

Mr. PECK: All of them under this, five-sixths under the Taggart proposal. This last brief of this paper includes some of the Taggart proposition and several of the minor amendments. It includes the Halfhill amendment about holding a court in each county and the amendment of Mr. Jones and one or two others suggested by Judge Worthington. It will be offered when the opportunity comes as a substitute for all.

Mr. KING: *It is rather late to start a discussion on a new subject, but I fear your answer to the gentleman from Defiance was not in accordance with anything in either of those proposals. Is it possible that if a law has been held unconstitutional and the rights of the parties determined by the court of appeals and then the case is taken to the supreme court and all but one of the judges there are for affirming that judgment, simply because one of the supreme court judges does not concur in the opinion that affirms the case—in other words, that it requires the entire supreme court, under circumstances like this, to declare a law unconstitutional?

Mr. PECK: I don't quite understand you.

Mr. KING: I will put that question in another form. Suppose five judges of the supreme court vote to reverse a judgment of the circuit court on the ground of the unconstitutionality of the law and one of the supreme

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court judges votes to affirm; does not that judgment stand reversed?

Mr. PECK: No; I don't think so.

Mr. ANDERSON: Not as they have it now.

Mr. KING: There is something wrong about this proposal. There is apparently a contradiction and it should be straightened out. It says that no law shall be declared unconstitutional except by the unanimous supreme court. Take the case I supposed, that the unconstitutionality of a law has been unanimously declared by the circuit court; the case is appealed and five out of the six of the supreme court are of the same opinion that the judges of the circuit court were and they want to affirm the case, but the case involves the declaring of a statute unconstitutional, and therefore, under this, it would take the entire supreme court to declare that statute unconstitutional, and as there is one of the supreme court judges who thinks it constitutional he would reverse the case apparently. That is the same question that the gentleman from Fayette [Mr. JONES] asked the gentleman from Mahoning [Mr. ANDERSON], and which the gentleman from Mahoning did not answer because he started with a reversal of this proposition and he continued on that way. He started with the judgment of the constitutionality of the law and it was affirmed in the supreme court by a divided court, three to three, but what happens where there is a decision of the unconstitutionality of the law below and the matter is appealed to the supreme court? Do you have to have a unanimous judgment of the supreme court to declare that statute unconstitutional?

Mr. PECK: Three to three could not declare it unconstitutional.

Mr. WINN: But under this wouldn't the same result be arrived at if only one thought it was unconstitutional? You require all of them to unite in an opinion as to the unconstitutionality before it can be declared unconstitutional, so if only one out of the six would think it was constitutional, that one would control the other five.

Mr. PECK: I am not sure whether you are right about that or not. I can not answer right now. We will look into it.

The great thing that we are after is having the court of appeals a court of final jurisdiction in all ordinary cases. I think that is the thing that practically everybody agrees upon.

As soon as there is an opportunity afforded I will offer the amended proposition. Then we can put in our motions to strike out or alter any part of it, get it in shape, have only a few minutes debate on each proposition and get to a vote.

Mr. DOTY: It now being 3:45 I call attention to the special order. I have a motion I desire the secretary to read in connection with that special order.

The motion was read as follows:

One. That there be no further debate until one or more pending amendments are disposed of;

Two. That debate upon any amendment that may be offered after the disposition of pending amendments be limited to three minutes for any member;

Three. That the provision of paragraph two hereof apply to any amendment offered to any substitute now pending;

Four. That the previous question shall be considered as ordered at 5:30 o'clock p. m. of this date, unless the proposal shall have been disposed of before that time.

Mr. DOTY: I have had a number of these struck off and distributed around, and yet there seems to be some question about what we propose to do. It is simply providing for a consideration of the program for the disposal of amendments so we can get through.

Mr. RILEY: The Taggart proposal is the first in order, and it would not be possible to offer an amendment to that.

Mr. DOTY: Under this it will be. The condition is this: There are three amendments pending. The last one is by my colleague, Mr. Thomas. Now, for the purpose of illustration, assume that is voted down. Then the substitute of the member from Wayne [Mr. TAGGART] would be next to be voted on, and upon that there will be a three minutes' discussion allowed on amendments.

Mr. HOSKINS: Then what about Judge Peck's amendment that he is proposing to offer?

Mr. DOTY: That can be offered then.

Mr. RILEY: Is it important that we fix 5:30 for the previous question and thus cut off debate? Suppose considerable time is taken up on the Taggart and the Worthington amendments, Judge Peck's proposition may come almost at the time you fix for the previous question and it would be unfair to have that proposition come up and there be no opportunity for debate on it.

Mr. DOTY: If I may answer that, the vote may come before 5:30. If it does not and we see that we are not prepared to vote, it is entirely within the right of the Convention to make the time 5:35 or 6 or any other time, and we do it simply by a motion.

Mr. RILEY: I suppose your motion would have the right of compelling the previous question at 5:30?

Mr. DOTY: Unless we extended it, it would have that effect, but we can extend it any time before that by a simple motion.

Mr. NYE: It seems to me, this being one of the most important matters to come before the Convention, we ought not to adopt a hard and fast rule such as this. We ought to have opportunity for considering. We are fixing an hour to take a vote on this matter. I think we should go along as we are, and when the time is ripe for the previous question there will not be any difficulty in ordering it.

Mr. ANDERSON: If the Thomas amendment is voted down, as it will be, that will give Judge Peck an opportunity to offer his amended proposal. That will be satisfactory to everybody except in two or three regards, and then we can offer amendments to those particular points. It seems to me we can get through with it in an hour.

Mr. HOSKINS: I beg to suggest that it is not probable that any compromise or substitute that is offered by Judge Peck will be satisfactory to everybody. Judge Taggart has an amendment in here that has attracted a good deal of favorable attention. Some of us have

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amendments which we desire to offer to Judge Taggart's proposal, and I object to any preliminary arrangement that is going to railroad this thing in a certain direction. Let us have a fair consideration of Judge Taggart's substitute and a discussion under the three-minute rule of any amendment offered to that. If any amendment is offered that is not satisfactory, or if the substitute is not satisfactory, we will vote it down and get to something else. This is too important a matter to fix an absolute time at which to vote on all propositions. I move to strike out paragraph 4 of this motion.

Mr. DOTY: I do not suppose the member from Auglaize [Mr. HOSKINS] is accusing me of any attempt to railroad anything through.

Mr. HOSKINS: I am not, but I don't like the idea embraced in that whole motion.

Mr. DOTY: The idea is simply to get some program to facilitate matters. Section 4, which the gentleman wants stricken out, reads "that the previous question shall be considered as ordered at 5:30 o'clock of this date, unless the proposal shall have been disposed of before that time."

Mr. FESS: We fixed the time to vote at 2 o'clock. When that was done it was thought that we would be ready to vote at that time. That time has been extended and now it is thought to extend it to 5:30. I agree with the member from Auglaize that there will be no desire to pass any parliamentary plan by which anybody's amendment shall be pigeonholed, and I am sure there is no desire on the part of anybody to do that. It seems to me, however, that we are about as ready to vote intelligently upon all amendments before the body as we shall ever be. I think the member from Auglaize will accept the amendment that is to be offered by Judge Peck with perhaps one or two exceptions. I think the Convention will do it. It is not for the purpose of shutting off anybody that this motion is made, but simply to get to a vote. We ordered the vote at 2 o'clock and now we have extended it to 5:30; and if we want to continue it at that time we can do so.

Mr. HOSKINS: I have no objection to going to a vote and voting these propositions through as fast as we can under the three-minute rule, but I do object to fixing an absolute time when everything is shut off. I am not willing to accept Judge Peck's proposal if I can get some things contained in Judge Taggart's proposal.

Mr. PECK: Indicate what there is in Judge Taggart's proposition that you have particularly in mind.

Mr. HOSKINS: There are several things.

Mr. PECK: Indicate what they are.

Mr. HOSKINS: His provision on the jurisdiction of the supreme court.

Mr. PECK: About what?

Mr. HOSKINS: I want a test vote on that.

Mr. ANDERSON: Indicate what you mean by jurisdiction of the supreme court in the Taggart amendment.

Mr. HOSKINS: I have an amendment to offer on that proposition.

Mr. ANDERSON: What about, the jurisdiction?

Mr. HARRIS, of Hamilton: I suggest, as it seems to be the universal desire that there be no effort to prevent a consideration of all amendments, that the simplest plan would be to accept the elimination process

and then we can reach the previous question by 5:30, or we may possibly order it earlier. The limit of debate is practically agreed upon, and that would remove any feeling that there is an intention to railroad any amendment, no matter whose it may be.

Mr. DOTY: I think it is very much better for the Convention if it desires, to vote in or out certain things than for gentlemen to agree on the changes that they want.

Mr. WINN: Mr President and Gentlemen: I want a moment's time. I have not taken any on this debate. I hope this amendment offered by the member from Auglaize [Mr. HOSKINS] will prevail. I say that because of the peculiar condition of this proposition. There is the Peck proposal and you will recall that there are two entire substitutes. It is already manifest that a good many amendments will be offered. I have four or five of my own that are being written with reference to the Peck proposal. They will fit in the Peck proposal, but not in the others, and I expect that will apply to other amendments that are ready to be offered. It is suggested by the member from Mahoning [Mr. ANDERSON], and concurred in by the member from Greene [Mr. FESS], that the author of this proposal has something to offer as a substitute that is agreeable to everybody. Of course, that may be so and I hope it is.

Mr. PECK: It does not differ much.

Mr. WINN: Then it is a violent assumption on the part of the member from Mahoning [Mr. ANDERSON] that with a few slight amendments it would be agreed to by everybody here. So we should limit debate to three minutes on the amendment offered by the delegate from Auglaize [Mr. HOSKINS], and then, when that is voted down, or when it prevails, we can go on with another one. And in that way we will finally reach a vote before the adjournment.

The amendment was agreed to.

The motion as amended was carried.

The PRESIDENT: The question is on the adoption of the amendment offered by the delegate from Cuyahoga [Mr. THOMAS] and the secretary will read that amendment.

The amendment was read as follows:

Strike out the words "adopted by the general assembly" in line 25; also the words "except by the concurrence of the five judges of the supreme court."

Place a period after the word "court" in line 26.

Mr. CASSIDY: I move to lay that amendment on the table.

The motion was carried.

Mr. PECK: I offer a substitute for the pending proposal and the two substitutes.

The substitute was read as follows:

Strike out all after the resolving clause in the pending proposal and all pending amendments and insert in lieu thereof the following:

SECTION 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

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SECTION 2. The supreme court shall, until otherwise provided by law, consist of six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or pronounce a decision, except as herein-after provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state and in cases of felony on leave first obtained, also in cases which originated in the courts of appeals and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such terms, not less than six years, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law.

Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below.

No statute shall be held unconstitutional and void by any proceedings in this court except by the concurrence of five of the judges of the supreme court.

In case of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct the court of appeals to certify its record to the supreme court and may review and affirm, modify or reverse the judgment of the court of appeals.

SECTION 6. The state shall, until otherwise provided by law, be divided into appellate districts of compact territory and divided by county lines in each of which there shall be a court of appeals consisting of three judges. The judges of the circuit courts now residing in their respective districts shall continue to be judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expirations of the terms of office of the judges of the courts of appeals shall be filled by the electors of the appellate districts respectively in which such vacancies shall arise and the same number shall be elected in each district. Laws may be enacted to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county and such other terms at a county seat in the district, as the judges may determine upon, and the

county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such courts by its judges and officers. Each judge shall be competent to exercise his judicial powers in any district of the state.

The respective courts of appeals shall continue the work of the circuit court and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the courts of appeals, subject to the provisions hereof, and the existence of the circuit court shall be merged into and its work continued by the courts of appeals.

The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus prohibition and procedendo and such other appellate jurisdiction to review, affirm, modify, or reverse the judgments of the courts of common pleas and superior courts within the district as may be provided by law, and judgments of said courts of appeal shall be final in all cases, except such as involve questions arising under the constitution of this state, or the United States, or cases of felony, or cases of which it has original jurisdiction, or cases of public or great general interest in which the supreme court may direct the court of appeals to certify its record to that court. No judgment of the court of common pleas and superior courts shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence and by a majority of such court of appeals upon other questions and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

The decisions in all cases in the supreme court and courts of appeals shall be reported, together with the reasons therefor.

Mr. WINN: I do not believe we should vote on this proposition until it has been printed. If I heard this correctly and if I understood the reading there are no districts provided for the courts of appeals and there is to be one term in each district each year, and that notwithstanding there are no particular districts.

Mr. PECK: It says one in each county.

Mr. WINN: It says one term in each county each year and then there shall be many more terms in some of the county seats. It seems to me that the whole thing is considerably uncertain, and I therefore move that the further consideration be postponed until tomorrow at ten o'clock and also that this be printed and that it be placed at the head of the calendar for that hour.

Mr. DOTY: I move to amend the motion by striking out the period and adding "and the limitation regarding debates adopted today shall be continued tomorrow."

The amendment was accepted by the maker of the motion and the motion was carried.

Mr. DOTY: I desire to make a report from the committee on Rules on a resolution introduced some time ago relative to a matter of some importance.

Resolutions Relative to Adjournment—Motions and Resolutions, Etc.

The PRESIDENT: If there is no objection the report can be made.

The report was read as follows:

The standing committee on Rules, to which was referred Resolution No. 89—Mr. Doty, having had the same under consideration, reports it back and recommends its adoption.

The resolution was read as follows:

Resolved, That any resolution providing for sine die adjournment of this Convention shall require for its adoption a vote of not less than a majority of all the members elected to the Convention.

Mr. DOTY: This resolution is adopting a rule of the Convention and it requires a ye and nay vote.

The PRESIDENT: The president does not know of any reason why this should require a ye and nay vote.

Mr. DOTY: Then I demand the yeas and nays.

The yeas and nays were regularly demanded; taken, and resulted—yeas 107, nays none.

Those who voted in the affirmative are:

Anderson,	Hahn,	Nye,
Antrim,	Halenkamp,	Okey,
Baum,	Halfhill,	Partington,
Beatty, Morrow,	Harbarger,	Peck,
Beatty, Wood,	Harris, Hamilton,	Peters,
Beyer,	Harter, Huron,	Pettit,
Bowdle,	Harter, Stark,	Pierce,
Brattain,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Brown, Lucas,	Holtz,	Riley,
Brown, Pike,	Hoskins,	Rockel,
Campbell,	Hursh,	Roehm,
Cassidy,	Johnson, Madison,	Rorick,
Cody,	Johnson, Williams,	Shaffer,
Collett,	Kehoe,	Shaw,
Colton,	Keller,	Smith, Geauga,
Cordes,	Kerr,	Smith, Hamilton,
Crites,	Kilpatrick,	Solether,
Crosser,	King,	Stalter,
Cunningham,	Knight,	Stamm,
Davio,	Kramer,	Stevens,
DeFrees,	Kunkel,	Stilwell,
Doty,	Lambert,	Stokes,
Dunlap,	Lampson,	Taggart,
Dunn,	Leete,	Tannehill,
Dwyer,	Leslie,	Tetlow,
Earnhart,	Longstreth,	Thomas,
Elson,	Ludey,	Ulmer,
Evans,	Malin,	Wagner,
Fackler,	Marshall,	Walker,
Farnsworth,	Matthews,	Watson,
Farrell,	Miller, Crawford,	Winn,
Fess,	Miller, Fairfield,	Wise,
FitzSimons,	Miller, Ottawa,	Woods,
Fluke,	Moore,	Mr. President.
Fox,	Norris,	

The resolution was adopted.

Mr. DOTY: We didn't have regular business on Monday night, and I therefore move that the order of the business for the remainder of this session be the same as on Monday night, beginning with the order: "Motions and Resolutions."

The motion was carried.

MOTIONS AND RESOLUTIONS.

Mr. ANTRIM: I offer a resolution.

The resolution was read as follows:

Resolution No. 100:

Resolved, That the following bills which have been filed with the secretary of this Convention be allowed and ordered paid:

Anna L. Bower, to extra compensation for reporting sessions of the convention from January 9 to February 6, inclusive, fifteen days, \$75 00

Minnie Rodgers, to extra compensation for reporting sessions of the Convention from January 9 to February 6, inclusive, fifteen days, \$75.00

On motion of Mr. Antrim the resolution was referred to the committee on Claims against the Convention.

REPORTS OF STANDING COMMITTEES.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 72—Mr. Stokes, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after the resolving clause and insert the following:

ARTICLE XIII.

SECTION 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.

Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stock and securities, and over the business and sale of the stock and securities of foreign corporations in this state, as may be prescribed by law.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Doty the proposal, as amended, was ordered printed.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 127—Mr. King, having had the same under consideration, reports it back, and recommends that it be indefinitely postponed.

The report was agreed to.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 87—Mr. Evans, having had the same under consideration, reports it back with recommendations for indefinite postponement.

The report was agreed to.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 265—Mr. Dunn, having had the same under

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consideration, reports it back, and recommends that it be indefinitely postponed.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 298—Mr. Hoffman, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Johnson, of Williams, submitted the following report:

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 164—Mr. Thomas, having had the same under consideration, reports it back and recommends its indefinite postponement.

Mr. Thomas submitted the following report:

The minority of the standing committee on Legislative and Executive Departments, to which was referred Proposal No. 164—Mr. Thomas, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out sections 2, 3, 4, 5, 6 and 7 and re-number the succeeding sections.

HARRY D. THOMAS.

The PRESIDENT: The question is on agreeing to the minority report.

Mr. WINN: I move to lay that on the table.

The PRESIDENT: The question is on laying the minority report on the table.

Mr. THOMAS: A point of order. I had the floor and I had not yielded.

The PRESIDENT: The point is well taken; the president was in error.

Mr. THOMAS: If you will look at Proposal No. 164 you will see it is a proposal similar to the one that Mr. Elson offered providing for one legislative body.

Sections 5, 6 and 7 contain the initiative and referendum and the minority report strikes these sections out. The other sections are amended to provide for one legislative body. That this matter is getting some consideration other than by the delegates in this Convention, and that it is something that not only is being considered in this state but in other states, is evidenced by the fact that since the discussion of this matter has been taken up in the daily papers I have had letters from nearly every state in the Union and from men in different walks of life and from different newspapers commenting on the subject in favor of one legislative body. I have been here at the sessions of the legislature for the past four or five years, and in all these years my experience proves to me that one legislative body can do the work as successfully as two, and better, in my opinion, because it costs less to the state. Those of you who are acquainted with legislative matters know that important measures are considered before one house. The consideration there determines largely whether it should be adopted or not. Take our women's fifty-four hour law at the last session. That matter was discussed in the senate and whatever amendments or changes were made were made in the senate, and they were agreed to almost without any

change whatever in the house. The workmen's compensation law, the Green bill, passed the house and was adopted by the senate with the change of but few words. It has been the general experience that one house does the work on important measures. Just to show to what extent this matter is being taken up by the public I want to read a comment from the Springfield Republican, Springfield, Massachusetts:

The Ohio Constitutional Convention, which convened last week at Columbus, is the fourth one in the state's history. A radical movement among the voters is responsible for it and apparently there is a majority of radicals in control. Innovations too numerous or too extreme, however, would cause a reaction among the voters when the amended or revised constitution was sent to them for approval, and this danger will tend to modify the aspirations of too zealous reformers. The initiative, referendum, recall, short ballot, woman suffrage and single tax are among the items on the radical program, while the liquor question may assume prominence in the Convention's work. It is somewhat surprising that American radicals do not take advantage of such opportunities to establish the state legislatures on a single chamber basis, but not even in Oregon, California or Arizona, not to mention Ohio, has an effort been made to effect this change. In municipal government the old bicameral legislative assembly has had its day; that it is really necessary to state governments may be disputed. Indeed, it may be argued that the bicameral system is somewhat or even largely responsible for the inefficiency and corruption of many states.

Now, here is something from the Pittsburg Sunday Post. It ridicules the idea of bicameral legislation:

Ohio is now having a constitutional convention on her hands, and if she wants to do something novel, and at the same time something that will commend itself to a large number of thinking people, she will provide for a single instead of a double-barreled legislature. There is no more sense in having two legislative bodies to do the same thing than there would be to have two executives to decide whether they would sign the bills.

Our double-headed system was borrowed from England, where one body was for the high and well-born and the other for the common people. In this country, however, we are not supposed to have any classes and to call the senate a higher body is an insult to our citizens, for we are all supposed to stand on an equality. If our senates are composed of wiser and better men than the lower houses, as they are falsely called, then why not have two senates, for the wisest and best are none too wise or too good. If they are not superior, then why not abolish them?

If the two bodies agree, one is sufficient, and if they disagree then both might as well be abolished. They tell us that one serves as a check on the other; but oftener than otherwise the check is placed just where the people do not want it and

Reports of Standing and Select Committees.

where they would not have it if they had a single legislature. Half the time the two houses are in a deadlock and can do nothing.

Besides, it enables members to shift the responsibility for their neglect of duty. As an illustration: In a Western Pennsylvania county a few years ago a certain statesman, now in congress, wanted to go to the assembly. He told the farmers if they would elect him he would see that a fence law was passed, compelling railroads to fence their lines. They took him at his word and elected him. The bill passed the house, but he took good care to see that it was killed in the senate.

At the next election he asked to be sent to the senate on the ground that he had the fence bill pass the house, and if in the senate he would have it passed in that body. He was elected and the bill passed the senate, but was killed in the house.

If a single body can make a constitution, the fundamental law of the state, why cannot a single body legislate under that constitution by which it is to be guided? Ben Franklin was about as level-headed as any man who has had anything to do with our government, and he ridiculed the idea of having a bicameral legislature.

It appears to me that argument is sufficient to convince most any man that the time has arrived in Ohio when, instead of following other states in progressive legislation, we might try to start something new ourselves. Here is an opportunity for starting something new and progressive.

Mr. WINN: I move that the minority report be laid on the table.

Mr. THOMAS: On that I demand the yeas and nays.

The yeas and nays were regularly demanded; taken, and resulted—yeas 62, nays 38, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Nye,
Antrim,	Halfhill,	Okey,
Baum,	Harbarger,	Partington,
Beatty, Morrow,	Harris, Hamilton,	Peters,
Beatty, Wood,	Holtz,	Pettit,
Brattain,	Johnson, Madison,	Riley,
Brown, Highland,	Johnson, Williams,	Rockel,
Brown, Pike,	Kerr,	Roehm,
Campbell,	Knight,	Rorick,
Collett,	Kramer,	Shaw,
Colton,	Lambert,	Smith, Geauga,
Crites,	Lampson,	Solether,
Cunningham,	Leete,	Stewart,
Dunlap,	Longstreth,	Stokes,
Dunn,	Ludey,	Taggart,
Dwyer,	Marshall,	Tallman,
Earnhart,	Matthews,	Wagner,
Evans,	McClelland,	Walker,
Fackler,	Miller, Fairfield,	Winn,
Fess,	Miller, Ottawa,	Woods,
Fluke,	Norris,	

Those who voted in the negative are:

Bowdle,	Elson,	Harter, Stark,
Cordes,	Farnsworth,	Henderson,
Crosser,	Farrell,	Hoffman,
Davio,	FitzSimons,	Hursh,
DeFrees,	Hahn,	Kilpatrick,
Donahay,	Halenkamp,	King,
Doty,	Harter, Huron,	Kunkel,

Leslie,	Read,	Tetlow,
Malin,	Shaffer,	Thomas,
Miller, Crawford,	Stamm,	Ulmer,
Moore,	Stevens,	Watson,
Peck,	Stilwell,	Wise,
Pierce,	Tannehill,	

So the minority report was laid on the table and the report of the committee was agreed to.

Mr. Leete submitted the following report:

The standing committee on Public Works, to which was referred Proposal No. 313—Mr. Leete, having had the same under consideration, reports it back and recommends its passage.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

REPORTS OF SELECT COMMITTEES.

The historian and reference librarian, to whom was referred Resolution No. 83—Mr. Dunn, begs leave to submit the following report:

The Ohio News Bureau Co., of Cleveland, Ohio, submits the following proposition to the Fourth Constitutional Convention of Ohio:

It will preserve and compile in volumes, newspaper records containing all the leading editorials and all important items appearing in the Ohio papers and in all the leading papers of the United States. This record will be arranged chronologically with the date of publication and the name of the paper stamped on each item; this record to begin on January 1, 1912, and continue until thirty days after the final adjournment of the Convention. This arrangement may be continued by vote of the Convention before final adjournment from thirty days after the adjournment of the Convention, so as to cover the period between its adjournment and its special election at which the constitution and the amendments thereto shall be submitted. Said clippings or records shall be furnished in volumes of 125 sheets each, making a total of 500 pages to the volume, which shall be bound in loose-leaf ledger style, and in as many volumes as may complete the work. For this work, labor and material up to thirty days after the final adjournment of the Convention, this body shall pay the Ohio News Bureau Co. of Cleveland, Ohio, the sum of fifty (\$50.00) dollars per month, beginning January 1, 1912; and for thirty days after the adjournment of the Convention. The latter may continue the arrangement until ten days after the election at which the proposed constitution and proposals submitted therewith shall be held, at the same figures. The volumes shall be furnished from time to time as completed, and the work shall be under the general direction of the historian and reference librarian as to the class of items preserved after the first volume is submitted. The Ohio News Bureau Co., of Cleveland, Ohio, shall also furnish under this proposition a suitable blank index for the entire number of volumes at the close of their publication.

Reports of Select Committees — Resolutions Relative to Adjournment.

The foregoing proposed contract between the Convention and the Ohio News Bureau Company of Cleveland, Ohio, is herewith submitted with the recommendation that it be approved.

NELSON W. EVANS,
Historian and Reference Librarian.

The report was received.

By unanimous consent Mr. Evans offered the following resolution:

Resolution No. 101:

Resolved, by the Fourth Constitutional Convention of Ohio, That the report of the historian and reference librarian of this body, as to the proposed contract with the Ohio News Bureau Co., of Cleveland, Ohio, is hereby approved, and said historian and reference librarian is directed, on behalf of this Convention, to execute this contract.

The resolution was laid over under the rule.

By unanimous consent Mr. Peters offered the following resolution:

Resolution No. 102:

Resolved, That when this Convention adjourns at the end of this week, that it be to meet on Tuesday morning, April 16, at 10 o'clock.

Mr. DOTY: What is the reason for that?

Mr. PETERS: That the members may attend the Jefferson banquet.

Mr. BROWN, of Highland: I didn't hear what the object of that resolution was.

The PRESIDENT: The president will state that the resolution introduced provides that there be no Monday night session next week and the purpose as stated is to give the members an opportunity of attending the Jefferson banquet Monday night. The question is on suspending the rules to consider the resolution.

The motion was lost.

The PRESIDENT: The resolution goes over under the rule.

Resolution No. 90—Mr. Beatty, of Wood, relative to the adjournment of the Convention sine die, was then taken up and read as follows:

Resolved, That this Convention, when it adjourns on Friday, April 26, 1912, shall adjourn to Monday, May 6, 1912, at 10 o'clock a. m. at which time the standing committee on Arrangement and Phraseology shall report upon such matters as shall have been referred to said committee.

Resolved, That the calendar of business for May 6, 1912, and thereafter, shall consist only of proposals for third reading and questions appertaining thereto, and no other business shall be considered except that which shall pertain to the concluding work of the Convention.

Resolved, That this Convention shall adjourn sine die, at 12 o'clock noon, Saturday, May 11, 1912.

Mr. EVANS: I move to table that resolution.

Mr. BEATTY, of Wood: You cannot make the motion to table because I am on the floor.

We have a custom in the legislature of introducing a resolution some six weeks ahead of adjournment and

working to that adjournment, and this was introduced with that in view. If we don't adopt some similar resolution to adjourn we will be here until Christmas. We have loitered away considerable time in the last two or three months. We are simply not working. Last Thursday I counted and there were only seventy-eight members in the Convention in the forenoon. A week before that we had only sixty-eight. We are not working as we should work. We need something to stimulate us, and I think this will be the proper stimulant.

Mr. HARRIS, of Hamilton: Do you include yourself in that statement that we are not working properly?

Mr. BEATTY, of Wood: Yes; I include all of us. We have been elected here to represent the people and we ought to represent them and we ought to work. I don't have any idea of trying to force an adjournment, but if we adopt a resolution of this character we will try to work up to it and if we can't get ready to adjourn by the time fixed in this resolution we can then fix the time farther ahead. If we keep going on the way we have and introducing new matter we will never get through. In thirty days from now we will have just as much work on the books as we have now and we will have just as much in sixty days. It is a never ceasing flow of new proposals.

Mr. ELSON: A point of order. How can all this debate go on when there was a motion to lay on the table?

The PRESIDENT: There was no motion to lay on the table. The gentleman who made the motion to lay on the table was not recognized. The gentleman from Wood [Mr. BEATTY] has the floor.

Mr. BEATTY, of Wood: As I have said before, I am willing to stay as long as anybody, but we ought to make some effort to get through. We ought to fix some time to adjourn and to work up to it, and if we are not ready to adjourn then we will postpone the time a little.

Mr. DOTY: The object is to set a time when we shall adjourn. We have plenty of work for the committee on Arrangement and Phraseology to work on, and, as the member said, if we set a time for adjournment and we are not quite ready then we can postpone the adjournment a few days longer.

I have seen the general assembly make all sorts of endeavors to adjourn. This plan is the one that has been found to work best in the general assembly.

We have adopted a resolution setting forth the manner of submitting our work to the people. It provides for a separate submission of a number of amendments to the people instead of the submission of a complete constitution. Having decided upon our plan and having gone through two-thirds of our work, so far as importance is concerned, there is no reason in the world why we cannot adjourn by the 26th of this month. The trouble is a number of you won't stay here and work. We all know that a number of fellows are going to duck out on Thursday and we ought to stay here and work six days in the week and complete our work on the 26th day of this month. It can be done if we will attend to business.

There is no trouble about adopting this resolution. We are not in any trouble like the house and the senate are when they adopt a resolution fixing adjournment. Then to change it both sides have to agree, but here there is no

Resolution Relative to Adjournment, Etc.

house at the other end. We can adopt this resolution and if we are not ready to adjourn at the time fixed, we can simply adopt another one or postpone the time set in this one.

Mr. LAMPSON: I am willing to adopt this resolution and try to work up to it and if we can't we will just simply postpone it.

Mr. KNIGHT: There are nineteen proposals that have been reported favorably by the committees. They are on the calendar, and there are at least two or three others extremely important and the twenty-sixth of April covers just eleven legislative days from now.

Mr. DOTY: Eleven possible legislative days?

Mr. KNIGHT: Eleven days under the rules.

Mr. DOTY: Well, the rules are not like the laws of the Medes and Persians; they can be changed.

Mr. ELSON: I don't think that we can possibly get through by that time.

Mr. DOTY: We can try.

Mr. ELSON: I am willing to support the motion and try to work up to that date, but I am not nearly so sanguine of being able to adjourn at that time as the member from Cuyahoga [Mr. DOTY] seems to be.

We have been sent here to do a very important work and we should take time enough to do it right, and I don't think we can work six days a week. Most of us have some duties at home, and I don't think it is right to begin to work six days in the week right now, although I am willing to support this motion.

Mr. HALENKAMP: When April 26 comes and we find we have more proposals on the calendar than possibly we have now and that we can't get through, what will be the method of going on with our work? Will we have to reconsider the vote by which this resolution is adopted?

Mr. DOTY: Simply a resolution rescinding that specific date and setting some other date. It just takes a majority.

The resolution was adopted.

Resolution 91 — Mr. Rorick, was taken up.

The resolution was read as follows:

Resolved, That hereafter debate upon all questions shall be limited as follows:

Author of a proposal or chairman of the standing committee to which it was referred, thirty minutes upon the second reading of the proposal and five minutes upon any amendment thereto. Other members fifteen minutes upon the second reading of the proposal and five minutes upon any amendment thereto.

Upon resolutions upon questions of adoption, five minutes for any member.

Upon all debatable subsidiary motions five minutes for any member.

No member's time shall be extended except on two-thirds vote.

Provided, however, that this special rule shall not apply upon the second reading of any proposal reported to the Convention by the standing committees on Taxation and Municipal Government.

Mr. RORICK: I move that that be referred to the committee on Rules.

DELEGATES: No; consider it now.

The motion to refer was withdrawn and the resolution was adopted.

Resolution No. 94 — Mr. Knight, was then taken up and read as follows:

Resolved, That the secretary be authorized to send to public libraries and, on application, to other educational institutions in the state of Ohio, copies of the pamphlets and other printed matter issued by this Convention.

Mr. KNIGHT: As worded this resolution might include the bound volumes of the debates, and I therefore move to amend by inserting the words "except the debates and proceedings of the Convention."

The amendment was agreed to and the resolution as amended was adopted.

Mr. DOTY: Doesn't that require a roll call? It will involve an expenditure for postage.

Mr. KNIGHT: I don't think so. We haven't been considering things in that way.

Resolution No. 96 — Mr. Fess, was taken up and was read as follows:

Resolved, That the select committee having supervision of the official reporter and reportorial staff of the Convention be authorized and directed to have the reports of the debates of the first fifteen days of the Convention, prior to the appointment of the official reporter, edited and put into proper form for preservation and publication at a cost not to exceed \$125.

Mr. DOTY: The member from Greene is not present and probably the member from Franklin [Mr. KNIGHT] ought to explain that.

Mr. FESS: I am just called to the telephone and I will ask the member from Franklin [Mr. KNIGHT] to make an explanation while I answer the call.

Mr. KNIGHT: As the members of the Convention know, our official reporter was not appointed until fourteen days of the Convention had expired. Down to that time we had done the best we could under a special resolution by having the stenographers on the regular staff of the Convention detailed to take the debates. They have not undertaken and do not feel that they can undertake to put them in proper form to conform to the debates from the day the official reporter began his work. The amendments are not copied in and the roll calls are not designated, and as this is the first part of the debates that is to be printed it is necessary that they be put in form to correspond with the rest, and this is simply a motion to authorize the committee to expend that amount of money to have it done. I want to say that this was strictly at our solicitation and not at the request of Mr. Walker, who says that he does not care whether it is done or not, or by whom it is done. We want the thing in uniform shape and we prefer it to be done by the reporter, so that at the end of the Convention he can certify to the general correctness of the debates. The amendments and the resolutions are not put in. In other words, every page has to be read over with the journal and put in proper form and recopied.

Mr. STILWELL: Is not there some clerk of the Convention who can do that?

Mr. KNIGHT: I am informed that there is not, but if there is we are perfectly willing to have that

Resolution Relative to Editing Debates — Resolution Relative to William H. Lewis.

clerk do it. So long as it is done the committee does not care how it is done. The committee, after looking over the situation, decided that the proper way to have it done would be to have the same official stenographer who has reported the debates do the work so that he will be in a position to certify as to the essential correctness of the work for those fourteen days.

Mr. FESS: Professor Knight has given exactly the situation. The only question is shall our record begin on the fifteenth day or shall it begin the first day. We want it to begin the first day and be uniform. If there is any way by which that can be done other than as provided in this resolution we are perfectly willing to pursue the other way, but we do not know of any other.

Mr. DOTY: In answer to the question of Mr. Stilwell whether some other clerk could do the work, the clerks of the Convention already have their hands full. Then this is a matter that cannot be done by anybody. I doubt if there is a member in the secretary's office who could do this work properly except the secretary, and that is not reflecting on the ability of any one there, but the secretary hasn't the time. He is charged with important duties and he has to attend to them and he cannot take the time to attend to this.

Mr. STILWELL: The only objection I have is to the matter of expense. Here we have two complete reports, one by the stenographers, which the delegate from Franklin [Mr. KNIGHT] informs us has to be written all over again, and we have the journal and the work is to make these two uniform. I don't see why it is worth \$125 for fifteen days' work. That amounts to \$8 a day for simply joining the two in proper form. I am opposed to the motion in the present form.

Mr. FESS: Can the gentleman from Cuyahoga [Mr. STILWELL] suggest any other way by which it can be done so that we will have a proper record?

Mr. STILWELL: It is certain that the present stenographer cannot authenticate the correctness of something done before he came here. He didn't take charge until the fifteenth day. Anybody else could do the work just as well as the stenographer can. I believe the entire matter ought to be referred to the secretary with instructions to him to have this work done, and I offer that as an amendment to the present pending motion.

The amendment of the delegate from Cuyahoga was put in writing and was read as follows:

That the secretary of the Convention shall be authorized and directed to have the reports of the debates of the first fifteen days of the Convention, prior to the appointment of the official reporter, edited and put into proper form for preservation and publication.

Mr. HARRIS, of Hamilton: It is not fair to charge the secretary with this increased duty. He has already voluntarily agreed to assume duties that could not properly be considered his, and it is absolutely out of the question to suppose that an unskilled person can take the journal and the debates in the form they are and put them into proper form any more than you could expect an amateur artist to finish up a painting begun by a master. We have been told that the official reporter does not desire to do this work, but will do it if the committee wants him to do it, and the only thing

for the Convention to do is to take advantage of his kindness and let the work be put in proper shape.

The amendment was not agreed to.

The PRESIDENT: The question is on the adoption of the resolution and on that the secretary will call the roll.

The yeas and nays were taken, and resulted — yeas 78, nays 22, as follows:

Those who voted in the affirmative are:

Anderson,	Fluke,	Miller, Crawford,
Antrim,	Fox,	Miller, Ottawa,
Baum,	Hahn,	Norris,
Beatty, Morrow,	Halfhill,	Nye,
Beyer,	Harris, Hamilton,	Okey,
Brown, Highland,	Harter, Huron,	Peters,
Brown, Pike,	Harter, Stark,	Pierce,
Campbell,	Henderson,	Read,
Cody,	Hoffman,	Redington,
Collett,	Holtz,	Riley,
Colton,	Hoskins,	Roehm,
Cordes,	Hursh,	Shaffer,
Crites,	Johnson, Madison,	Smith, Geauga,
Cunningham,	Johnson, Williams,	Stalter,
Davio,	Kerr,	Stamm,
Doty,	King,	Stevens,
Dunlap,	Knight,	Stewart,
Dunn,	Lambert,	Stokes,
Dwyer,	Lampson,	Tallman,
Earnhart,	Leete,	Tannehill,
Elson,	Leslie,	Ulmer,
Evans,	Longstreth,	Walker,
Fackler,	Ludey,	Winn,
Farnsworth,	Marshall,	Wise,
Fess,	Matthews,	Woods,
FitzSimons,	McClelland,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Kramer,	Stilwell,
Bowdle,	Kunkel,	Taggart,
DeFrees,	Malin,	Tetlow,
Donahay,	Moore,	Thomas,
Farrell,	Pettit,	Wagner,
Harbarger,	Rockel,	Watson,
Kehoe,	Shaw,	
Keller,	Solether,	

The resolution was adopted.

Resolution 97 — Mr. Bowdle, was then taken up and was read as follows:

Resolved, by the Constitutional Convention of the state of Ohio, That Hon. William H. Lewis, assistant attorney general of the United States, is hereby extended an invitation to address the Convention before adjournment in behalf of the colored citizens of the state of Ohio.

Mr. BOWDLE: I shall take your time for just a moment. I introduced that resolution in the utmost possible seriousness. It is a difficult thing in these days of conspiring politics for people to attribute anything like disinterested motives to a person in introducing a resolution like this. However, I beg leave to say that in this instance while the accusation is ordinarily true, my introduction of this resolution was a very disinterested one. We have heard in this Convention by invitation from a variety of prominent men, and cudgel my brain as best I can I cannot think of one single novel or illuminating thing that fell from the lips of any man who has had the honor of occupying that rostrum.

Mr. DOTY: Agreed.

Resolution Relative to Invitation to William H. Lewis.

Mr. BOWDLE: Therefore I voted against any of them coming, but it seems to me that an exception might be made in the case of this distinguished colored man, whose name is mentioned in this resolution. We have here among us a race of people which has done as much work as any race of men on the edifice of our material civilization, a race of men which has received but little recognition. They are unctiously talked to in all political campaigns, but when the campaign is over the best reward they get is janitorships, bootblackships, and some other menial ships not worth talking about. And meanwhile, between campaigns, we exercise the right of suspending all the criminal laws applicable to ourselves by hanging them and by occasionally burning them. It seems to me, therefore, that it is a proper thing, as the race is not represented on the floor of this Convention, that we step aside for a moment and spend a half hour listening to one of the most distinguished representatives of the colored race.

Mr. ELSON: May I ask the gentleman a question?

Mr. BOWDLE: Yes.

Mr. ELSON: How many colored voters are there in your district?

Mr. BOWDLE: About six thousand in the first congressional district. I see the purpose of that question, but I should like to say for the benefit of the member from Athens [Mr. ELSON] that I have in my hand a watch which is sixty-five years old. It is a watch that is intimately connected with the anti-slave movement in this country. I know we have reached the time in the history of the United States when pretty near everybody will claim the honor of having had a relative on the underground railway, but most people who tell you that they were there were there as brakemen. This watch comes to me from my grandfather, Daniel Bowdle, who himself was an engineer on the underground railway, with Achilles Pugh, of Cincinnati, another leader in the movement, who in his time had his entire plant destroyed by some white gentlemen from Covington, whereupon my grandfather loaned him enough money to equip his press and get new type and the result was that he returned the loan to my grandfather plus the watch which I hold in my hand. Therefore, I think it is not amiss for me to say that I have inherited some interest in the colored race, which is now being so terribly discriminated against in America. I was reading last night in Ben Butler's book about the fight at Big Bethel. Ben Butler said that the most conspicuous service of the war was rendered by colored men; that after the fight at Big Bethel, on the morning after, when he was riding his horse among the corpses, he was struck with the astounding number of black men who were dead on the field, and that brought about a strong feeling for the colored man and he there made up his mind that among the finest soldiers in the Civil War, were the colored men.

This letter concerning the matter says:

Mr. Lewis is a graduate of Harvard and former coach on the Harvard eleven. He is a resident of Boston and was formerly United States district attorney for Boston until recently appointed assistant attorney general of the United States.

I sincerely trust the friends of the colored race among the Constitutional Convention will co-

operate and grant our only request in behalf of four hundred thousand colored citizens of Ohio.

Grant me permission further to state in behalf of the negro press of Ohio and the United States in the passing of the resolution the Ohio Constitutional Convention will have done more towards encouraging the colored citizens of Ohio than all the acts of lynch law and mob rule can accomplish from now to eternity. Mr. Lewis' talk will be along the lines of racial development and of great value to the colored citizens, the Constitutional Convention and the press and fellow white citizens.

I therefore bespeak for Mr. Lewis a hearing.

Mr. DWYER: What office are you a candidate for?

Mr. PECK: I move that the resolution be tabled.

The motion was seconded.

Mr. BROWN, of Highland: On that I demand the yeas and nays.

Mr. FESS: After hearing the eloquent speech of Mr. Bowdle I wish you would withdraw the resolution.

Mr. PECK: I move that we adjourn until ten o'clock in the morning.

The motion was lost.

The PRESIDENT: The motion is to lay the resolution on the table and on that the yeas and nays are demanded.

The yeas and nays were taken, and resulted — yeas 42, nays 56, as follows:

Those who voted in the affirmative are:

Baum,	Fluke,	Moore,
Beatty, Morrow,	Harbarger,	Okey,
Beatty, Wood,	Henderson,	Peck,
Beyer,	Hoskins,	Peters,
Brattain,	Hursh,	Pettit,
Brown, Pike,	Kehoe,	Read,
Cody,	King,	Shaw,
Collett,	Kramer,	Stalter,
Colton,	Leete,	Stevens,
Crites,	Ludey,	Tallman,
Elson,	Malin,	Ulmer,
Evans,	Matthews,	Wagner,
Farnsworth,	McClelland,	Walker,
Fess,	Miller, Crawford,	Worthington.

Those who voted in the negative are:

Anderson,	Halfhill,	Riley,
Antrim,	Harris, Hamilton,	Rockel,
Bowdle,	Harter, Huron,	Roehm,
Brown, Highland,	Harter, Stark,	Shaffer,
Campbell,	Hoffman,	Smith, Geauga,
Cordes,	Holtz,	Solether,
Cunningham,	Johnson, Madison,	Stamm,
Davio,	Johnson, Williams,	Stewart,
DeFrees,	Keller,	Stilwell,
Donahey,	Kerr,	Stokes,
Dunlap,	Kunkel,	Taggart,
Dunn,	Lambert,	Tannehill,
Dwyer,	Leslie,	Tetlow,
Earnhart,	Longstreth,	Thomas,
Fackler,	Marshall,	Watson,
Farrell,	Miller, Ottawa,	Winn,
FitzSimons,	Norris,	Wise,
Fox,	Pierce,	Woods.
Hahn,	Redington,	

So the motion to table was lost.

Mr. DOTY: I move to amend the resolution as follows:

Strike out the words "before adjournment" and insert "on Wednesday evening, April 17, 1912."

Resolution Relative to Invitation to William H. Lewis.

By this amendment we arrange for an evening hearing and it will not break into any of our sessions.

The amendment was agreed to.

Mr. ELSON: I cannot support this resolution. We haven't invited anybody to come to this Convention and speak as a democrat or as a republican or as a white man. We have invited a few very prominent American citizens because we wanted to hear from them and because we thought they could instruct us some, but we did it for a perfectly good purpose and we must draw the line somewhere.

Mr. NORRIS: I understand you to say that we haven't invited anybody here as a democrat or as a republican or as a white man. We are not inviting this man here because he is a white man.

Mr. ELSON: No; we are inviting him because he is a colored man. He is not a very prominent citizen and he is not a man of national reputation. I don't know what good he can do this Convention and why we should invite him here merely to compliment a certain class of citizens is something I cannot understand. If the gentleman will change the name to "Booker Washington" I will vote for it. Booker Washington is a national char-

acter and I will vote for him to be invited any time, although we have very little time to fool away on those things. However, while I cannot support this resolution I will say that were I a colored man and lived in the sixth congressional district I would vote for Mr. Bowdle and I think I would as a white man.

Mr. FESS: I voted to table this motion because I thought we had voted down invitations to other people, and with the time fixed for adjournment we would need every minute of our time. That is the only reason I voted against it. I voted with my eyes open, but since the motion has been fixed so that it will not take a particle of time from our sessions, but will be in the evening, I will vote for it.

The resolution was adopted.

Indefinite leave of absence was granted to Mr. Weybrecht and Mr. Worthington.

Mr. BEATTY, of Wood: I move to recess until 7:30 o'clock p. m.

Mr. DOTY: I move to adjourn until tomorrow at 10 o'clock a. m.

The motion was carried and the Convention adjourned until tomorrow at 10 o'clock a. m.

FIFTY-FOURTH DAY

MORNING SESSION.

WEDNESDAY, April 10, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Clarence A. Hill, of Columbus, Ohio.

The journal of yesterday, the legislative day of April 2, was read and approved.

Mr. HALFHILL: I desire to offer an amendment to paragraph 2 of the special rule adopted April 9, 1912. I move that that paragraph be rescinded and the debate be limited to ten minutes on any amendment offered to the amended substitute Proposal No. 184 by Mr. Peck.

The purpose is to change the rule limiting the debate on the proposal to three minutes.

Mr. DOTY: That was changed yesterday.

Mr. HALFHILL: Very well, then. It is manifest on the examination of this proposal here that this is a very important matter and can not be considered, so far as any amendments are concerned, in three minutes. I call attention to the importance of this from the fact that several gentlemen have told me of amendments that they want to offer. Some of them, with which I am familiar, I desire to support. At lines 6 and 9 the provision for six judges is affected by one of the amendments, as to whether there will be five or seven, and if that is adopted it will do away with lines 24 to 27, inclusive, in this proposal, which provide that where the supreme court is equally divided in opinion that fact shall be entered upon the records, etc. That would be a most unsatisfactory situation. There may be some other changes that may be necessary—for instance, this clause of the proposition allowing legislative powers to add additional jurisdiction to the supreme court. There may be some question on that. I am not familiar with that, but it looks to me as though this might be a dangerous thing. Amendments to that should and doubtless will be offered. Of course, that will be objected to by the chairman of the committee, as indicated yesterday, and that will provoke discussion.

Mr. PECK: That opens the door to go back to the old system, and we do not want that door opened.

Mr. HALFHILL: It is an open question, however, and we desire to have that amendment discussed.

Mr. PECK: Your motion is to make it ten minutes instead of three. There is no objection to it. The motion will be adopted.

Mr. DOTY: You might have indicated that a moment ago.

The amendment was reduced to writing and was read as follows:

That paragraph 2 of the special rule adopted April 9, 1912, be rescinded and that debate be limited to ten minutes on any amendment offered to the amended and substitute Proposal No. 184 by Mr. Peck.

The amendment was agreed to.

Mr. DWYER: I ask unanimous consent—

Mr. DOTY: I call for the regular order.

Mr. HARRIS, of Hamilton: As one of those who voted not to put the Bowdle resolution on the table and as one of those who subsequently voted to invite the Hon. W. H. Lewis to address us I now move to reconsider the vote by which that invitation was extended, and it is done not through any discourtesy to Mr. Lewis, whom all of us would be glad to hear, and to whose race all of us would be glad to pay honor; but out of justice to ourselves and with the limited time at our disposal, I think we ought to reconsider the vote. The action of the Convention to adjourn on April 26, has made it absolutely necessary that we should occupy every minute of time at our disposal. We will have to hold not only day sessions but evening sessions, and that would probably break into one of the evening sessions. Even if it does not, it is an enormous burden on us to sit here all morning and frequently late in the afternoon and then have to come back two hours in the evening to listen to a discussion, no matter how interesting or how important, and I trust as we have lost a great deal of time that this motion will be reconsidered.

Mr. DWYER: I ask unanimous consent to offer a proposal and I ask that it be referred to the Judiciary committee.

Mr. STILWELL: I move that the motion of the delegate from Hamilton [Mr. HARRIS] be laid upon the table.

The motion was lost.

The PRESIDENT: The question is now on reconsidering the vote by which the resolution extending this invitation was carried.

Mr. BOWDLE: I appreciate the spirit in which Mr. Harris makes the motion. It is rather curious that we should become so exceedingly chary of the time of the Convention at this particular point. Our economy in the matter of time is a good deal like the economy of most people, people become economical of their money when there is not a nickel in the house. We are approaching the end of our Convention, and it seems to me the hour assigned for this gentleman to speak, being in the evening, will not impinge upon the deep meditations of the entire Convention, and I therefore oppose the reconsideration.

Mr. ELSON: We have had a little byplay. Now what is the use of carrying it further? The candidates have all gone on record. We can not afford to carry this thing any further. People say, "What is the use of inviting a man just because he is colored?" He is not a national character at all. We have had our fun out of it and now let us drop it. I am sure it will not be appreciated by the people of the state if we carry the thing out. I say by all means let us reconsider.

The motion to reconsider was carried.

Mr. DOTY: I now move that the motion be referred to the committee on Rules.

The motion was carried.

Mr. DWYER: I ask unanimous consent to offer a proposal and ask that it be referred to the committee on Judiciary.

Introduction of Proposal—Change in Judicial System.

The PRESIDENT: Does anybody object?

Mr. DOTY: I object. Everyone understands this is no reflection upon the member from Montgomery [Mr. DWYER], but I desire to say if you want to make haste the way to do it is in regular order and not to be breaking in on the regular order by interruptions. We have a big day before us, and it will take all day to do the threshing out of this particular proposal.

Mr. DWYER: You are taking more time talking to the Convention about it than it would take to get my proposal introduced and referred. Now what is before the Convention?

Mr. DOTY: I hope nothing.

Mr. DWYER: Then sit down.

Mr. STOKES: To allow the gentleman from Montgomery [Mr. DWYER] to introduce his proposal I ask unanimous consent that the proposal may be introduced at this time.

Mr. DOTY: I object.

The PRESIDENT: Unanimous consent is not given.

Mr. WINN: I move that the further consideration of Proposal No. 184 be postponed for one minute.

The PRESIDENT: That motion is not in order.

Mr. STOKES: I move that the rules be suspended and the delegate from Montgomery [Mr. DWYER] be allowed to introduce his proposal.

The motion was carried.

The following proposal was introduced and read the first time:

Proposal No. 330—Mr. Dwyer: To submit an amendment to article IV, of the constitution—Relative to dividing the state into appellate court districts.

Mr. DWYER: I move that that be referred to the committee on Judiciary.

Mr. DOTY: I object.

Mr. STOKES: I move that the rules be suspended and the resolution be referred to the Judiciary committee.

Mr. DOTY: Does the member from Montgomery [Mr. DWYER] desire to have his proposal printed?

Mr. DWYER: I don't care.

Mr. DOTY: If you desire to have it printed I want to inform you it will not be printed if this motion carries.

The motion was lost.

The PRESIDENT: The question now is on the adoption of the substitute amendment offered by the delegate from Hamilton [Mr. PECK].

Mr. PECK: There are one or two matters omitted in drafting this paper, correction of which ought to be made, and there is one correction to which attention was called by the delegate from Erie yesterday. I propose at the beginning of line 28 to insert these words:

In any case wherein the judgment of the court of appeals is reversed, statutes shall not be held unconstitutional and void except by the concurrence of all the judges of the supreme court.

That will leave it this way: If the supreme court affirms the judgment of the court of appeals declaring a law unconstitutional, it is necessary to have only a majority of the supreme court to affirm that judgment.

Mr. TALLMAN: I rise to a point of order.

The PRESIDENT: The gentleman will state his point of order.

Mr. TALLMAN: Is any amendment in order?

The PRESIDENT: No.

Mr. PECK: This is a correction I am offering to a substitute I myself offered.

Mr. TALLMAN: I insist upon my point of order.

The PRESIDENT: The president will rule on the point. If the Convention agrees to accept these corrections they can be considered.

Mr. HOSKINS: I object to a vital point being inserted as a correction. It should be put on the same plane as an amendment.

Mr. TALLMAN: I insist that anything in the way of a change is an amendment.

Mr. BROWN, of Highland: The member from Hamilton [Mr. PECK] simply notifies the Convention that it is his intention to offer this amendment.

Mr. BROWN, of Lucas: A word on the point of order. It seems very clear that Judge Peck, having offered the amendment, is entitled to offer it in any form he desires. It is his own amendment, no step has been taken in regard to it and if he wants to vitally change it he should be permitted to do it. He is not seeking to amend anything. He is simply endeavoring to get an amendment, that he himself offered, in the shape he wishes it.

Mr. PECK: There is another place where three lines were left out in copying and I want to put them back.

Mr. HOSKINS: With all due respect to the chairman of the Judiciary committee, the change the gentleman has just offered is an amendment. It can not come under any other head, and I insist that it come regularly.

Mr. PECK: I passed that matter. It is another matter altogether in another place that I am referring to. What I refer to now is in line 36, and I want to insert three lines that were left out there.

Mr. LAMPSON: Are the lines that you wish to put in in the original amendment or in the copy that was offered? If they were simply left out in printing they are in the proposal.

Mr. PECK: They were left out in copying, not in printing. I will give them to you and you will see what they are. Without them the proposal would be lame. After the first word "judges" in line 36 these words should be inserted: "And until altered by statute, the circuit in which circuit courts are now held will constitute the appellate districts."

Those words were in all the proposals and in the hurry they were not copied, and I overlooked the fact that those lines were not in the proposal that I offered as a substitute yesterday. Without them the proposal is incomplete.

Mr. KING: I would like to have the lines read as they would read with this correction made.

The PRESIDENT: The president wishes to rule upon this point of order. The president understands these are not in the nature of corrections, that they are the matters that in the hurry of preparing the proposal were omitted, and the only way that these matters can come up now is after the adoption of the substitute, so as to clear the way for further amendments, and the matter shall be offered as amended.

Mr. PECK: I give notice that I want to offer these when the substitute is adopted.

Mr. FESS: I think we should vote on this substitute now and then we can offer amendments.

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A vote being taken the substitute of the delegate from Hamilton [Mr. PECK] was agreed to.

The PRESIDENT: Now the matter is open to amendment and the member from Hamilton [Mr. PECK] offers the following amendment:

Amend Proposal No. 184 as follows: At the beginning of line 28 insert: "In any case wherein the judgment of the court of appeals is reversed."

In lines 28 and 29, strike out "by any proceedings in this court."

In line 29, strike out the word "five" and insert the word "all."

In line 28, change the capital "N" to a small "n."

Mr. PECK: The members want to be heard on each of these proposed changes. We had better stop right there at present and we had better take each one separately.

Mr. STEVENS: That first amendment is not exactly in form. It reads in any case wherein the judgment of "the court of appeals is reversed." Should not that be in any case where the judgment of "a court of appeals is reversed"? These courts are not one court.

Mr. PECK: I accept the gentleman's suggestion.

The PRESIDENT: The secretary will make the correction.

The correction was made accordingly.

Mr. PECK: I want to explain this amendment a little before discussion goes further so the members will not be under any misapprehension about it.

The original idea of the Judiciary committee was that no laws should be declared unconstitutional except by a vote of all the judges of the supreme court. That was the original proposal as reported, but there was considerable opposition and in the Taggart proposal it was made five-sixths; then Judge King showed yesterday there were certain cases wherein it would be not workable. For instance, where the court of appeals decided a case unconstitutional and that went up, if five-sixths of the supreme court agreed that that case should be affirmed they could not affirm it because as the proposal then stood it required a unanimous decision by the supreme court to declare a statute unconstitutional, and in that case if one of the supreme court judges voted to reverse the decision of the court of appeals declaring the statute unconstitutional, it would be reversed. We thought if both courts, the court of appeals and the supreme court, held by a majority of each court that the law was unconstitutional that that raised a presumption that it was unconstitutional, and therefore I have proposed this amendment. This only applies where the supreme court is passing upon a decision of the court of appeals declaring the law unconstitutional, and there the supreme court does not have to be unanimous.

Mr. KNIGHT: I desire a division of the amendment offered. It seems to me the changes applicable to the cases where judgment of the court is reversed, is one amendment and the change about the five judges is another. It seems to me there are two questions involved.

Mr. HOSKINS: I want to offer an amendment.

Mr. ANDERSON: How many amendments are there?

The PRESIDENT: This is the second.

Mr. WOODS: Do I understand that the first amendment has been adopted?

The PRESIDENT: The substitute amendment has been adopted wiping away all the others.

Mr. WOODS: But the substitute has not been adopted?

The PRESIDENT: The member from Franklin asks that this amendment just offered by the delegate from Hamilton [Mr. PECK] be divided.

Mr. WOODS: I don't understand that amendment just offered by the delegate from Hamilton and I do not think it is workable. I would like to have it read again.

The amendment offered by the delegate from Hamilton [Mr. PECK] was again read.

Mr. HOSKINS: I desire to offer an amendment to that amendment.

The PRESIDENT: The president is in doubt as to whether that amendment is in order in view of the request of the member from Franklin [Mr. KNIGHT] to have the amendment divided.

Mr. LAMPSON: The request of the member from Franklin is simply for a division on the vote. He wants an opportunity to vote on each distinct part of the amendment, but prior to that amendments are in order.

Mr. KNIGHT: I withdraw my request for a division.

The PRESIDENT: The member withdraws his request for a division and the member from Auglaize [Mr. HOSKINS] offers the following amendment:

Strike out of line 29 the word "all" and insert the word "five."

Mr. HOSKINS: Just a word. We all understand the situation. Judge Peck's amendment to his substitute takes out the word "five" in line 29 and inserts the word "all." I have offered an amendment to his amendment—which simply reinserts the word "all"—and I want to take out the word "all" and insert the word "five," so that five out of six can render the decision.

Mr. WINN: It is provided that "until otherwise provided by the legislature the supreme court shall consist of six judges." Suppose the legislature changes the supreme court and makes it consist of five, what good will your amendment do? Or if the legislature reduces the number to four.

Mr. HOSKINS: Are you in favor of this word "all."

Mr. WINN: I am not.

Mr. HOSKINS: That matter can be corrected.

Mr. WATSON: I move to lay the amendment upon the table.

Mr. ANDERSON: Let us discuss it.

Mr. HOSKINS: On that I demand the yeas and nays.

The PRESIDENT: The question is, Shall the amendment offered by the delegate from Auglaize [Mr. HOSKINS] be laid on the table? On that the yeas and nays are demanded.

Mr. HOSKINS: I would like unanimous consent to change that just a bit.

The PRESIDENT: If there is no objection the gentleman can change his amendment.

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Mr. FARRELL: I object. The gentleman from Cincinnati [Mr. PECK] tried to do the same thing and objection was made.

The gentleman from Auglaize [Mr. HOSKINS] was among those who objected, and I object now to his amendment.

Mr. HOSKINS: I desire to withdraw that and at the proper time I will offer a proper amendment.

The PRESIDENT: We had started to take a vote and we will take a vote on the motion to table.

The motion to table the amendment was carried.

Mr. BROWN, of Lucas: I desire to offer an amendment.

The amendment was read as follows:

Strike out line 28 and the words "this court" in line 29 and insert: "No judgment of a court of appeals shall be reversed by reason of the unconstitutionality of any statute." In line 29 change the word "five" to "all."

Mr. BROWN, of Lucas: It will then read "except by the concurrence of all the judges of a supreme court."

Mr. PECK: That is the same thing as mine but in a little better form.

The SECRETARY: Does this take the place of the Peck amendment entirely?

Mr. PECK: Yes, sir.

The SECRETARY: It will then read as follows: "No judgment of a court of appeals shall be reversed by reason of the unconstitutionality of any statute except by the concurrence of all the judges of the supreme court."

Mr. ANDERSON: I move that that amendment be laid on the table.

Mr. PECK: No; it is all right.

The PRESIDENT: The motion to table is not entertained. The gentleman making the motion had not been recognized. The delegate from Lucas [Mr. BROWN] had the floor.

Mr. BROWN, of Lucas: The purpose of this amendment is to avoid the Hibernian use of language. "In any case wherein the judgment of the court of appeals is reversed those statutes shall not be held unconstitutional or void."

That is to say, no limitation is placed upon the reversing of the judgment, but the statutes shall not be held to be void. The thing we are attempting to do is to regulate the reversing of the judgment. What I am trying to do here is to reach the judgment itself, and I do that by saying no judgment in the court of appeals shall be reversed for the reason of unconstitutionality of a statute except by the concurrence of such number of judges as the constitution shall prescribe. I am simply attempting to correct that.

Mr. PECK: The gentleman from Lucas [Mr. BROWN] showed me his amendment before he offered it, and I think it expresses my idea better than I express it.

Mr. LAMPSON: I would like to ask the gentleman if his amendment does not in effect direct the supreme court to disobey the constitution?

Mr. BROWN, of Lucas: I think not.

Mr. KING: I want some information about cases involving questions of the unconstitutionality of a statute in a case in which by this proposal original juris-

diction is given. How are they to be declared unconstitutional? By a majority or by five, or what?

Mr. PECK: This does not affect those cases.

Mr. KING: This only refers to the reversal of cases coming from the court of appeals, and does not apply to cases originally brought in the supreme court.

Mr. PECK: That is left to be decided as always.

Mr. KING: By a majority. The statute could be held unconstitutional by a majority of the court.

Mr. BROWN, of Lucas: What I am seeking to do is to get into this language the meaning that Judge Peck desires to have in it. I am not caring at all about the form. I am trying to get his ideas correctly embodied. I am trying to get this to say exactly what Judge Peck wants to say. It may not be full enough, and if it is not will some one offer a suggestion tending to correct it?

Mr. ANDERSON: If your amendment is adopted would not this be the situation: Where the present circuit court, the court of appeals under the new proposal, would hold an act of the general assembly unconstitutional, then the law would be just as it is now so far as the supreme court is concerned, but if the court of appeals held it constitutional, then it would require all of the supreme judges to declare it unconstitutional. Is that correct?

Mr. BROWN, of Lucas: Yes.

Mr. ANDERSON: In all other matters where the supreme court is passing upon the constitutionality of an act of the legislature the law would be just as it is now, and the only form of remedy, if this amendment is carried, would be where they would seek to reverse the court of appeals where the court of appeals held the statute unconstitutional?

Mr. BROWN, of Lucas: Yes.

Mr. ANDERSON: That is not much of a reform.

Mr. PECK: That is all we can get.

Mr. BROWN, of Lucas: That is what the member from Hamilton [Mr. PECK] wanted put in. I was simply endeavoring to get the language the member himself desired.

Mr. ANDERSON: It is not what you are trying to do, but what you have done.

Mr. HARRIS, of Hamilton: Will you explain to us laymen the following proposition: Suppose a statute is declared unconstitutional by the supreme court. The case is brought directly in the supreme court and the majority of the supreme court declare it unconstitutional. Then suppose the same question comes before the circuit court and they declare the statute unconstitutional?

Mr. PECK: They could not.

Mr. HARRIS, of Hamilton: They could not do it, you say? But they might.

Mr. PECK: I don't think it will ever happen.

Mr. HARRIS, of Hamilton: Is it possible for it to originate in both courts at the same time?

Mr. BROWN, of Lucas: I think not, but whatever action is taken by the supreme court prevails.

Mr. KNIGHT: Suppose the court of appeals has declared a statute unconstitutional and it goes to the supreme court and the supreme court is equally divided?

Mr. PECK: The judgment of the court of appeals would prevail.

Mr. KNIGHT: Then the law would be declared unconstitutional by an equally divided court?

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Mr. PECK: The judgment of the court below prevails.

Mr. KNIGHT: Then you are having the supreme court declare a law unconstitutional by a divided court?

Mr. BROWN, of Lucas: It appears to me that what Judge Peck is trying to do is to reach a situation which sometimes occurs when the circuit court sustains the statute and the supreme court reverses it. I want to frame his language so he will accomplish what he is trying to do.

Mr. KNIGHT: I don't know what you are trying to do, but I want to see that I understand exactly what it is you are doing.

Mr. ANDERSON: Is not this the thing that you are desiring: Where the court of appeals holds an act of the legislature unconstitutional the law shall remain as it is now; but where the question as to the constitutionality of the law is first raised in the supreme court and where the court of appeals has held the statute constitutional, it must require all of the supreme court to declare it constitutional.

Mr. BROWN, of Lucas: That is the effect of what Judge Peck is seeking to accomplish in this particular amendment. What I am trying to do is to get the language so clear that it can be understood.

Mr. NORRIS: If that is what it is intended to do, why don't you write it up in language that ordinary people can understand and not have different sections that may be clashing?

Mr. ANDERSON: I move that the amendment of the gentleman from Lucas [Mr. Brown] be laid on the table.

Mr. WOODS: I don't believe this matter is understood yet.

Mr. WINN: I rise to a point of order. The member from Medina is not in order.

The PRESIDENT: The member from Medina is not in order. The question is on the motion to lay the Brown amendment on the table.

The motion was carried.

Mr. HOSKINS: Now I offer an amendment.

The amendment was read as follows:

Amend the amendment of Mr. Peck to Proposal No. 184 as follows: Insert after the word "all" the words "but one."

Mr. PECK: That just reverses the amendment offered by me, and it is in effect the same amendment the gentleman attempted to withdraw.

Mr. HOSKINS: No; it is not.

Mr. PECK: Your amendment was laid on the table and this is the same thing.

The SECRETARY: No; it is not.

Mr. PECK: Don't put your oar in, Mr. Secretary; attend to your own affairs.

Mr. HOSKINS: The distinguished member of the committee [Mr. Peck] has a peculiar way of getting in his arguments. The other amendment I offered was not exactly in the form I desired it to be, and attention was called to it by the member from Defiance, whereupon I changed my amendment. I first said "five" instead of "all" and attention was called to the fact that if the number were reduced by the legislature that would mean "all" just the same. I have changed it to read "all but one," so that, whatever the number is, it will require

all but one to declare a statute unconstitutional.

Mr. PECK: As there are six judges now, the word does not change your former amendment.

Mr. HOSKINS: No; but if the number would change this would mean a different thing from what the other amendment did.

Mr. PECK: So it is the same thing that was laid on the table.

Mr. HOSKINS: I think that this Convention can draw the line at what they want to do. My position is this: We ought not to pass an arbitrary rule by which it would require all of the supreme court judges to declare an act unconstitutional. If you retain the present system of six judges it would require five out of the six under this amendment. I regard your idea of unanimity as going too far. It is absurd to say that five judges out of six shall not be allowed to pronounce a decision of the court on any proposition. The requirement of unanimity of all the supreme court judges may work all kinds of trouble. Some one man on the court may have an accident. He may be run over, or he may be sick and disabled. I would like to know how you can get all the judges of a court if one is disabled, and that is a practical reason. The other reason is, I don't think it should be a principle adopted by this Convention. If we can not trust five of our supreme judges to pronounce a decision on any proposition we are entertaining a very small opinion of them.

Mr. HALFHILL: I agree with this amendment so far as it goes, but I wish it would go farther. I think we are limiting the jurisdiction of this court by a hard and fast rule and we are laying down requirements here which may arise some time in the future to plague us and justly so.

I want to call attention to a situation that has arisen in the courts of Ohio. Under our dual form of government every judge of the supreme court has to take an oath to support not only the constitution of the state of Ohio, but the constitution of the United States and the treaties of the United States, which are a part of the supreme law of the land. Now, under the rule of international law, as all of us who have investigated know, treaties always provide a rule of action relative to personal and property rights. The United States has not with any civilized nation in the world, a treaty that does not provide how the property of a subject of that nation shall be disposed of in certain contingencies; and in the case of death or injury occurring to that subject the consul of that foreign power residing in that jurisdiction is the one who represents the subject or the property of the subject, notwithstanding any state statute that conflicts with such treaty right. The courts of Ohio in construing a statute as to the right of an administrator of the estate of a foreigner has to be governed by the treaties of the United States. Now, a case went up from Tuscarawas county, I think, in which all of the lower courts permitted the ordinary statutes of Ohio to govern the appointment of an administrator to take charge of the estate of a deceased alien, and permitted such administrator to be appointed in the probate court, on application of a creditor, just as any creditor of a citizen of the United States could go into the probate court and have an administrator appointed to reduce an estate to a fund. All of those statutes and all the constructions given to

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the statutes by the lower court of the state of Ohio were in direct conflict with the treaty of the United States with the foreign power and the foreign country in the case in question. I know that to be the fact. I have had experience along that line and have seen cases where the administrator has been appointed for the estate of a subject of a foreign power by a creditor acting under the statutes of the state of Ohio, and wherein that administration was held to be of no force and effect, and the consul of that particular power came in, upset the proceedings of the lower court, took charge of the estate and made a settlement of it under the treaty.

Mr. ANDERSON: Will you permit a question?

Mr. HALFHILL: When I get through with my statement. If that condition should arise, and I am only pointing to the illustration where it might arise, I do not see why the supreme court of the state of Ohio should not have a right by majority vote and without every member of that court joining to declare that the treaty obligations that are binding upon every citizen of Ohio should be superior to any statute passed by the legislature of Ohio, and even if all the lower courts had held that those statutes were constitutional and not in conflict with the treaty right. There is a case where it would not be wise to involve ourselves in complications with the United States law, by having any conflict with a treaty right guaranteed to foreign subjects under the obligations existing between the United States and that foreign country.

Mr. ANDERSON: In the case you cite you would not expect the probate judge, sometimes not an attorney, to take into consideration treaties of other countries, but you would expect, when that case got up to the learned men of the supreme court, to have them know what the treaties were and prevent doing what the treaty said should not be done. Don't you think you could get all the supreme court judges to decide on a question like that which you state so clearly?

Mr. HALFHILL: I certainly do not think the supreme court of Ohio should be fettered by any such rule. It is entirely possible that some member of that court would insist upon holding to a situation which would involve us in difficulty and I see no reason in the world for putting such a hard and fast rule as that into the constitution.

Mr. ANDERSON: Do you not know that just such a question as that went up in Pennsylvania, as to whether or not you could bring an action for the death of a foreigner; and don't you know it went to the supreme court and then to the supreme court of the United States—I think about 207 or 208 U.S.—and there was no trouble in getting the supreme court of Pennsylvania to be unanimous on a question of that kind? Do you really, seriously contend that where the treaties of a foreign country plainly set forth certain rights of their subjects in this country that the supreme court would be divided on it?

Mr. HALFHILL: I do.

Mr. ANDERSON: You do?

Mr. HALFHILL: I do. And the question that has gone through the courts of Pennsylvania or any other state of the Union cuts no figure in the discussion and is quite beside the point. This is the sovereign state of Ohio and you are making fundamental law for it. I point to a condition which seems to me ought to be ap-

parent to any man who is biased or prejudiced to the extent of desiring that the supreme court of the state of Ohio should be shackled by a rule that should not be inflicted upon any court. What this proposal ought to do is to fix the rule that a majority of the court shall control, and I say, unless you do it, you will live to see the day when this hysteria, this attack upon the courts, made here, will be a thing to rise up and plague you. It is to the courts of Ohio and courts of the country that we owe the liberties of the country. They protect the liberties of the country and the rights of the individual. And these cases that have been cited here, some thirty in number, to show that individual rights have been transgressed by the supreme court of Ohio are a slander upon the courts of the state of Ohio, unless you take into account the hundreds of other cases where the rights of the individuals have been fully and fairly protected by holding statutes unconstitutional, and I can cite a number of them right here in these reports.

The PRESIDENT: The time of the gentleman is up.

Mr. BROWN, of Highland: I want to ask a question.

The PRESIDENT: The member's time is up. The question is on the adoption of the amendment.

Mr. LAMPSON: It seems to me there are many cases reported in the supreme court reports where statutes have been held unconstitutional by a divided court. Now suppose we change the rule and our court of appeals, which we propose to establish, following the precedents of those decisions, shall hold some statute unconstitutional. When those decisions reach the supreme court does it require the unanimous decision of the judges of the supreme court in those cases?

Mr. PECK: No; that is just what we are trying to avoid.

Mr. LAMPSON: Then I do not construe it correctly. If I understand it, you require unanimity in the court.

Mr. PECK: Only when the court reverses.

Mr. LAMPSON: Would not the effect of that be to permit one or two members of the court to overturn all of those precedents?

Mr. PECK: No.

Mr. COLTON: After all of the gratuitous instruction that has been given by members of the bar to laymen of the Convention, it may be regarded as presumptuous for one to venture a suggestion. But I think an amendment of this kind or a statement in a proposal of this kind should be so plainly put that laymen can understand it. I do not understand this amendment to be clear in its language. It reads: "In any case wherein the judgment of the court of appeals is reversed no statute can be held unconstitutional," etc. If I understand what is aimed at, this language would be nearer the point, "and no judgment rendered by an appellate court declaring a statute unconstitutional shall be reversed except by the concurrence of all but one," etc. I do not know that I understand the amendment, and if I properly caught the meaning that is what is intended. It seems to me this language would be much clearer than the language that is employed in the amendment.

Mr. KING: The statement is made, if I caught it correctly, that if a statute be held unconstitutional by the appellate court it shall require five judges of the supreme court to reverse that. Now, the reversal would mean to

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hold it constitutional and not to hold it unconstitutional. Why not let four judges reverse? There is not anything in any of the proposals that prevents that.

Mr. FACKLER: I offer a substitute for the Peck substitute and all pending amendments—

Mr. HOSKINS: There are two amendments pending as I understand it. That is what the parliamentarians tell me.

The PRESIDENT: No; the substitute is treated as the original proposal and three amendments may pend to that substitute.

The amendment offered by the delegates from Cuyahoga [Mr. FACKLER] was read as follows:

Strike out lines 28 and 29 and all pending amendments thereto and substitute the following:

"No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Mr. PECK: I am inclined to accept that amendment. It accomplishes the same purpose.

Mr. FACKLER: The purpose of the amendment is not to allow the supreme court to declare an act unconstitutional in those cases in which it has original jurisdiction except by the concurrence of all but one of the judges. If a case should come from the court of appeals which had affirmed the constitutionality of an act, it could not be reversed except by a concurrence of all the judges. If it came up from the court of appeals from a judgment of that court holding the act unconstitutional, then a majority of the supreme court could affirm the judgment of the court below. I think that takes care of all three possible ways in which the matter can come before the supreme court.

Mr. PECK: It also takes care of the provision by saying "all of the judges sitting in the case."

Mr. ANDERSON: As I understand the situation now existing, first we have the amended Proposal No. 184. That was printed last night and stands as the proposal. Then we have an amendment offered by Judge Peck to line 28; we have an amendment to that by Mr. Hoskins changing "all" to "all but one," and then we have the amendment of Mr. Fackler as just read. The purpose of Judge Peck's amendment was to permit cases coming to the supreme court on questions of the constitutionality of an act of the legislature, where the court of appeals had held the statute unconstitutional, to be affirmed by the supreme court and just as now. That might be by a three to three vote if it so happened. The Peck amendment went to that and that alone. In all other parts it was to be by the supreme court, that all of the judges sitting in the case should agree as to the unconstitutionality of an act before it should be so declared. The amendment by Mr. Hoskins means the same as the one by Mr. Fackler except one of the judges need not agree. It seems to me that the Fackler amendment should prevail. It seems to me if the supreme court can declare an act unconstitutional where the lower court has held it unconstitutional that this provision ought to be satisfactory. Then "all of the judges sitting in the case" cures another trouble that has been suggested, and

that is that some one may be sick, or some one, by reason of interest in the case or having been in the case when he was not a supreme judge, may not be able to sit. It does seem to me there is not much reform, as to acts declared unconstitutional, in the Peck proposal, unless the Fackler amendment carries, and I hope all in favor of the reform of the law will support this amendment.

Mr. NYE: I do not want to let this pass without saying a word. It seems to me we have been elected to this Constitutional Convention because of our qualifications to prepare amendments to the constitution, and if we prepare amendments they ought to be more binding than any statute that can be passed by any legislature that is elected in the ordinary way. If the legislature can pass a statute by a bare majority and then we require a unanimous decision of the supreme court to declare it unconstitutional, it seems to me that you gentlemen are belittling your work in this Convention. I believe that the supreme court ought to have a right by a majority of the court to hold unconstitutional any statute passed by the legislature in violation of the provisions of the constitution we are making. I believe we are putting a millstone around our own necks, and that the people of the state now and to come hereafter will regret our action. I believe we ought to leave the constitution as we have it now, with reference to the point of declaring a law unconstitutional. We ought not to change a provision which has been the rule in this state for a hundred and ten years, and the rule in the United States for a hundred and two years. I say this as a warning. I say that this is wrong in principle and wrong in practice.

Mr. FACKLER: You admit that no law should be declared unconstitutional unless it is so beyond reasonable doubt?

Mr. NYE: Certainly.

Mr. FACKLER: Then under the substitute amendment the requirement of unanimity in the supreme court only applies where the judge of the court of appeals has decided in favor of the constitutionality of the act, does it not?

Mr. NYE: The supreme court ought to be considered by us as the highest and best court under the law of this state, and a majority of that court in my judgment ought to rule.

Mr. LAMPSON: Legislatures have been in the habit of passing what is known as special legislation. Such legislation has usually been held to be unconstitutional. There is a long line of precedents upon that subject. Some times the statutes are so near the border line that statutes of that class have been held unconstitutional by a divided court. It seems to me that this proposal will reverse, or may reverse, this whole line of precedents and permit those special legislation statutes to be held constitutional simply because one member of the supreme court refuses to hold them unconstitutional. If I am wrong in that I would like to know it.

Mr. FACKLER: Under this his judgment would have to be concurred in by the court of appeals.

Mr. LAMPSON: It need not come from there at all. It may come direct to the supreme court without going to the court of appeals. The thing we have to guard against is special legislation. This opens the door wide to the legislature to pass all kinds of special legislation and have it held constitutional in the supreme court.

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Mr. HARBARGER: Where a case goes to the supreme court direct and does not come to the supreme court from a court of appeals, it only requires a majority of the supreme court to hold a statute unconstitutional.

Mr. LAMPSON: You are wrong about that. It takes all of them, and it is the supreme court that makes the law on these questions.

Mr. OKEY: A point of order: Was not a roll call demanded?

The PRESIDENT: Some one did call for the yeas and nays, but the member from Ashtabula [Mr. LAMPSON] had been recognized and the member who called the yeas and nays did not have the floor to make the demand.

Mr. LAMPSON: I would like to have my question answered.

Mr. FACKLER: The original jurisdiction of the supreme court is very limited?

Mr. LAMPSON: Yes; but all of these administrative questions will be special matters. The legislature used to be flooded with applications for special acts to allow cities and towns things peculiar to themselves which were entirely applicable to them. We used to get around the constitution by providing that a city not having more than a certain population and not less than a certain other population might be so authorized. As a matter of fact the population specified would make the statute applicable to but that one city.

Mr. FACKLER: But that was finally knocked out?

Mr. LAMPSON: Yes.

Mr. FACKLER: And it was only when a case arose about the lighting plant in Cleveland that they knocked it out.

Mr. LAMPSON: Yes; but for a long time they held those statutes constitutional. Finally they held them unconstitutional.

Mr. SMITH, of Hamilton: I want to ask Mr. Fackler a question. Under your amendment, which takes the place of all the other amendments and strikes out lines 28 and 29, you provide that "no law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Now the supreme court, after hearing a constitutional question argued, often delays quite a considerable time before it reaches a decision. What would happen if in that time one of the judges should die? Could there be any claim that the death of that judge would settle the constitutionality of the law?

Mr. FACKLER: I think not.

Mr. SMITH, of Hamilton: Would not all cases of that kind have to be heard again?

Mr. FACKLER: I am not certain as to that, but I do not think so. The remainder of the judges would be all the judges sitting in a case and they would render the decision.

Mr. SMITH, of Hamilton: You say "sitting in the case." All the judges that heard the case would be sitting in the case and if one died after that time that would not alter the number of judges who were "sitting in the case," so don't you think the matter ought

to be safeguarded? I think it ought properly to be put "all but one."

Mr. FACKLER: I am willing to consent to that.

DELEGATES: We object.

Mr. FESS: I do not want to reflect on anybody, but it does seem to me that there is an attempt to defeat by minor corrections without number the reform that is here sought. Every suggestion that could be thought of has been made here, and every modification. It seems to me if the proposition concedes the unanimous decision for reversal in pronouncing a law unconstitutional—that, if there be concession about it and it is put "all but one," that can meet the approval of the Convention and the Convention can pass the proposal as it was proposed in the amendment by Judge Peck this morning.

Mr. KING: Will the gentleman from Greene [Mr. Fess] be kind enough to tell us what his idea would be as to the language that ought to be put into this amendment so that it would be clear and so it would be plain and so it would accomplish everything we want?

Mr. FESS: It would be very difficult to word the language so as to avoid technicalities of the practitioner of today whose chief stock in trade is to find a flaw in order to carry a case to the supreme court, and that is the thing we are trying to avoid. If there is any ambiguity in the language the committee on Phraseology, which is appointed for that purpose, will straighten it out, not a hundred and nineteen people, but a small committee of seven here in session, and it seems to me, if there is no dispute on the point we want to preserve with respect to the judiciary, we ought not to delay long about it. I call the attention of my friend from Lima [Mr. HALPHILL] that while we want to respect in the largest way the judiciary, we can have a greater respect if you don't allow five men against four in the supreme court of the nation to declare a law unconstitutional. If it had required a greater proportion than that we would have had greater respect for that court. I stand here in defense of the judiciary, but it seems to me there is no injury or violation to the judiciary to make the concession of "all but one;" that certainly will cure it, and why can't we get out and vote on this proposition?

Mr. LAMPSON: Does the gentleman seriously think that we should amend the constitution so as to permit one or two of the judges out of six to hold all sorts of special legislation constitutional which have heretofore been held unconstitutional?

Mr. PECK: It has to be held so in the court below before one can do it.

Mr. FESS: If the legislature had seen fit to pass a law and it goes to the court for adjudication and interpretation, I believe that one man dissenting from an entire court does not make that law seriously defective.

Mr. LAMPSON: But the one man becomes the controlling power.

Mr. FESS: No.

Mr. LAMPSON: Certainly the one man can reserve all the precedents under this proposal.

Mr. FESS: Not under this proposal.

Mr. PECK: "All but one" is put in there.

Mr. LAMPSON: That helps it some.

Mr. PECK: I rise to a point of order. A vote was ordered some time ago. The roll call was ordered. Mr.

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Lampson was permitted to take the floor for the amendment. It degenerated into a general discussion, and I demand the roll call.

The PRESIDENT: The president did not recognize any one on that matter. There was no roll call. Does the member move the previous question on the amendment?

Mr. PECK: Yes.

Mr. DOTY: That would be the previous question on the whole thing.

Mr. FESS: In answer to that I would like to read this proposed amendment: "No law shall be held unconstitutional and void by the supreme court without the concurrence of all the judges but one sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Mr. LAMPSON: Suppose the courts had been holding a certain class of legislation unconstitutional right along for ten or fifteen years, and now some act that has been passed, similar to those that have been held unconstitutional, goes to the court of appeals and under that provision that act can not be held unconstitutional without the concurrence of all of the judges?

Mr. FESS: Not under that amendment.

Mr. FACKLER: I wish to withdraw the amendment and offer this:—

The PRESIDENT: If there is no objection the member from Cuyahoga [Mr. FACKLER] withdraws the amendment and offers the following amendment:

Strike out lines 26 and 29 and all pending amendments thereto and substitute the following: "No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Mr. WATSON: I move that that amendment be laid on the table.

The motion was lost.

The PRESIDENT: The question is now on the adoption of the amendment.

The yeas and nays were regularly demanded, taken, and resulted—yeas 94, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Dwyer,	Hursh,
Antrim,	Earnhart,	Johnson, Madison,
Baum,	Eby,	Johnson, Williams,
Beatty, Morrow,	Elson,	Kehoe,
Beatty, Wood,	Evans,	Keller,
Beyer,	Fackler,	Kilpatrick,
Bowdle,	Farnsworth,	King,
Brattain,	Farrell,	Knight,
Brown, Lucas,	Fess,	Kramer,
Brown, Pike,	FitzSimons,	Lambert,
Campbell,	Fluke,	Lampson,
Cassidy,	Fox,	Leete,
Cody,	Hahn,	Leslie,
Colton,	Halenkamp,	Longstreth,
Cordes,	Halfhill,	Marshall,
Crites,	Harbarger,	Mauck,
Cunningham,	Harris, Hamilton,	McClelland,
Davio,	Harter, Huron,	Miller, Crawford,
DeFrees,	Harter, Stark,	Miller, Fairfield,
Donahey,	Henderson,	Miller, Ottawa,
Doty,	Hoffman,	Norris,
Dunlap,	Holtz,	Partington,
Dunn,	Hoskins,	Peck,

Peters,	Shaw,	Thomas,
Pettit,	Smith, Geauga,	Ulmer,
Pierce,	Smith, Hamilton,	Wagner,
Redington,	Stamm,	Walker,
Riley,	Stewart,	Winn,
Rockel,	Stilwell,	Wise,
Roehm,	Stokes,	Mr. President.
Rorick,	Tannehill,	
Shaffer,	Tetlow,	

Those who voted in the negative are:

Brown, Highland,	Malin,	Stevens,
Collett,	Moore,	Taggart,
Crosser,	Nye,	Talman,
Kerr,	Okey,	Watson,
Kunkel,	Stalter,	Woods.

The roll call was verified.

The substitute was agreed to.

The PRESIDENT: The question now is on the adoption of the amendment as amended by the amendment just adopted.

The amendment was agreed to.

Mr. PECK: Now I want to offer an amendment which simply restores three lines that were left out.

The amendment was read as follows:

In line 34 strike out "until otherwise provided by law." In line 36 insert after the word "judges" and before the period "and until altered by statute the circuits in which the circuit courts are now held shall constitute the appellate districts afore-said."

Mr. PECK: There will be an interval before the general assembly can act.

The amendment was agreed to.

Mr. KNIGHT: I move that we recess until two o'clock p. m.

Mr. MILLER, of Crawford: I move to amend that by recessing until 1:30 p. m.

The amendment was agreed to and the original motion thus amended was carried.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. PECK: I have another brief amendment to offer and then I am done.

In line 58 strike out the words "such other" and in line 60 after the word "court," add "and other courts of record."

The amendment was agreed to.

Mr. BROWN, of Highland, I offer an amendment.

The amendment was read as follows:

In line 58 strike out the word "and," immediately following the word "prohibition," and insert a comma. After the word "procedendo" insert "the right to try de novo cases, not triable by jury, appealed from any inferior court."

Mr. PETTIT: I have an amendment along that line myself.

The PRESIDENT: The member from Highland [Mr. BROWN] has the floor.

Mr. BROWN, of Highland: In the consideration of this proposal it occurred to me that lawyers of small

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caliber are sometimes elected to judgeships and that in the examination of cases, as suggested on the floor the other day, sometimes are introduced witnesses whose very personal appearance renders them credible and other witnesses whose credibility would appear not to be of the very best. When the transcript goes to the reviewing court that court does not come in contact with the witnesses under those conditions, and if the court only has a right to review on the cold transcript, justice may miscarry, particularly if the judge who previously tried the cases is not competent. I have seen judges on the bench before whom I would hesitate to try a case if I could avoid it, and I would do this all the more when I knew that there would be no appeal except to a reviewing court. I think this proposal is fraught with danger to the litigant, that should have the right to have the case tried de novo before this court of appeals. These are reasons why I oppose this proposition.

Mr. FESS: In view of the fact that this amendment will not close up the gap we are seeking to close, I move that it be laid on the table.

Mr. PECK: It is too late, of course, to be heard, but if you pass that amendment you will have to double the court of appeals.

Mr. BROWN of Highland: Is not that better than having the cases not properly tried?

Mr. HALFHILL. I ask the gentleman from Greene [Mr. Fess] to withdraw that motion until we can be heard on this.

Mr. FESS: I am willing to withdraw it.

The PRESIDENT: The question before the Convention is, unless it is withdrawn, the tabling of the amendment.

Mr. FESS: I will withdraw the motion at the request of members who wish to have the amendment discussed.

Mr. BROWN, of Highland: Does the gentleman from Greene [Mr. Fess] impugn any one's motives?

Mr. FESS: You will learn something later on.

Mr. BROWN, of Highland: I have not learned much yet.

Mr. WINN: Once before the member from Greene county [Mr. Fess] challenged the good faith of the other members of the Convention who were seeking to perfect this proposal so that they may be able to vote for it. I think I am just as heartily in favor of the proposal as the member from Greene [Mr. Fess]. I have not thus far offered an amendment, but I have several written out, several of my own already have been covered by amendments offered by the author of the proposal. I regard this amendment as one of the very greatest importance. I have one prepared along the same lines which I think covers the situation better than the one under consideration, but I am not particular about that.

We must remember that judges who sit on the common pleas bench—in fact, all the judges—are merely men.

When we impanel a jury to try a question of fact we take the greatest care to obtain men to sit in the jury box whose minds are unbiased, but if we have a question to be tried by the court we have no means of challenging the prejudice or bias of the one man who is trying the case, and I come back to what I have said before, that the judges on the bench are merely men, whose minds are warped, whose judgments may be con-

trolled by opinions formed before a single word of testimony has been heard, just as the judgment and conviction of a jurymen is controlled by his prior opinion.

Now the trial of a case before a jury is altogether different. It has been said by the author that after you have had a trial by a jury you should have a right to have it reviewed on error upon the record and that that ought to be sufficient. I submit that the cases are not analogous. You try a case before a jury of disinterested men. You try a case before the court many times when the court sitting in the case has already determined, before a word of testimony, everything in the case; that is within the practice of every man who has tried a case in court. I have in mind one case now in a northwestern county where a ditch proceeding was involved and more than fifty farmers were interested, and you need not tell me that the judge who tried that case had not an opinion before the testimony was heard. I was not interested in that case and I am not speaking from the standpoint of one interested, but from the standpoint of a practitioner who knows from thirty years' practice at the bar that judges are prejudiced and biased the same as jurors. When they try cases and render judgments the litigant should have the right to appeal to another tribunal and be heard, not upon the record, because the reviewing court is liable to say, as some one suggested yesterday, "If this case were originally in this court a different judgment would be rendered, but we do not feel justified in disturbing the judgment of the lower court." So I insist that this amendment is of the utmost importance to litigants. It does not do any harm. It does not put us back where we are, as has been suggested, and I hope the amendment will be adopted. It ought to be agreed to by the author of the proposal.

Mr. PETTIT: I have an amendment on this same subject which I think more fully covers the ground. It is really a substitute.

The amendment was read as follows:

Amend the amendment to Proposal No. 184 by Mr. Peck, by inserting in line 59 of the said proposal, after the word "jurisdiction," the following words: "to try de novo all chancery cases, appealed from the courts of common pleas and superior courts and."

Substitute the word "said" for the word "the" before "courts" near the end of line 59 and strike out in line 60 the phrase "of common pleas and superior courts."

Mr. PETTIT: It would then read: "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo and appellate jurisdiction to try de novo all chancery cases appealed from the courts of common pleas and superior courts and to review, affirm, modify or reverse the judgments of said courts."

Mr. BROWN, of Highland: If the member will permit I would like to have the secretary read the proposal as it would read if the amendment offered by the delegate from Highland were adopted.

The SECRETARY: "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, the right to try de novo cases not triable by jury appealed from any

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inferior court, and appellate jurisdiction to review, affirm modify or reverse the judgments of the courts of common pleas and superior courts within the district, etc."

Mr. PETTIT: Now the member from Hamilton [Mr. PECK] has made the objection that this would increase the number of appellate courts.

Mr. PECK: Yes; the appellate courts cannot do the work now.

Mr. PETTIT: They do it now and this does not increase their duties one bit, under this proposal. I agree with everything my friend from Defiance [Mr. WINN] has said about the one-man judge. They have the same kind of failings that the rest of us have. They are made of the same dirt. I know in my experience in one bastardy case that the judge was very wild; he came in with his mind made up before the case was called. I would not have stood any more chance before that man than a snowball in hot regions. I do not think one man should try a case. I think we should go mighty slow in this matter. I agree with about everything that Dr. Fess has said in this Convention, but I cannot agree with him on this matter. I have practiced law for twenty-five years. I know what I am talking about, and everybody else knows that when you submit a case to one man, although you have a right to go up on error, that is about an end of your case. At any rate it will not increase the work of the appellate courts one particle over what they have to do now. In our district they are playing more than half of the time. It just preserves the appeal as we have it in the chancery cases, and I think it would be an outrage on the poor class of litigants not to allow them to go on up in a chancery case.

Mr. FACKLER: The Peck proposal preserves the right of appeal, but it does not give the right to hear new testimony.

Mr. PETTIT: What is the benefit of an appeal if you cannot hear the testimony?

Mr. FACKLER: If the lawyer tries his case correctly in the lower court he will have all his testimony in the record.

Mr. PETTIT: He may have in all that is obtainable then, but may he not discover testimony after that?

Mr. FACKLER: You have your rights under the law in that particular.

Mr. PETTIT: After a certain time you have no remedy.

Mr. DWYER: I feel like criticising that language. That "de novo" cannot apply in the appellate court. I think that phraseology ought to be changed.

Mr. STILWELL: I would like to ask the delegate from Adams [Mr. PETTIT] if it is not done now just exactly the way this proposal provides.

Mr. PETTIT: It may be—

Mr. STILWELL: Is it not a fact that in five of the eight circuits you must go up on your transcript of evidence in appealed cases?

Mr. PETTIT: It is not in compliance with the statutes.

Mr. STILWELL: Nevertheless it is the rule of court, and you are simply insisting that what prevails in three of the circuits shall become the law in the eight circuits.

Mr. PETTIT: I don't understand that a rule of court can override a statute.

Mr. HALFHILL: Will you allow me to ask a question of the gentleman?

Mr. PECK: I object unless the question is asked of the speaker.

Mr. PETTIT: If I don't object you can't.

The PRESIDENT: Does the gentleman from Adams [Mr. PETTIT] yield to the gentleman from Allen [Mr. HALFHILL] to ask a question?

Mr. PETTIT: Yes.

Mr. PECK: I object.

Mr. HALFHILL: If the member yields to me I have the privilege of asking the question.

Mr. PECK: Well, it is disorderly to ask a question of some one not on the floor. If you want to ask Mr. Pettit a question all right, but you have no right to ask anybody else.

Mr. PETTIT: Just keep cool, we will get along.

Mr. PECK: I object to the member asking questions of anybody except the member on the floor. I submit that it is out of order.

Mr. PETTIT: I have yielded my right to him.

Mr. HALFHILL: Now I want to ask a question of the delegate from Cuyahoga [Mr. STILWELL].

The PRESIDENT: Does the member from Cuyahoga yield to a question from the member from Allen [Mr. HALFHILL]?

Mr. STILWELL: Yes; if I can answer the question I will do it.

Mr. HALFHILL: In the districts you speak of this rule is by an order of court?

Mr. STILWELL: Yes.

Mr. HALFHILL: Yes, but the law will allow the introduction of witnesses?

Mr. STILWELL: No; the judge would simply refer the case to a commissioner.

Mr. HALFHILL: But there you can introduce witnesses?

Mr. STILWELL: Oh, you can!

Mr. HALFHILL: In all the courts of which you speak, and I am familiar with them, you can always apply to the court for a right to supplement your written transcript with oral testimony, and if the court thinks it ought to be heard the court will grant that as a matter of course.

Mr. STILWELL: That is true, but it all depends on the number of the witnesses. The court won't go into any lengthy testimony. They may permit a witness or two to clear up some point.

Mr. HALFHILL: But there is no hard and fast rule of court and no rule of the statutes which says that you cannot present testimony in the circuit court.

Mr. STILWELL: I don't suppose it will be absolutely binding, but that is the practice.

Mr. PECK: I hope this amendment will not be passed. This is the last stand of stupid conservatism, I was about to say; I will say it is certainly the last stand of conservatism. It is a sort of conservatism that lawyers always manifest whenever any suggestion touches anything that affects their sacred purse. It is the same way when any statute is offered to abolish something that has been existing a long time. Why, it is history that when the statute was offered to abolish hang-

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ing men in England for stealing a few shillings the lament was made by Lord Eldon that it was a wicked reform in the law. It is of record in the state of Ohio that when the code of civil procedure was adopted it was fought by nearly all the leaders of the bar in the state and it had to be adopted and put into effect over their objection. Now nobody objects to it and if anybody were to want to change it the lawyers would sit back in their conservatism and fight against it. There is an unreasoning element of conservatism in the bar and it always has to be overcome from the outside. The right of appeal has existed too long; it has clogged the court and has been gotten rid of by five of the circuit courts through a rule which the gentleman from Allen [Mr. HALFHILL] claims violates the statute. At any rate it is a rule that is operated in all of them and they enforce it, as indicated by the gentleman from Cuyahoga [Mr. STILWELL] in this way: If you insist on coming in with witnesses they will simply refer you and your witnesses to a master and let him take the depositions and let him bring them in; then they will hear them. That would put you in no better position than to simply let the court try on the record of the common pleas court. You seem to say that you would rather have the trial by the master than the judge of the common pleas court. Well, I think not, if you know what is good for you.

Mr. PETTIT: If we insert a proviso can the courts adopt any system that will override the constitution?

Mr. PECK: If they cannot, that is the reason why it ought not to be in here. The only reason your circuit courts are not all clogged up now is that this rule they have adopted has saved the situation. If you would carry this out the way you would want it done and have all the witnesses in every case introduced in the circuit courts or court of appeals, you would have twice as many courts as you have now.

Mr. PETTIT: We only had three cases in Brown county and two in Butler county at the last term.

Mr. PECK: But there are many other counties in your district. And we are tired of the way they are trying cases now. A case ought to be carefully tried on its first trial and that is enough. I am opposed to these a la justice of the peace trials that we have had in some of the common pleas courts. There is only one way to try an equity case and that is to try it before the chancellor.

Now the objection is made that judges are only men. What would you have them be? I don't know of any other sort of being that tries cases. You may get some women in certain cases if woman's suffrage carries. There may come a time when my friend will have a right to argue a case before a petticoated chancellor, but as it is now he has to take his chancellor in trousers. That is the only kind he can have. I do not know of any other kind of tribunal that you can have except one presided over by a man. Of course, you must in all things make allowance for human nature. Human nature is weak in everything under the sun and it is not worth while to talk to me, as the gentleman from Defiance has been talking, about cases here and there where the trial judge may have made a mistake. No trial judge and no jury and no circuit court is free from mistakes. Three of the circuit court judges may be in error and

may come to a false conclusion, but they are just as likely to come to a correct conclusion on a record brought before them as any other way. Now let us vote upon these amendments and dispose of this last stand of ultra conservatism.

The chair recognized the delegate from Noble.

Mr. PETTIT: I want to make a few remarks in reply.

The PRESIDENT: The member from Noble has the floor.

Mr. OKEY: I have been in favor of the Peck proposal and I was on the committee that reported it out, but at the time it was reported out it did not occur to me that the right in chancery cases to be tried anew in the appellate court had been taken away. I am opposed to the taking away of that right from the people. I know that that right ought to exist. We have one trial in equity cases in the court below and we ought to have a right to go to another court and there let the case be heard before three disinterested judges that they may hear the testimony; because it sometimes happens that, when we try an equity case in court and take it up on transcript, new witnesses have been discovered that will entirely change the decision of the court below. I have known such a thing to happen in numerous cases, and I say that the people ought to have a right to a retrial in an equity case.

When I voted to report this proposal I did not know that it contained that provision.

Mr. FACKLER: Is not the object sought to be accomplished by the Peck proposal one trial and one review, and would not that be defeated if this amendment carries?

Mr. OKEY: Not one bit. It would not add any more burden on the appellate court than is now on the circuit court.

Mr. WOODS: Do you think there should be a single review of all cases?

Mr. OKEY: Yes.

Mr. WOODS: If this amendment should go into this proposal, would there be any review of cases tried de novo in the appellate court? Could you go into the supreme court on an equity case that has been tried de novo in the circuit court or the court of appeals?

Mr. OKEY: No.

Mr. WOODS: Then you would have two trials and no review.

Mr. BROWN, of Highland: Under this proposal if a case is important would not the supreme court have a right under certiorari to reach down and get the case for review?

Mr. OKEY: No; not as I understand it. There has been a good deal of talk about the circuit court's adopting certain rules saying that cases shall be heard upon a transcript taken in the court below. It is as Judge Laubie said to me. The circuit courts of the state adopted a rule that doesn't rise to the dignity of a rule, because the court is doing something it has no right to do, and he never observed the rule in my county strictly, but permitted us to introduce as many additional witnesses as we desired.

The member from Mahoning was here recognized.

Mr. PETTIT: Mr. President.

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The PRESIDENT: The gentleman from Mahoning has been recognized.

Mr. PETTIT: I was on the floor first.

The PRESIDENT: The member from Mahoning has the floor.

Mr. PETTIT: It seems to me that this Peck proposal is considered such a sacred thing that nobody ought to touch it. The statement of the gentleman from Cuyahoga [Mr. FACKLER] intimated that we must take this Peck proposal just as it is. They first brought in a proposal here and then after it had been discussed Mr. Peck yesterday offered a substitute. Then he came up this morning and there were three or four more amendments that he had to offer, showing that it was not perfect; and now if anyone else suggests that he wants to amend it they act as if the whole fat were within the fire. I am not trying to delay. We want to get this thing right, and this talk about doubling the number of courts if we allow cases to be tried de novo in the circuit courts doesn't amount to anything. In our circuit they don't work one-half the time. In Adams county sometimes they have one or two cases. Last week in Brown county they only had one case. I don't know of any judges that are overworked anywhere. It seems to me that my amendment or the amendment of Mr. Brown, of Highland, ought to prevail. Talk about poor litigants! Here is a right taken away from them and you want to allow them only one trial in the lower courts.

Mr. ANDERSON: I do not believe either carrying the amendment or rejecting the amendment injures very much or to any extent the great reform sought to be accomplished by the Peck proposal. So that those who are not lawyers may better understand it, in a certain kind of cases, equity cases, where you have not any jury, you try the cases before the common pleas judge sitting as a chancellor, both judge and jury, and as it is now if you are not satisfied when you lose in that court you may go on to the circuit court and try the case over again before three circuit judges sitting as a court and jury just as if it had not been tried in the common pleas court. The men who are back of this amendment wish that to remain where it is.

Mr. STILWELL: Can you do that now?

Mr. ANDERSON: Yes; where there is not a rule. In many of the courts, in five of the circuits out of the eight, they have made a rule, and whether they like it or not they abide by it, by which the circuit court demands of the plaintiffs or defendants, when they come from the court below in an equity case, that they bring, in typewritten form, the testimony of the witnesses below. Then, if either the plaintiff or the defendant asks that further testimony be heard, the circuit court sometimes permits the witnesses to come in, take the stand and testify before the circuit court. In the smaller counties they take practically all of their witnesses up to the circuit court. Really this is the difference between the small counties and the big counties. In the larger places, like the cities of Youngstown, Cleveland and Cincinnati, they now conduct affairs just as it is provided in this proposal. In the smaller counties it is different; it is as the gentleman from Adams [Mr. PETTIT] and the gentleman from Defiance [Mr. WINN] suggest. Sometimes they handle matters in the same way we do, but generally they take up their witnesses to the circuit courts. I am

in favor of the amendment, which permits the smaller counties still to try before the circuit court sitting as a court and jury.

Mr. HOSKINS: Is it not a fact, if one of these amendments is not adopted, that the other circuit courts are simply trying to force their rules on all the rest?

Mr. ANDERSON: If it remains as it is now the larger counties can have just what this amendment proposes to give them and the smaller counties have it the other way, but I am afraid of the wording—I don't like that de novo. If they would erase that, I am in favor of it; but I don't believe that I am in favor of doing away with the rule.

Mr. PECK: Well, that is just what will happen.

Mr. KING: I have never been very warmly in favor of a retrial of an equity case, but the custom is well established throughout Ohio. This is the only state in the Union that has it; but we have it and have had it for sixty years. It has grown into a system and we feel that we ought to have it.

But I disagree with those who object to it on the ground of the time it will take. I undertake to say proper judges can hear all the witnesses in a case and know more about the case when they are through, in less time than you can read a typewritten record that comes up from a lower court; because a judge hearing the case will know when to stop the witnesses and when to stop the bringing in of testimony, whereas the court below will feel a hesitancy about doing that. Then the attorneys below understand that they have to get everything in the case in the common pleas court. They call witnesses and keep on piling up testimony and the judge trying the case will necessarily be slow about stopping the introduction of testimony. But the circuit court can stop it wherever it pleases, and my experience on the circuit court bench in hearing cases with witnesses was that we could hear them quicker and decide a case quicker and more satisfactorily from the evidence of the witnesses than from the transcript of testimony.

Mr. BROWN, of Highland: Does it cost much more to try a case de novo in the same court house in a county where the circuit court is sitting than it would to have a record transcribed and brought up?

Mr. KING: No.

Mr. BROWN, of Highland: What is the expense of a transcript as compared with a trial?

Mr. KING: If you could avoid taking up the transcript—which you could probably not do—if you could avoid that you could take the witnesses up cheaper than you could take the transcript.

Mr. STILWELL: If any equity case is going to the circuit court in any event, what is the use of having it tried in the common pleas court?

Mr. KING: We have no control over that question under this proposal. The common pleas court has always had control over those cases since our constitution was adopted, and there was no proposal to abolish that jurisdiction. Many cases are not appealed.

Mr. WINN: I wish you would turn to the amended proposal. I have a substitute to offer for that, which I think covers the case better than either of these proposals or substitutes. You will remember that the words "such other" in line 58 have been stricken out. My amendment strikes out the word "appellate" at the end

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of that line so that it would read, "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and jurisdiction to review," etc.—leaving out the word "appellate." I do that for this reason: In Ohio there is a distinction between cases prosecuted through the higher courts by appeal and those prosecuted by proceedings in error. That does not prevail in many of the states besides Ohio. If you turn to our statutes you will find all through them the word "appealed" is used where we mean to go up and try the case, as has been said, de novo. We find error proceeding used where we have to review questions of law by a higher court, so that I think it is not advisable to use the word "appellate" jurisdiction where we mean jurisdiction by review of proceedings below.

Again, in all our circuit court reports and supreme court reports there is always a distinction made between cases heard on appeal, as we use the term, and cases on review, so that I would strike that word "appellate" out at the end of that line and amend it so as to read as follows: "The court of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and jurisdiction to review, affirm, modify or reverse judgments of the courts of common pleas and superior courts and other inferior courts of record," and these are the words that I would provide for retrial, "and for the retrial of cases appealed from any of such courts."

Mr. PETTIT: I will accept that amendment as far as I am concerned.

Mr. KING: Do you wish to provide by that amendment an open door by which the legislature can enact laws which will permit all cases to go up?

Mr. WINN: I just will add the word "equity" which I omitted and make it read, "and the retrial of equity cases appealed from any of said courts."

The amendment was reduced to writing and read by the secretary as follows:

Substitute the following for the amendments of Mr. Brown, of Highland, and Mr. Pettit to Proposal No. 184: Strike out the word "appellate" at the end of line 58. Between the word "district" and the word "as" in line 60, insert the words "and for the retrial of equity cases appealed in any of the said courts."

Mr. ANDERSON: Will the gentleman from Defiance permit a question?

Mr. WINN: Sure.

Mr. ANDERSON: Do you think your proposed substitute will in any way interfere with the rules they now have in the different circuit courts?

Mr. PECK: It will. This is then a constitutional right.

Mr. WINN: I do not know what rules they have in the circuit courts. I submit this, that if any of the circuit courts of the state have, without any authority of law, deprived any citizen of his right to have an equity case appealed and tried as from the beginning, that court has usurped authority that it has had no right to do. The humblest citizen of the state has a right to appeal in an equity case and he has a right, if he did not have all the testimony below, to call his witnesses into the circuit

court and have his witnesses heard there, and no circuit court has a right to deprive him of that privilege.

Mr. PECK: But the circuit court can send him to a master.

Mr. WINN: I don't know what they can do in the big cities, but they don't do that in our district.

Now I want the members to think about this. This is an important matter. You have heard it talked from the stump, from the pulpit and from everywhere that the courts have been depriving the people of their rights by injunction. Remember this matter applies to injunction suits. Are you here to say that if some judge who has already prejudged an injunction suit decides it in one way and renders an opinion no appeal can be taken from it? I submit that to deprive litigants of this right deprives them of one of their sacred privileges and we should hesitate a long time before doing it.

Mr. ROCKEL: I am very much in favor of this amendment. I think it materially affects the rights of the people of this state. I remember within the last two or three years attending a state bar association at which Judge Reeves, of Cuyahoga county, brought this question before the association, and it was there discussed. It was the sentiment of the bar association of this state that this would be a serious invasion of the rights of the people.

Mr. PECK: Did you ever know any bar association to declare in favor of any legal reform?

Mr. ROCKEL: I do not profess to have the wisdom of the gentleman from Hamilton—

Mr. PECK: That wasn't the question at all. That was not an answer to my question. Did you ever know of any bar association declaring in favor of any legal reform?

Mr. ROCKEL: I don't know and I don't care. It is not material to the question before this body. I want to say to the gentlemen of this Convention that the poor man is the man who is likely to be affected by this. You have heard a great deal said in the Convention about injunctions and the cases that come up before one man and I say to the Convention no man should be entrusted with absolute and arbitrary power. I am in favor of reserving to the people of this state all the rights that can be reserved to them. I had the honor to be on the circuit bench a while and we never found any difficulty under the present procedure. If a case came up on a transcript and an attorney wanted to present his witnesses, we heard the testimony of the witnesses. I repeat to you, don't take away this barrier, don't put the power in the hands of one man to determine rights that may affect the humblest citizen of this state far more than the rich and corporate wealth.

Mr. KING: I would like to ask the member from Defiance [Mr. WINN] to examine his amendment to see where it comes in. As it was just read by the secretary after the last word of your amendment, in the copy I have, there is the phrase, "as may be provided by law."

Mr. WINN: It comes after the word "district."

Mr. KING: Where does the phrase "as may be provided by law" come?

Mr. WINN: I think that is stricken out.

The SECRETARY: No; it is not.

Mr. WINN: That should be stricken out.

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Mr. KRAMER: I want to say just a word. The most important cases we try are those that are in courts of equity. Equity cases usually involve a great deal more money and a great many more sacred rights than jury cases. For instance, a poor old man is imposed upon by some person and he deeds away his one hundred and sixty acre farm, worth \$16,000. You go into a court of equity and try to have that deed involving \$16,000 set aside, and we are compelled to try it before one man finally and absolutely, no difference what his prejudices may be. You may go into a court to have a will proved and it may involve an estate of thousands of dollars; you go before one judge and you are bound absolutely by what he finds. Hence, I think we should have the right to try the case before more than one man if we want to.

Mr. FACKLER: Does not the Peck proposal give you the right to try the case in the court of appeals upon the testimony in the common pleas court?

Mr. KRAMER: You know just as well as I do, and Judge King suggested it, that no circuit court will read a long record. Judge King hinted at it, but I say it outright.

Mr. ROEHM: How many times do you get a chance to put your testimony before the jury?

Mr. KRAMER: Once; but we have twelve men to hear the testimony and if one man is prejudiced one way or the other, or if he has a lesion in his brain, as Judge King said, the other eleven men may convince him that he is wrong. In any event, with our three-quarter jury verdict one man cannot stop the wheels of justice as one judge could.

Mr. ROEHM: What has been your experience in trying cases with judges and juries? Have you ever waived a jury and consented to try before the judge?

Mr. KRAMER: Not in many cases. If there is a whole lot of law and very little fact we do it sometimes.

Mr. ROEHM: Is it not conceded by ordinary lawyers—excepting damage suits—that they prefer to try questions of fact before a court rather than a jury?

Mr. KRAMER: Well, if they wish to do it they can do it.

Mr. JONES: When this proposal was first brought to the attention of the Convention and when I had occasion to first speak in reference to it, I was inclined to the view held by the gentleman now introducing this amendment, and so stated from the floor in the remarks that I made upon the subject. Upon further reflection I am inclined to the view that the provisions of the proposal as it stands are the better. As has been suggested, this constitutional provision proposed to be incorporated by this amendment may have the effect of preventing the court of appeals from doing the very thing which in practice is done now by the circuit court in reference to hearing cases on appeal. It may prevent the exercise of the power to refer to a master in order to compel parties to submit their cases upon transcript.

Mr. WINN: Suppose this amendment is adopted; will it be any different from what it is now?

Mr. JONES: It may be. If this becomes a part of the constitution and you provide that cases shall be and must be tried upon appeal with the oral testimony of witnesses, I can readily see how that might have the effect suggested of preventing the court of appeals from

requiring them to be tried on transcript of the testimony. Mr. HOSKINS: Is it not a fact that that provision is simply a jurisdictional feature?

Mr. JONES: What provision?

Mr. HOSKINS: The amendment proposed by the delegate from Defiance.

Mr. JONES: But the manner in which it has been presented here, in at least some of the amendments, will raise a very serious question as to whether you may not have to try those cases on appeal by oral testimony, just as this provision contemplates.

Mr. WINN: You understand that the statute provides these cases can be tried de novo on appeal?

Mr. JONES: Yes.

Mr. WINN: Do you think it is more difficult to disobey a constitutional provision than a statutory one?

Mr. JONES: Certainly it is more difficult to disobey a provision of the constitution than of a mere statute. That is illustrated by the provision with reference to reporting decisions. Suppose you have a statute requiring the court to report all decisions; how can you enforce it? If there is a constitutional provision to the same effect you can enforce the provision and secure reporting of all the cases.

Mr. WINN: If a statute provides that the circuit court must hear the evidence on appeal in certain cases, and if the circuit court can disobey that provision of law, what is there to prevent the circuit court from disobeying a similar provision in the constitution?

Mr. JONES: That is assuming a situation that does not exist. The statute now simply gives the right of appeal, and the court has applied to the trial of cases on appeal as provided by our statute the existing methods of trial.

Mr. PETTIT: You say that if this amendment is adopted it may tie the hands of the court of appeals. What harm will there be in tying the hands of the court of appeals in this matter?

Mr. JONES: The main object of this whole reform in our judicial system is to secure a prompt disposition of cases. Now, as we all know, if all the cases that go to the circuit courts in the various circuits had to be heard on oral evidence taken by the court, the courts could not possibly do all the business. It could not be done now, and necessity has compelled changing the rule in the respects referred to. As a matter of fact, nineteen out of twenty cases, aye, more than that, forty-nine out of fifty cases, tried on appeal in the circuit courts, are tried on a transcript of the testimony. In every other state in this country cases on appeal are tried in that way. They are tried that way in the federal courts. What wrong can there be to the litigant in trying them that way in Ohio, in these proposed appellate courts?

Now, there is another matter in connection with this that should not be lost sight of. The great majority of cases that go to the circuit court are jury cases. At least that has been my observation and experience.

Mr. PETTIT: What jury cases can be appealed from the common pleas to the circuit court?

Mr. JONES: They would come up on appeal, where now they come up on error proceedings, which simply brings up for review the whole evidence in the case and the questions of law made in the lower court upon the

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introduction of evidence and otherwise, and the question is whether the judgment below is fairly sustained by the evidence in the case.

The great majority of cases you have in the circuit court are jury cases, and the rights of parties are determined upon the record from the court below. They are often the largest and most important cases that go up. What reason can there be for having two trials on oral testimony of an equity case and only one trial of a jury case, when the rights of the parties may be just as great in the one and the interest involved just as important as in the other?

Mr. BROWN, of Highland: The gentleman from Fayette seems to deal with this question as if the amendment made it mandatory on the appellate court to try a case de novo. If the member from Fayette [Mr. JONES] will endeavor to ascertain, he can easily see that the amendment I propose only gives the court that right. It is not a mandatory provision, but it gives the court the right and under that it is in the court's discretion.

Mr. JONES: That may be, but under one of the proposed amendments the question arises whether it does not make it mandatory on the court to hear the evidence on appeal. But if the rights of parties can be subverted and justice can be properly administered in law cases by taking them on error proceedings to the reviewing court, why cannot the rights of the parties be equally subverted in an equity case in the same manner? The best answer to be made to this is that the experience of the whole country and of the English speaking world has demonstrated that it can be done.

Mr. HOSKINS: I want to speak just a moment on this proposition and I want to say this: I am more vitally interested in this thing than in any of the rest of the provisions. I want reform, but I do not want it at the expense of the average litigant. You are simply seeking by the Peck proposal to take away from the average litigant certain rights that we have enjoyed for the last sixty years.

Now, as to the matter of time, you do not save any. Judge King has told you so. You don't save any time and you don't save any money. The member from Erie [Mr. KING] has had years of experience on the bench. He tells you that you can hear the witnesses quicker, with less expense and with a great deal more satisfaction, in the circuit court, or the court of appeals, or whatever it is called, than you can read the transcript.

Mr. JONES: May I ask the gentleman a question?

Mr. HOSKINS: No, don't bother me; I do not yield. I want to call attention to the fact that if you are compelled to try the case before the lower court you are going to put every scrap of evidence in because the upper court will hold you to the evidence in the lower court. That common pleas judge will be slow to shut out any evidence. You will not be controlled by the strict rule of the evidence as in jury cases. He will be slow to shut out anything, unless it is clearly incompetent. Consequently you will spread your transcript over about five times as much as you should.

Now, some circuit courts have adopted an arbitrary rule, which they had no right to do. I don't care what they do down in Cincinnati or in Cleveland; I want to practice law in my own county, and I want my people's rights preserved. If the circuit court of any other place

have taken away the people's rights, it is a matter that concerns those people and not the remainder of the state. I know our circuit court has not taken these rights away. My information is that the states of New York and Indiana, and possibly other states, have this intermediate court, and that in it you may introduce evidence. You have started to rip things up. Now, we people who represent circuits that have not been enforcing an arbitrary rule ask to be let alone. We don't want to change our customs and adopt the customs of Cincinnati. We don't want the arbitrary rules of any Cincinnati court written into the constitution of Ohio, and I protest against it. I have great respect for the gray hairs of the gentleman from Cincinnati [Mr. PECK]. He has practiced in Cincinnati, but if he had practiced in Northwestern Ohio he would not take this position. We ask the Convention to allow the appellate courts, or the circuit courts, to remain as they are now and not to inaugurate a revolutionary proceeding on the idea of saving time and expediting litigation, when we are told by those in position to know that it does not do either. There may be some other features of the Peck proposal that will expedite and facilitate, but certainly this is not one of them. I was glad to see the gentleman from Mahoning [Mr. ANDERSON] so fair as to agree that this should be written into the Peck proposal; which he helped to draft.

Mr. STILWELL: Is it not a fact that the only place where this custom at the present time prevails is in the three circuit courts of this state and that it does not prevail anywhere else?

Mr. HOSKINS: I don't know.

Mr. STILWELL: Is it not a fact that you are attempting to force the rules of those three circuit courts upon all the other parts of the state?

Mr. HOSKINS: What right have you to attempt to force your rules and your customs on us?

Mr. STILWELL: You are making objection to a course and you cannot show an instance where any hardship has resulted from it.

Mr. HOSKINS: I don't know anything about that.

Mr. JONES: If your statement is true that these cases can be heard on appeal with the witnesses before the court more expeditiously than they can be on transcript, how do you explain the fact that in five of the circuits of the state they all come up on transcript and that in the other three circuits nineteen out of twenty cases come up on transcript?

Mr. HOSKINS: I don't know anything about that. It is an arbitrary rule and in that rule they are violating the statute.

Mr. STILWELL: But they don't object.

Mr. HOSKINS: I would if I were there.

Mr. LAMPSON: Is not the essence of the controversy that it is one between the cities and the country counties?

Mr. PECK: No.

Mr. HOSKINS: That may be true, but I think there are people over the state who are fair enough not to attempt to urge a rule on us.

Mr. LAMPSON: Don't you think that the country representatives ought to understand what the issue is?

Mr. HOSKINS: Most assuredly, and I think the country representatives ought to protest against writing

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the rule of the Cincinnati circuit court into the constitution of Ohio.

Mr. SHAFFER: As a matter of fact, the only point that you make in this argument of yours is to give the court of appeals the right to consider additional testimony in cases that come before it.

Mr. HOSKINS: Not necessarily.

Mr. SHAFFER: Is not that the whole of your controversy?

Mr. HOSKINS: No.

Mr. SHAFFER: What else is there?

Mr. HOSKINS: You have all the evidence that has been given in the trial below. Now I don't care to have my time taken up by an argument. The proposition has been made half a dozen times that in an equity case the judgment is by one man. He may be a good judge, but he may be a two-by-four, and I want to say that all the poor judges are not on the supreme bench. Some of them are on the common pleas bench, and you have to go before judges of that class and have one man instead of twelve pass on your rights. It has also been argued here that the upper courts are loath to disturb a finding of a lower court upon a cold transcript, where you cannot get all the facts before them in the manner in which the witnesses themselves could present the facts.

Mr. BEATTY, of Wood: Couldn't the judge be sworn off the bench if there is any just ground for it?

Mr. HOSKINS: We have not a statutory right now to do that, and if the senator could recognize what a delicate thing that is to do he would know that would not be an adequate remedy. Next week you would have to meet that same judge in some other matter, and if you have sworn him off the bench you are not in very good standing with him.

I hope this Convention will realize that there are some arbitrary, narrow-minded judges on the common pleas bench and that you cannot get a proposition properly before the appellate court without a right of retrial.

Mr. FACKLER: Several questions have been raised regarding this amendment.

There has been an attempt to inject sectional differences here, leaving the impression that the cities are asking for the Peck proposal while the country districts are opposed to it. All of the circuits of the state except two or three have adopted as a rule of court what the Peck proposal provides, and this rule is in effect in the district embracing Ashtabula county, from which the gentleman comes who asks the question.

Does the gentleman think that Geauga county is one of the city counties? Is Columbiana county? Is Harrison county? Is Noble or Monroe? Take your map of the districts of the state and you will find your answer and the answer will be diametrically opposed to the statement of the gentleman from Auglaize [Mr. Hoskins].

Mr. LAMPSON: There has been considerable complaint in those counties along that line.

Mr. FACKLER: The object of the Peck proposal is simply this, and it is an object that has been advocated by every progressive lawyer and thinker on the subject of judicial reform in the country: "One trial and one review." What is sought here? Here is an effort on the part of some men to cut out that principle as applied to equity trials. They say you would not save any money. You can try cases in an appellate

court in a few hours and if you attempt to bring all the witnesses before the court on appeal, in a case involving considerable testimony, you will have lawyers' fees and witnesses' fees piled upon the litigant. No, sir; this is a help to the poor people. The proposal here offered is cheaper. Very much so in the long run.

Mr. CROSSER: Have you tried any cases in the circuit court?

Mr. FACKLER: Yes.

Mr. CROSSER: Didn't you find that you could try them as rapidly and more so by the introduction of the witnesses?

Mr. FACKLER: Not nearly so.

Mr. BROWN, of Highland: Don't you regard a review de novo as more valuable for your case than an appeal on the record?

Mr. FACKLER: That depends entirely on which side of the case you are on. Taking it as an abstract proposition, stripped of interest in the matter, you will get just as near justice by trying the case rightly in the lower court and then taking the record up to the higher court. The result of what we have now is really slipshod trials in the lower court, because the lawyers feel they can go to the higher courts and try it over again. That means expense and extended litigation.

Mr. BROWN, of Highland: It seems to me that you are not trying to reach justice.

Mr. FACKLER: We are trying to reach justice, and we believe it is best to reach justice with one trial and one review.

Mr. WINN: Suppose you were trying an equity case in a certain city of the state where most of the judges are boss-made, and on one side of the case was a litigant of the same persuasion as the boss and on the other side was a man fighting the boss, what chance do you think the man against the boss would have before the boss-made judge?

Mr. FACKLER: That is an argument that goes not to the system of jurisprudence, but to the manner in which you carry out your system of jurisprudence, and I submit you will have just as much chance if you take that case upon a transcript of testimony to the higher court as if the lawyers had the right to bring in all the witnesses and spend all the time trying the case over again in the second court. It does not take away the right to an appeal; it simply says on what facts you try the appeal; that it is on the testimony below. I believe if this amendment is adopted it will strike out of the Peck proposal very much of its merit.

Mr. PETTIT: What right have you to impugn the motives of any lawyer?

Mr. FACKLER: What did I say?

Mr. PETTIT: You said substantially that lawyers are taking cases to higher courts to make more money out of them.

Mr. FACKLER: That is the effect of it. Now let us vote upon this proposition. This is the last stand to try to save an equity case from "one trial and one review," which has been established as a sound and progressive doctrine in judicial procedure.

Mr. ROEHM: When this amendment is voted on won't the next move be to provide a method for going to the supreme court?

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Mr. FACKLER: I don't know. Some people are never satisfied with an end to litigation. Litigation must end somewhere, and usually it is to the advantage of the poor litigant to have the end quickly.

Mr. HOSKINS: Will the gentleman yield for a question?

Mr. FACKLER: No; I will not.

Mr. TALLMAN: I want to start with the idea that if we have our equity case in the court above we have one trial and one review. I presume the gentleman used the word "review" in the sense of reviewing the law in the case, which is the only sense in which it can be used unless there is testimony and the case is heard on testimony above. In jury trials they have a judge and a jury and the case is again heard by a judge on the facts on the motion for a new trial. It is heard upon the facts below by thirteen men. It goes on error, and the questions of law are reviewed. When an equity case goes up on appeal it is heard upon the facts and the law by the judges who pass upon that case, and it is reviewed as to the facts and there is a review as to the law. If the facts are reviewed it is a better review than a review of the law alone. The idea of having only one trial and one review is theoretical; I do not care what you call it. I want to ask this question: Doesn't the judge who tries the case below decide upon what is competent and what is incompetent testimony? Let us have your boss-made judge upon the bench, let us have your boss-counsel trying his side, and let us have a man opposed to the boss-made judge as one of the parties to the case. How about your review if you want to have it as does Judge Peck, the Martin Luther of this century? The judge below determines the law and what is competent testimony and he determines what is to go into that record of the case and what doesn't go into the record of that case. The court of appeals can't read or review evidence that is excluded, and you can always beat a case on review before the court of appeals if you keep out all of the proper testimony, or a good portion of it, that ought to have been admitted below. I want to ask some of you, how are you going to get that testimony before the court of appeals if it is not in the transcript and the court below has erred—this boss-made judge, this narrow-minded judge, this judge who has made up his mind before he took his seat upon the bench?

How are you going to get the whole testimony before the court above if the judge chooses to rule it out? There is only one way on earth that you can do it. You would have to go up by a petition in error and you would also have to go up by appeal. Now if you cannot get your testimony in the transcript which has been wrongfully excluded by the court below by this boss-made judge how are you going to get it there if you are not allowed to bring the original witnesses before the court? That is what I would like to know. Here we are called stupid conservatives. I admit, if this is stupid conservatism, I am a stupid conservative, and I would rather be a stupid conservative than that kind of a progressive, a progressive that goes backward—a crawfish. That is another name for it, and it is just as apropos as the one applied to us.

Mr. JONES: Your inquiry was, how the evidence rejected by the boss-made judge is gotten into the record. How would it get into the record in a law case?

Mr. TALLMAN: By exception.

Mr. JONES: Could it not be gotten into the equity case just as in the law case?

Mr. TALLMAN: When you except to the testimony, how are you going to get it there on petition in error?

Mr. JONES: Could you not get it in the equity case the same as you get it in the law case?

Mr. TALLMAN: The court rules it out and the transcript only embodies what the court permits.

Mr. JONES: But wouldn't you get the evidence in the equity case just the same as you would in a law case?

Mr. TALLMAN: The court above would say in the common law case that the court below erred in ruling it out.

Mr. JONES: But if he ruled it out erroneously in the one case would it not be just as erroneous as in the other?

Mr. TALLMAN: Would you send it back to another jury?

Mr. JONES: It certainly would be sent back if there were wrongful exclusion of evidence.

Mr. TALLMAN: We don't want a crawfish—we don't want to go back.

Mr. JONES: Well, why go back in the one case and not in the other?

Mr. TALLMAN: Simply because the other doesn't go up and you can't hear it on testimony. We have a class of cases where the facts have been heard and have been passed on by the jury, but you cannot get them up to the other court.

Mr. DWYER: If the court refuses to give you a proper transcript can you not compel him by mandamus?

Mr. TALLMAN: There is no trouble in getting the transcript. The trouble is in regard to what the transcript contains, when you take it to the appellate court.

Mr. REDINGTON: I acknowledge that I am oftentimes influenced by experience, and I find that some of the delegates here are also influenced by experience. Before I state the reason for my opinion upon this proposition, I want to give you one illustration only. I could give others in my practice, but one will suffice. About twenty-two years ago a father and son got into a controversy over a farm. The son obtained possession, claiming he obtained possession under a gift from his father and that he had made valuable improvements thereon, and he claimed the title. The father denied having given the son the farm as a gift, the farm still being in the father's name. I happened to represent the son. We brought our evidence to the common pleas court as a trial court, and after the evidence was in I received a lecture from that court. The court took the position that he would always believe a father as against a son in property transactions of that kind, that the father knew what the son should have and the father could be trusted to do what was right by the son. The court absolutely ignored the testimony. I appealed the case to the circuit court. That was twenty odd years ago, when the circuit court heard their witnesses. They heard the case upon the same evidence and they gave the farm to the son. Now, how can you get justice between two parties in a case like that under this proceeding? While we are making these courts, why not make them right? I don't care what the circuit court has done. I don't care anything about courts de novo or courts of

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appeals, but as long as we pay the court and there are only a few equity cases that go to the court while they have ample time and the difference between hearing a case on record and with the witnesses is a mere bagatelle, I believe that the equity case, as a matter of justice between the parties, ought to be heard de novo in the circuit court. Six months may have intervened between the two hearings, and you may have found some new witness or some document that will add to your side. Why can't the parties, as between man and man, receive full and complete justice and introduce the record below plus the new testimony discovered? As long as the court is here, why not allow it to hear the new evidence if the parties demand it? No harm is done.

Again, as has been well said, the trial judges do not always allow you to introduce such testimony as you think ought to be introduced, and how are you going to introduce that record into the trial above when it hasn't that evidence in it? You can do it in an error case by going to the stenographer and have him put in the record what you expect to prove. But on the hearing of an equity case, as long as that evidence doesn't get to the ears of the court he does not weigh it, and you have no advantage of it in the appealed case, for it is not in the record, but you have in an error case. It makes no difference what you call the court. The mass of the people want to know when they go into a court that all of their evidence will be heard, and it seems to me it is a play upon words to say that one man can get justice in a review as well by reading a cold record. Here is a man whose appearance would convince anybody that he is telling the truth and yet a scalawag can go upon the stand and contradict him. The testimony of the scalawag will look as well as the testimony of the credible man. How can the judge above decide between those two parties?

Now, I didn't expect to say anything, but the remarks have gotten on my nerves. I have had some experience and I don't believe it is just between the parties to shut off this trial by hearing witnesses in the circuit court in an equity case where there may be a settlement of an estate, a construction of a will, a receivership, an injunction or a great many cases of that character. I am not satisfied every time with the judgment of the trial court in those cases. I know oftentimes, where certain corporations are interested, they expect certain things from the court. I feel the judgment in advance, and I believe we have a right when we go to the second court to let that second court hear all of the testimony, hear the witnesses, hear the evidence and dispose of the case in such a way that justice may be done between the litigants. That is what the people want. They don't care what you call the courts. You are making the court and you are giving it certain powers. I don't care what the supreme court has done, I don't care what rules of common law the courts in England follow; you are arranging for the courts in Ohio, and I think you should arrange things having in view somewhat the practice that we have had here in such cases.

Mr. FESS: As a layman, you may regard it as presumptuous for me to speak upon this proposition, but as a practitioner of law with ten years of experience and as a teacher of legal procedure in a college for five years, I am partially conversant with the method of legal pro-

cedure as practiced in the courts today. I came to this Convention with no pledge written upon paper on any proposition, but I came here with a pledge to myself that if there were any possibility of reforming the methods employed now by the judiciary so as to prevent delays and make it possible for litigants to reach the end of a lawsuit without unnecessary loss of time and expenditure of money, I would do it, and I am going to speak to you now in favor of that idea.

Mr. HOSKINS: Will you tell the Convention how you are going to make litigation any shorter by the adoption of this original proposition?

Mr. FESS: If you have a trial in the lower court and insist upon having the case retried in the upper court on the evidence introduced orally you have multiplied the possibility for delay and expense. You insist upon having a retrial of the case de novo in the upper court.

Mr. HOSKINS: Is not the review upon the evidence the same thing in point of expense as the hearing of the witnesses?

Mr. FESS: No, sir; the review on the evidence will not bring in testimony de novo.

Mr. HALFHILL: Do you not know that the preparation of the stenographer's transcript and the fees charged for it are vastly in excess of the expense of litigant's taking the testimony into the circuit court for another trial?

Mr. FESS: I do not know that is true. I would think that would depend entirely on the character of the case.

Mr. HALFHILL: That would be true in any case. The testimony of ten witnesses, covering a day in the common pleas court, will make a transcript that will cost \$75 to \$100. So, on that statement, would it not be much cheaper for the litigant to take his witnesses at \$1 per day and mileage into the circuit court?

Mr. FESS: Don't pick out a single instance and use it to apply under all circumstances. You may find a case where the transcript will be more expensive than the retrial, but the principle is the thing we are going upon. We do not see any necessity for the lawyers' contention that when a trial has been heard in a court there must be another retrial of it. That is the thing we want to avoid. I insist that we must reach some form of reform that will cheapen and make possible for us to reach an end of a trial without doing injustice to any one.

If you carry this amendment I am ready to vote against the whole proposition, for we might as well give it up so far as reform is concerned. I insist that we come to some conclusion here, and therefore I move that we table this amendment and thus bring it to a test one way or the other.

The yeas and nays were regularly demanded, taken, and resulted—yeas 58, nays 51, as follows:

Those who voted in the affirmative are:

Baum,	Doty,	Harbarger,
Beatty, Wood,	Dunlap,	Harter, Huron,
Beyer,	Dwyer,	Harter, Stark,
Bowdle,	Fackler,	Henderson,
Colton,	Farnsworth,	Hoffman,
Cordes,	Farrell,	Hursh,
Crites,	Fess,	Johnson, Williams,
Davio,	FitzSimons,	Jones,
DeFrees,	Hahn,	Kehoe,
Donahay,	Halenkamp,	Knight,

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Kunkel,	Read,	Tetlow,
Lambert,	Roehm,	Thomas,
Leete,	Rorick,	Ulmer,
Leslie,	Shaffer,	Wagner,
Longstreth,	Smith, Geauga,	Watson,
Malin,	Smith, Hamilton,	Wise,
Mauck,	Stamm,	Woods,
McClelland,	Stevens,	Mr. President.
Moore,	Stewart,	
Peck,	Stilwell,	

Those who voted in the negative are:

Anderson,	Fox,	Norris,
Antrim,	Halfhill,	Nye,
Beatty, Morrow,	Harris, Hamilton,	Okey,
Brattain,	Holtz,	Partington,
Brown, Highland,	Hoskins,	Peters,
Brown, Pike,	Johnson, Madison,	Pettit,
Campbell,	Keller,	Pierce,
Cassidy,	Kerr,	Redington,
Cody,	Kilpatrick,	Rockel,
Collett,	King,	Shaw,
Crosser,	Kramer,	Stalter,
Cunningham,	Lampson,	Stokes,
Dunn,	Marshall,	Taggart,
Earnhart,	Matthews,	Tallman,
Elson,	Miller, Crawford,	Tannehill,
Evans,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Winn.

The roll call was verified.

So the amendment was tabled.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

In line 8 strike out the first comma and all following in that line.

In line 9 strike out the first four words and insert the following: "consist of a chief justice and six judges."

In line 20 after the period insert the words "The chief justice and".

In line 20 change the capital "T" in the word "The" to a small letter.

Mr. KNIGHT: I shall take only three or four minutes to show why I offer this amendment. I want for the first time to bring a direct vote on the question of the constitution of the supreme court. The purpose is to avoid the question of a divided court upon important matters that may come before the supreme court. If an equally divided court affirms the judgment of a lower court, that is of interest to all the people. Further than that, we have provided distinctly in this provision that the judgments of the court of appeals are final, that no ordinary case can be taken from the court of appeals to the court of last resort until or unless there be a diversity of judgment in two different circuit courts or courts of appeals. Often in one circuit a question has been decided one way and in another circuit it has been decided just the other way. Under this provision that would be certified to the supreme court and the supreme court being divided affirms the judgment of the lower court. So if two of those cases should go up at the same time, decided in an exactly opposite way in the lower courts and the supreme court divided equally, each of those cases would be affirmed when the decisions were diametrically opposed to each other.

During the noon recess I had an opportunity to speak to a number of attorneys, and one of them called my attention to a matter that arose in his own practice in

Missouri, where, within the last year, he himself has happened to be engaged as an attorney. There they have two appellate courts and they have a rule like this: Where there is a diversity of decision by the two courts of appeals upon a question, it then goes to the supreme court. In Missouri with only those two courts—where we are going to have eight—contrary decisions do arise; my informant says that in his practice they have arisen in those two courts and that they had to be sent to the supreme court to reconcile the decisions of those two courts of appeals. Now, if we have eight we multiply by at least four—and I think if we apply the proper rule of arithmetic it would be many times four—the number of conflicting decisions they would have in a state where there were only two courts of appeals. Therefore, I do not think it is a good idea to have a case affirmed by an equally divided court. The court should be constituted of an uneven number of judges in order that there cannot be a divided court even in the few instances where the supreme court may have to pass upon conflicting decisions from two different courts of appeals. If there were an absent member, leaving an equal number on the supreme court bench, the supreme court would probably decline to hear the case until the absent member returned.

Now, the reason I increase the court to seven rather than reduce it to five is that to reduce it to five would legislate out of office a present member of the supreme court bench, whereas to increase it to seven would simply necessitate the election of a chief justice.

A DELEGATE: There are only five now.

Mr. KNIGHT: There will be six on the bench before you get this passed.

Now, whether the supreme court business is decreased or increased by this proposal makes no difference; the thing we want above all other things is certainty as to decisions. In the second place we want expedition, and in the third place we want a court that will have weight, and on account of the very size of the court the decisions of that court will have weight not only in this state but in others, and it will make it impossible ever hereafter to have thrown at us what was published widely a short time ago when the president of the American bar association said publicly that if any one would give him any price at all for his Ohio State Reports he would be glad to get the money out of them, because they were valueless in his practice. I think we want to make a supreme court that shall command respect at home and abroad. I think increasing the number of judges by one and putting the chief justice on the bench will be money well expended, for we have done something to expedite justice and to give us greater confidence in the court than we now seem to have, and we avoid the possibility of a divided court, a court divided at a point where we cannot afford to have it divided when we are making our courts of appeals the courts of last resort in so many cases.

Mr. PECK: I want to speak a moment about this matter. If the judgment of the Judiciary committee is of any value at all on any question it is on this question, because they very carefully considered it for quite a while and discussed it calmly and dispassionately when everybody was there, and there was a considerable tendency at one time to adopt the view expressed by the

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gentleman from Franklin. Upon final and full consideration, however, it was agreed by everybody present that it was not advisable to increase the judicial force of the state, especially the supreme court, the duties of which we are reducing. We do not want to put another man into a court that many of us think will not have enough to do under its reduced jurisdiction. What would the people say about that for economy, and what will they say about increasing the judicial force of the state when it is not needed?

Mr. KNIGHT: Has not the gentleman forgotten that this new proposal makes the entire court sit in one body, whereas it has been sitting in two divisions?

Mr. PECK: How will seven expedite it? Six men can do just as much as seven.

Mr. KNIGHT: Does not the reduction of the supreme court to one body instead of two, as it is now, offset the claim that we are reducing the work so that they won't have anything to do?

Mr. PECK: I believe it is reducing the work greatly. I think we will lighten the work considerably and enable them to keep up with their docket. If that does not happen I will be surprised.

The people have the final say, and we want the people to be able to see that we have not legislated out any judge and we have not created any new judges. We have simply readjusted the judicial work so that in our opinion they will do the work better and more promptly. Let us maintain the position and don't let us have anything to explain.

Mr. KNIGHT: How do you dispose of the cases that I have referred to?

Mr. PECK: Where two conflicting decisions come up from two different circuit courts at the same time and the court is divided equally?

Mr. KNIGHT: Yes.

Mr. PECK: I don't think that will happen once in twenty years. It is a negligible quantity.

Mr. KNIGHT: It has happened in this state.

Mr. PECK: It might, but it is not worth making an amendment to provide against. The supreme court would work that out. They will contrive to make a decision and to make it harmonious. Our judges of the supreme court are honest and conscientious men. They are good lawyers, too. No man has heard me in the whole course of this discussion say anything against the supreme court. I am not here to say anything against them or to cast any reflections, and when a case like that goes up before them, they would find some way to decide the question without dividing equally.

Mr. JOHNSON, of Williams. I offer an amendment. The amendment was read as follows:

In line 9 strike out the word "six" and insert the word "five." Strike out lines 24, 25, 26 and 27.

Mr. WATSON: I offer an amendment.

The amendment was read as follows:

In section 2, line 9, strike out the word "six" and insert "one chief justice and four judges."

Mr. KING: I move that all amendments be laid on the table.

The motion was carried.

Mr. KILPATRICK: I offer an amendment. The amendment was read as follows:

In line 14 strike out the second comma and the word "prohibition."

In line 58 strike out the second comma and the word "prohibition."

Mr. PECK: This sounds like a report from the Liquor Traffic committee.

Mr. KILPATRICK: Prohibition as used in this proposal really should be "writ of prohibition." The present constitution provides: "It shall have original jurisdiction in quo warranto, mandamus, habeas corpus and procedendo, and such appellate jurisdiction as may be provided by law." Now I do not know how many members there are in this Convention who have given any particular attention to that word "prohibition" as it appears in this proposal. The proposal before us says: "It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo and appellate jurisdiction, etc." If we understood what that word "prohibition" means there wouldn't be more than two or three votes against my amendment. With your indulgence I want to read what the writ of prohibition means as used in this proposal. It was not in the constitution of 1802; it was not in the constitution of 1873-'74, nor is it in the present constitution, adopted in 1851. Now the writ of prohibition is a writ issued by a superior court directed to a judge and the parties in an inferior court, commanding them to cease from the prosecution of some case upon a suggestion that the cause originally or some collateral matter arising therein does not belong to that jurisdiction, but to the cognizance of some other court. If this is put into the constitution and a case were commenced in the court of common pleas, or in any circuit court where they have original jurisdiction, one of the parties could go to the supreme court and ask for a writ of prohibition and the supreme court immediately could say to the parties of the lower court, "Get out of court; you have no right of action." In this state just a very short time ago a certain higher court did issue in fact writs of prohibition. I refer to the case which took place in Cincinnati a short time ago. They didn't call it a writ of prohibition, but it was a higher court issuing an injunction against the lower court to prevent it from doing certain things. We don't want to place in this constitution the right in the supreme court to say to the lower courts you cannot do thus and so, and for that reason this amendment ought to prevail.

Mr. PECK: This amendment was put in at the suggestion of Judge Worthington. He thoroughly explained it. This word "prohibition" was thoroughly explained by Judge Worthington and I do not think the gentleman could have heard Judge Worthington's argument on the subject on this floor. He gave the very case to which the gentleman alludes as a reason for placing this writ of prohibition in there, and certainly if anything could have stopped the unseemly action of the court of common pleas and the circuit court of Hamilton county, it would have been a very good thing. It was a bad exhibition of judicial conduct in that matter, and if some court above could have stopped it, it would have been a godsend. This writ is only used occasionally. I

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understood Judge Worthington to say it was in use under the constitution of 1802 and was left out of the constitution of 1851. At any rate the supreme court of the United States issues such writ. I have known that court to issue such writs to territorial and other courts. It is a rare writ. It is something that the average lawyer would not meet once in a lifetime, but it is one like a weapon adjusted to rare circumstances. It is not very often used, but when the circumstances arise it is a very handy thing. This supreme court is not going to be arbitrary and interfere in a case in which it has no warrant. We must always assume, and I have always assumed in my attempts to arrange this matter, and that is the proper basis of assumption, that they are all going to do their duty and do it honestly and conscientiously, and the possibility of abuse of power is no argument against the existence of power. You give any other body of men a power and they are liable to abuse it, but those powers must be vested somewhere. Every power necessary for the community must be entrusted to some one. It may be abused, but the person to whom it is entrusted will feel responsible.

Mr. DWYER: This writ is only used where the lower court is departing from its jurisdiction?

Mr. PECK: Only where the lower court is going beyond its jurisdiction and doing something it has no right to do.

Mr. STOKES: I move that the amendment be laid on the table.

The motion was carried.

Mr. JONES: I offer an amendment.

The amendment was read as follows:

Insert after the word "may" in line 30, the following: "and in cases where the decision of the court of appeals upon questions other than the weight of the evidence is not unanimous for a reversal of a judgment of an inferior court shall, upon application of a party in interest". Also strike out in line 64 the words "of public or great general interest." In line 65, after the word "may" insert the following: "as herein provided."

Mr. JONES: Those who were present a few days ago when I spoke on this matter may recall that I discussed this to some extent at that time. The number present was very small at the time and I ask your indulgence for a few minutes to say something I may have said heretofore on this same matter. I called Judge Peck's attention to this amendment and he was under the impression that this provision was in the substitute. However, upon examination it appears that the amendment is not in this substitute proposal.

Mr. PECK: I wrote it into one draft and another got into the hands of the copyist.

Mr. JONES: This amendment is now some different from what it was when I first offered it for the consideration of the Convention. It is now intended to meet simply those cases in which the appellate court is not unanimous for the reversal of the case upon grounds other than the weight of the evidence. The objection made to this amendment before was that if a case should go to the supreme court the duty might devolve upon that court of reviewing the case upon the weight of the evidence; so I have now provided for

that class of cases, where the appellate court divides upon the question of reversal, that the case may, upon all questions other than the weight of the evidence, upon the application of a party in interest, be certified to the supreme court for decision.

Now it will readily be seen on a moment's reflection that this will only cover a class of cases where a member of the appellate court has coincided with the views of the common pleas judge, making two judges in favor of the judgment rendered below, and two court of appeals judges on the other side, so that you have a situation where there are two members of the reviewing court saying the judgment is wrong and two judges, one a member of the appellate court and the other the common pleas judge, saying it is right. It does appear to me in a case of that kind that the rights of the parties ought not to be concluded by that sort of a judgment of the appellate court, and that there should be some provision whereby the litigants can have the judgment in some way or other of more than two judges against two. If the case is reversed on the weight of the evidence it will of course go back for a new trial, but if the reversal is upon other grounds the appellate court may render the judgment which the common pleas should have rendered, and thus finally dispose of the case. If the case is taken to the supreme court merely upon the questions of law, you could have a determination by the highest court in the state of the questions upon which the lower courts have divided equally. The appellate courts are not going to divide upon questions of law unless one or the other of two situations exists. They may divide because they claim that one court of appeals has decided a question one way and another the contrary, or because the question has never been decided in Ohio and is a new question. Now, in either case, it is important to have the judgment of the supreme court upon the question which caused those four judges below to divide, two on the one side and two on the other.

The means of taking the case to the supreme court would be simply by the ordinary proceedings in error, and would require review by the supreme court merely of those law questions involved in the case. What will result if this sort of a provision is not incorporated into the proposal? A case comes to the court of appeals and two judges of the court vote to reverse and one to affirm. The case might go back to the common pleas court and be retried and come up again in the court of appeals with exactly the same practical results—that you have the rights of litigants finally determined upon questions of law with two judges of inferior courts of the state on one side of those questions and two on the other. It is hard to see how you are going to satisfy litigants with that sort of a final judgment.

If two judges of the court of appeals are in agreement with the judge below, you would have three to one, and it is suggested that where you have the concurring judgments of three members of these courts, two of the appellate court judges and one common pleas judge, that ought to be enough and ought to satisfy the parties. There is a good deal of force in that suggestion and so I have changed my original amendment and applied it only to reversals.

Mr. PECK: I am inclined to accept this amendment and I hope it will prevail.

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Mr. ANDERSON: I object to it. With all due respect to Judge Peck I cannot understand why the committee in favor of this proposal should accept that amendment. It would practically destroy the whole proposal. Let us analyze and see what it means.

1. It defeats the purpose of the proposal. I hope we understand the proposal by this time. Its purpose is to limit litigation and make it cheap, swift and sure; to give one trial before a jury and a court and one trial before a reviewing court, and let it stop there. If this amendment is adopted what have we? Take the witnesses before the jury, try the case, the judge charges the jury, the jury decides in your favor. The losing side takes the case to the circuit court or the court of appeals. On the question of the charge to the jury two of the judges of the court of appeals may say the court committed error and the other judge may say, "Yes, but that is a technicality." It is an error, but it is not prejudicial. Now you have the divided court that Mr. Jones has referred to. Under these circumstances it goes to the supreme court. What happens? Two years expire before you can have it heard as to whether or not the charge to the jury, although technically wrong, is prejudicial, and it costs hundreds of dollars to have that question determined. The supreme court says it is prejudicial and sends it back to the common pleas court; you try it all over again, and then probably the judge in charging the jury will change one sentence in the charge—

Mr. JONES: Why do you say, if this reform in the judiciary is going to get business through the courts so rapidly, that it will take two years for a case to be reached by the supreme court?

Mr. ANDERSON: I mean what I say.

Mr. JONES: Don't we hope that these cases will be promptly disposed of by the supreme court?

Mr. ANDERSON: No; because if your amendment carries there will be practically no change in the present system.

Mr. JONES: Would it not be much better after the case has once been tried and has gone to the appellate court, where there are questions of such serious nature that the appellate court divides upon them, to have the court of last resort immediately determine them? Would not that expedite business much more rapidly than to send the case back for another trial?

Mr. ANDERSON: You know that ninety per cent of the lawsuits that go from the common pleas court to the circuit court on questions of law go upon the charge to the jury or upon the admission of testimony or refusal to allow testimony to be introduced—some little technicality or other about evidence being introduced improperly. Ninety per cent of the cases that go from the common pleas court to the circuit court and up to the supreme court on error are predicated upon what I suggest.

Again, say that some witnesses are called. The Jones amendment is carried and certain questions are asked him and the common pleas judge permits him, over the objection of the other party, to answer. The losing party takes the case to the circuit court upon the evidence improperly introduced. The two judges hold it was a technical error and prejudicial. The other judge holds that technically it was an error, but not prejudicial.

What happens? In the course of two long years the case goes up to the supreme court; printed records, printed briefs, expense of hundreds of dollars, and the supreme court finds the circuit court was right, the evidence was improperly introduced, and you have to go back to the common pleas court and start all over again. Then when the same witness testifies the next time there is a change of the phraseology of his answer, in no way changing the substance, but still a change of phraseology, and it goes up again.

Mr. JONES: Does not the gentleman know that in actual practice in our circuit courts there is probably not one case in fifty, certainly not one case in twenty-five, where the circuit court fails to reach a unanimous conclusion? That being so, will there be a burdening of the supreme court to any great extent? Will not the provision in practice simply result in taking to the supreme court those cases in which important questions arise on which the court of appeals divides?

Mr. ANDERSON: Under conditions as now existing to some extent you are right, but we are now making the circuit court a court of last resort, and that is what we who are the friends of the measure want to have done. In the doing of that you are going to add responsibility and dignity to the court. If your amendment carries you offer to the court of appeals a premium to escape responsibility by having a divided court. The court of appeals can simply say we will escape responsibility and one judge will take one position and the other two the other and then the case will go to the supreme court at the expense of years—delays and hundreds of dollars of expense.

Mr. JONES: Does the gentleman mean to claim that in practice the court of appeals of this state, if this system is adopted, is going to degenerate into any such condition as he suggests?

Mr. ANDERSON: I mean this: We are trying to legislate, not in favor of the lawyers or the court, but in favor of the people, if I understand it rightly. Just as Judge Peck suggested, we cannot have a suggestion of reform that is not fought by the lawyers. I don't want to be unfair to the bar, but the only interest that a lawyer can have is the additional fee for doing additional work, which does not at best amount to much.

Mr. JONES: If the result is to facilitate a disposition of cases, why is not that in the interest of the clients and against what you claim is the interest of the attorneys?

Mr. ANDERSON: If I agreed with you that it helped to facilitate the cases, I would not be talking. As Judge King suggests, what if the circuit court were to find upon the weight of the evidence that the common pleas judge and the jury were wrong, and in addition to that found that the court committed an error in the charge to the jury, what would happen then?

Mr. JONES: Wouldn't the case go on to the supreme court?

Mr. ANDERSON: Then you would have all kinds of cases. Let us be honest and say we are against the proposal. Let us get out in the open and say we are not for it.

Mr. JONES: I don't like remarks of that kind.

Mr. ANDERSON: I move that the Jones amendment be tabled.

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The motion was carried.

Mr. TANNEHILL: I offer an amendment.

The amendment was read as follows:

Strike out lines 30 to 33 inclusive. Place a period after "jurisdiction" in line 64 and strike out "or cases of public or great general interest in which the supreme court may direct the court of appeals to certify its record to that court," in lines 64 and 65.

Mr. TANNEHILL: If we are going to make the court a court of last resort, let us make it a court of last resort. If we are going to fix an impassable gulf over which you cannot come up, let us prevent them from going down in the other direction. If you leave in this provision which I am seeking to have taken out, you will lose most that you are trying to gain in the way of reform. I think we all agree that the supreme court has been, in the past at least, too far from the people. If that court in the future should be, as it has been in the past, unfriendly to the people, and you put this provision in, and the lower courts make the decision favorable to the people and against the corporations, and the highest court of the land continues in the future as it has been in the past, friendly to corporations, as the proposal now stands, what is to prevent that court from reaching down and bringing that case up? I think this is an important matter and that these words ought to be stricken out of the proposal.

Mr. PECK: I hope this amendment will not prevail. This matter of certiorari has been attacked from the other side, and I was against that. The proposition was that the supreme court should have a right to get any cases up and I opposed that. Now the attack comes from the other side. They want to strike it out altogether. I do not believe in any impassable gulf, but I believe the supreme court should have the right occasionally to reach down and bring up cases to the supreme court. It is a great help to the United States court jurisdiction, this taking of cases from the circuit court of appeals, and this proposal is largely modeled upon that principle, which has been found to work well. I hope that this will be left as it is so that cases that should go up to the supreme court will be taken there and decided, and I move that this amendment be tabled.

The motion was carried.

Mr. KNIGHT: With the full consent of the author of the proposal I wish to offer a minor amendment and take a moment to explain.

The amendment was read as follows:

In line 66 strike out "the court of common pleas and superior courts" and insert in lieu thereof "a court of common pleas, a superior court or other court of record".

Mr. KNIGHT: Just after recess today Judge Peck introduced an amendment, which was adopted, inserting in lines 58, 59 and 60 the words "other courts of record". Evidently it was an oversight not to make the same amendment here. Incidentally, I offer this to try to correct the English a little. I do not wish to put any more work than is absolutely necessary on the committee on Phraseology. It will have enough to attend to at best.

The amendment was agreed to.

Mr. SMITH, of Hamilton: I offer an amendment.

The amendment was read as follows:

Add at the end of line 23: "All judicial officers of the state shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever."

Mr. PECK: That ought not to be here. There are several places where that might possibly go, but it is not germane to this proposal and I move to lay it on the table. There are twenty sections of article IV and several of them will have to be amended.

Mr. SMITH, of Hamilton: Do I understand you to say that to make the constitution conform to this proposal we shall have to change other sections in it?

Mr. PECK: There will be changes made in other sections. The committee on Judiciary is contemplating a number of them.

Mr. SMITH, of Hamilton: I am not sure that this Convention will want to do anything more in the way of judicial reform aside from this proposal.

Mr. PECK: Well, there are some proposals to the effect that the supreme court shall be limited in its power to punish for contempt. These matters will come in here and you can't help it.

Mr. SMITH, of Hamilton: I feel that if we are to reform the judiciary we had better begin right now. This last general assembly made an attempt to take the judiciary out of politics, but they didn't do it. Section 4965 still provides that parties of any kind may have partisan committees to decide nominations for judges. If my amendment carries the judiciary will be as free from politics as it can be made; it will sound the knell of party control of judicial nominations. To my mind this would be a most beneficial provision.

Mr. FACKLER: The legislature would have to enact additional legislation to make this amendment effective.

Mr. SMITH, of Hamilton: It would make section 4965 unconstitutional. The legislature has already provided the machinery to carry the idea out I have suggested. It would simply wipe out section 4965.

Mr. PECK: I think the gentlemen are all out of order. I move to table this amendment. I am in favor of this matter when it comes in its proper place, but not now.

The motion was carried.

Mr. PECK: I move the previous question on the amended proposal.

The motion was carried.

The PRESIDENT: The question is on the adoption of the amended proposal as offered by the member from Hamilton [Mr. PECK].

Mr. LAMPSON: I think this vote is upon the proposal as amended by the adoption of the amendment of the gentleman from Hamilton [Mr. PECK].

The SECRETARY: It is the final vote.

The PRESIDENT: The question is on adopting the proposal as amended.

Mr. KILPATRICK: As I understand it the gentleman from Hamilton [Mr. PECK] introduced an amendment and we are voting upon that. We are not voting on the original proposal. This is not the final vote.

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The PRESIDENT: Those amendments are voted on, the substitute amendment of the gentleman from Hamilton was adopted and this is the final vote.

Mr. FESS: I think there was a misunderstanding this morning. I made the motion that we adopt this amendment in order that it would be in shape to offer further amendments. It was adopted and they have offered amendments and they have been voted upon and disposed of.

The PRESIDENT: This is the final vote and the secretary will call the roll.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 78, nays 28, as follows:

Those who voted in affirmative are:

Anderson,	Hahn,	Miller, Ottawa,
Baum,	Halenkamp,	Moore,
Beatty, Morrow,	Harbarger,	Peck,
Beatty, Wood,	Harris, Hamilton,	Peters,
Beyer,	Harter, Huron,	Pierce,
Bowdle,	Harter, Stark,	Read,
Cassidy,	Henderson,	Roehm,
Colton,	Hoffman,	Rorick,
Cordes,	Johnson, Madison,	Shaffer,
Crites,	Jones,	Shaw,
Crosser,	Kehoe,	Smith, Geauga,
Davio,	Keller,	Smith, Hamilton,
DeFrees,	Kilpatrick,	Stamm,
Donahey,	King,	Stewart,
Doty,	Knight,	Stilwell,
Dunlap,	Kunkel,	Stokes,
Dunn,	Lambert,	Tannehill,
Dwyer,	Lampson,	Tetlow,
Earnhart,	Leslie,	Thomas,
Elson,	Longstreth,	Ulmer,
Fackler,	Malin,	Wagner,
Farnsworth,	Marshall,	Walker,
Farrell,	Mauck,	Watson,
Fess,	McClelland,	Wise,
FitzSimons,	Miller, Crawford,	Woods,
Fox,	Miller, Fairfield,	Mr. President.

Those who voted in the negative are:

Antrim,	Halfhill,	Partington,
Brattain,	Holtz,	Pettit,
Brown, Highland,	Hoskins,	Redington,
Brown, Lucas,	Johnson, Williams,	Rockel,
Brown, Pike,	Kramer,	Stalter,
Campbell,	Matthews,	Stevens,
Collett,	Norris,	Taggart,
Cunningham,	Nye,	Tallman,
Evans,	Okey,	Winn.
Fluke,		

The roll call was verified.

So the proposal passed as follows:

Proposal No. 184—Mr. Peck. To submit an amendment to article IV, sections 1, 2, and 6, of the constitution.—Relating to the supreme and circuit courts.—Judicial.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SECTION 2. The supreme court shall, until otherwise provided by law, consist of six judges,

and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state and in cases of felony on leave first obtained, also in cases which originated in the courts of appeals and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such terms, not less than six years, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law.

Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below.

No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void.

In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct the court of appeals to certify its record to the supreme court and may review and affirm, modify or reverse the judgment of the court of appeals.

SECTION 6. The state shall be divided into appellate districts of compact territory and divided by county lines, in each of which there shall be a court of appeals consisting of three judges and until altered by statute the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall continue to be judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the appellate districts respectively in which such vacancies shall arise and the same number shall be elected in each district. Laws may be enacted to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least

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one term annually in each county and such other terms at a county seat in the district, as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such courts by its judges and officers. Each judge shall be competent to exercise his judicial powers in any district of the state.

The respective courts of appeals shall continue the work of the circuit court and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the courts of appeals, subject to the provisions hereof, and the existence of the circuit court shall be merged into and its work continued by the courts of appeals.

The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo and appellate jurisdiction to review, affirm, modify, or reverse the judgments of the courts of common pleas and superior courts and other courts of record within the district as may be provided by law, and judgments of said courts of appeal shall be final in all cases, except such as involve questions arising under the constitution of this state, or the United States, or cases of felony, or cases of which it has original jurisdiction, or cases of public or great general interest in which the supreme court may direct the court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence and by a majority of such court of appeals upon other questions and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

The decisions in all cases in the supreme court and courts of appeals shall be reported, together with the reasons therefor.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next matter before you is Proposal No. 236—Mr. Worthington.

The proposal was read the second time.

Mr. HARRIS, of Hamilton: Mr. President and Members of the Convention: The proposal referred to is one that I think will receive the unanimous support of the Convention. It is that of Judge Worthington, who asked me by a note on Monday night if I would take charge of the proposal on the floor, owing to his absence because of sickness. I have consulted with Mr. Harris, of Ashtabula, the chairman of the committee, and he has authorized me to speak in his behalf. The sole object of this proposal is to meet a condition which confronted Hamilton county two years ago when the famous Drake investigation was in progress. The supreme court of Ohio stopped that investigation on the ground that it

was not authorized by a concurrent resolution by both houses of the general assembly. This proposal simply meets that condition by giving to each house power to do the things contemplated originally. The attorneys in the Convention are familiar with the legal aspects and it will not be necessary for me to refer to them. I sincerely hope that you will pay the compliment to my honorable colleague and let me send a telegram to him that his proposal has been passed on second reading.

Mr. ANDERSON: The only language that has been changed in the proposal from the present constitution is that part which is italicized?

Mr. ROEHM: There was an amendment passed by the committee.

Mr. PECK: I hope this will pass. The power here conferred should be in each house.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Nye,
Antrim,	Hahn,	Okey,
Baum,	Halenkamp,	Partington,
Beatty, Morrow,	Halfhill,	Peck,
Beatty, Wood,	Harbarger,	Peters,
Beyer,	Harris, Ashtabula,	Pettit,
Bowdle,	Harris, Hamilton,	Pierce,
Brattain,	Harter, Huron,	Redington,
Brown, Highland,	Harter, Stark,	Rockel,
Brown, Lucas,	Henderson,	Roehm,
Brown, Pike,	Hoffman,	Rorick,
Campbell,	Holtz,	Shaffer,
Cassidy,	Johnson, Madison,	Shaw,
Collett,	Johnson, Williams,	Smith, Geauga,
Colton,	Jones,	Smith, Hamilton,
Cordes,	Kehoe,	Stalter,
Crites,	Keller,	Stamm,
Crosser,	Kerr,	Stevens,
Cunningham,	Kilpatrick,	Stewart,
Davio,	King,	Stilwell,
DeFrees,	Knight,	Stokes,
Donahay,	Kunkel,	Taggart,
Doty,	Lambert,	Tallman,
Dunlap,	Lampson,	Tannehill,
Dunn,	Leslie,	Tetlow,
Earnhart,	Longstreth,	Thomas,
Elson,	Malin,	Ulmer,
Evans,	Marshall,	Wagner,
Fackler,	Matthews,	Walker,
Farnsworth,	McClelland,	Watson,
Farrell,	Miller, Fairfield,	Winn,
Fess,	Miller, Ottawa,	Wise,
FitzSimons,	Moore,	Woods,
Fluke,	Norris,	Mr. President.

So the proposal passed as follows:

Proposal No. 236—Mr. Worthington. To submit an amendment to article II, section 8, of the constitution.—Relative to investigations by the general assembly.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend section 8, of article II, of the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SECTION 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceedings, punish its members for disorderly conduct;

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and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. ANDERSON: I move that 2,500 copies of the Peck proposal as passed on second reading be printed. The motion was carried.

The VICE PRESIDENT: The next business in order is Proposal No. 93 — Mr. Earnhart.

The proposal was read the second time.

Mr. ANTRIM: The one proposal recommended to the Convention for passage by the committee on Banks and Banking is a very simple measure, namely, double liability for the stock of incorporated institutions receiving deposits; and because of its simplicity and the absence of opposition to its adoption its consideration need take very little of the precious time of the Convention.

Mr. PECK: Will you allow me a question right there?

Mr. ANTRIM: Yes.

Mr. PECK: I want to ask whether this proposal applies to building and loan associations?

Mr. ANTRIM: I think so.

Mr. PECK: You want to be very careful about that. You will raise a hornets' nest. You will be sorry you ever fooled with it.

Mr. ANTRIM: However, from the fact that this proposal is a substitute for a state guarantee deposit proposal, from the further fact that Hon. W. J. Bryan, in his able address before this Convention eloquently recommended the guarantee of deposits, and finally lest some ultra-progressive delegate under the hypnotic influence of the peerless leader should be tempted to offer the original proposal as an amendment to the substitute, I decided to make a hasty review of the history of banking for the purpose of discovering, if possible, a precedent that would warrant the advocacy of the idea of guaranteeing deposits.

At this point, it was my idea to take you on a little excursion into the history of banking, but because of the resolution recently passed limiting the time of speakers to half an hour, it will be necessary for me to give you instead a little aeroplane flight. I will be the aviator and I shall want to go very rapidly. However, the flight will be sufficiently slow to permit of a bird's-eye view.

We shall start away back in an old historic city in Italy, and we find that the first bank organized was in Venice, in 1171. A few years later several other banks were established in Italy, one in Genoa, another in Florence. For a great many years banking in Italy, as well as to a certain extent banking in Europe, in the matter of international banking, was in the hands of these three cities. Then came a number of centuries when very

little was done in the banking business. That was during the Dark Ages. During the Dark Ages of European history we find nothing of any importance in banking history and we pass to the Bank of Amsterdam, established in the year 1609. Previous to the organization of this bank two important handicaps were found in the banking business. One was the scarcity of coin. Coin was very scarce all over Europe. The other handicap was the inability of reaching a basis of equivalence among the different coinages. When the Bank of Amsterdam was started in 1609 a way was found to remove both of these handicaps and it was found in this way: In the first place, the bank received all kinds of coin and gave credit for it in Dutch money; secondly, this furnished a good deal of money which was simply representative of coin deposits. Because of these two facts the trade of Europe was given a very wonderful impetus. We find in connection with the banks of Italy, to which I have briefly referred, as well as in connection with this great Bank of Amsterdam, which played an important part in the banking business in the seventeenth century, that no idea of guaranteeing deposits was ever mentioned or ever heard of by any of the people of the time.

From the Bank of Amsterdam we go over to the Bank of England, which was established in the year 1694. It was established to assist the government to liquidate government obligations and we find this bank has had a successful history from the time of its organization down to the present day. It became what we might call an impregnable bank after the "Peel Act" was adopted in 1844. At the present day we find the currency of England the safest in the whole world. Only 20,000,000 pounds is based on anything but gold. Twenty million pounds is based upon securities and all the rest is based on bullion or gold coin. The idea of guaranteeing bank deposits, as far as I know, has never been mentioned and never been considered in the British Isles! And this bank, being the reserve agent not only of the banks of the British Isles but of all the banks that have to do with British trade, we can see that the idea of guaranteeing bank deposits would not be considered.

From England we go over to the Bank of France, and we find that the first French bank was established in France by that most remarkable character, John Law, a Scotchman. We have all heard about the Mississippi bubble, or the Mississippi scheme, which was started in order to relieve the French government in its financial straits. John Law started the first bank, but it came to grief after the Mississippi bubble, of which Emerson Hough has written, burst. After the breaking of the Bank of France which was started by John Law we find little in banking history of any importance down to the year 1776. Then we have a state bank organized and from that time until the establishment of the great bank by Napoleon several other banks were organized. The banks that represented France during the eighteenth century were not very important institutions, but the great Bank of France started by Napoleon may be considered one of the great banks of all history. From the day it started until today it has often been in trouble, particularly during the Franco-Prussian war, but there never was a time when it came near insolvency. Its most remarkable period was during the Franco-Prussian

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war, when it paid the indemnity of the French nation amounting to a billion dollars and at the same time liquidated its own war debts.

We find that the great Bank of France does not even guarantee its circulation. We hear of guaranteeing bank deposits, but in France, whose credit is second to none among all the nations of the earth, the great bank of the nation does not even guarantee its circulation, and of course the idea of guaranteeing deposits was never heard of among the French people.

Then we go to Germany and we find the first great bank in Germany established in 1765, in Prussia. This bank operated in the German nation for quite a number of years, but really the first great bank of Germany was started after the war with France, when we have the Reichsbank, or Bank of the Empire. The remarkable thing about this bank is the wonderful elasticity of its currency. In this respect the Bank of Germany is one of the great banks of the world and it is the one thing needed in our banking system to put our banks on a sound footing. The Bank of Germany, the great central bank of the empire, has two-thirds of its circulation based on short-time notes and the other one-third on gold coin and bullion, and the same thing that I have said about the banks of Italy, the Bank of Amsterdam, the Bank of England and the Bank of France is true of the Bank of Germany as well as of the banks of all other nations. In none of these banks do we hear anything about guaranteeing bank deposits.

With this brief extemporaneous introduction, we come down to the banks of the United States. We find over a century elapsed after the first settlement in the United States before the first bank was established. It was in the year 1714 that Massachusetts led the way by starting a bank of issue. The sole purpose of this bank was to issue notes, and its notes were based on land security. Other banks similar to this one were from time to time organized. The first great name in the financial history of our country is that of Robert Morris. Unlike John Law, France's first banker, who started his banking career under the most propitious circumstances and ended it most disastrously, Robert Morris established America's first real bank under rather discouraging circumstances, but this institution has had an uninterrupted and honorable history to the present day. Robert Morris and several other patriotic men of means of his day accepted, in the year 1780, bills drawn by congress, and established on their own personal credit in the same year the Pennsylvania Bank of Philadelphia. Its sole purpose was to render aid to the government. This it did in a time when assistance was most sorely needed. Too much credit can not be given the father of American banking and his loyal supporters. This bank was replaced by the Bank of North America during the following year. It was much larger than its predecessor and had the double purpose of aiding the government and fostering the struggling business enterprises of the country. It issued a limited number of notes. This bank was in 1781 chartered by the state of Pennsylvania and has continued to the present date.

Between the establishment of the Morris Bank and the first bank of the United States several state banks were organized and played an important part in the financial history of those early days. In 1791 congress

chartered the Bank of the United States. With this bank is associated the name of Alexander Hamilton, the greatest financier of the eighteenth century. That the bank enjoyed the confidence of foreign investors is shown by the fact that of the 25,000 shares, 18,000 shares were sold abroad. Still the control was in the hands of home stockholders because of a special way of voting the stock. Naturally the first bank of the United States dominated the financial interests of the country; still the state banks were also a factor in the country and their number increased. However, with the expiration of its charter the Bank of the United States was obliged to go into voluntary liquidation on the ground of the alleged unconstitutionality of its charter. Of course the young republic missed its financial institution. The Bank of the United States had exercised a salutary influence over the numerous state banks and with its disappearance state banks rapidly increased, note issues expanded unreasonably and an unstable condition of affairs resulted. During the five years that intervened between the expiration of the charter of the first bank of the United States and the chartering of the second bank of the United States the finances of the nation fell into a very disordered state. Of course, the war with England during this period had much to do with the financial condition of the times. Still we feel that if the country had had a strong, conservative institution of its own the result might have been vastly different. The country was entirely dependent on state banks, and because of their advances to the government, with some exceptions, they were forced to a suspension of specie payments.

The discontinuance of the first bank of the United States marked the rise of private banking. Stephen Girard purchased the outfit of the bank and founded a private bank with a capital of \$4,000,000. There had been private banks before, though all of them had been small institutions. Girard floated a government loan, which the government had vainly sought to obtain, and this assisted materially in the effecting of an early peace. Private banks were followed by savings banks, which came into existence in 1816. Some years later, in 1831, building and loan societies had their origin.

On April 3, 1816, the second bank of the United States was established. The capital was \$35,000,000, of which the government took \$7,000,000. With the organization of the second bank of the United States pressure was brought to bear on the state banks and they resumed specie payments. Moreover, they increased and prospered. Unlike the first bank of the United States, the second bank had an unfortunate termination and its undoing was largely caused by Andrew Jackson, who was a bitter opponent of the institution. He boldly stated in his message to congress in 1829 that he would veto the bill to renew the charter. He vetoed the bill in 1832 and thence proceeded to remove the government deposits from the bank. This, of course, crippled the institution, since the government had a great deal of money on hand. The old bank ceased to be a United States bank with the expiration of its charter, though under a charter granted by the state of Pennsylvania it operated until 1840. From the expiration of the charter of the second bank of the United States to the time of the Civil War the business of the country was all transacted through state banks. Of course, with

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banking principles little understood, with the undeveloped condition of the country, with the great area of the country compared to the population, with the imperfect transportation facilities, with the scarcity of both capital and coin, and with lax ideas of redemption, it is no wonder that the record of state banks is somewhat checkered.

In this connection let me say that from the year 1171 to 1829 no government or state or county or municipality or other political subdivision, or bank, as far as I know, had ever guaranteed deposits. In the year 1829 a law was passed by the New York legislature requiring all state banks to contribute to a so-called safety fund to the extent of three per cent. of their capital to take care of the losses of failed banks. This law, which is the parent of the notorious Oklahoma act, came to an ignominious end, and recent months have proved beyond the shadow of a doubt that the Oklahoma child will go to an early grave. Michigan and Vermont, which adopted plans similar to that of New York, each experienced a more disastrous failure than did the Empire State, and the states that have followed Oklahoma, Kansas, Nebraska, South Dakota and Texas—will some day realize the error they have committed.

Our financial history preceding the Civil War reveals the fact that there was a strong sentiment against a central bank. However, the exigencies of the war demanded the raising of large sums of money to meet extraordinary expenses, and because of this fact it was comparatively easy to establish a national banking system, though the system established was a compromise. The purpose of establishing a national banking system was to float government bonds and to provide a national currency. The plan of chartering national banks was proposed in 1861, emphasized in 1862 and made a law in 1863.

This introduces us to the banks of the present time, since the banks of today are the banks of the Civil War times with the changes resulting from a modification of federal and state laws. There are three classes of banking institutions in the country, namely, national banks, which are under the supervision of the government; state banks, which are under the supervision of the several state governments; and private banks, which are under the supervision of the owners. Of the national banks nothing need be said, since they are under the sole direction of the federal government. In the class of state banks are included commercial banks, trust companies and savings institutions. Here we might also mention building and loan associations.

The member here yielded to Mr. Doty, who moved to recess until tomorrow morning at 10:00 o'clock.

Mr. PIERCE: I move to amend to 7:30 this evening.

Mr. FOX: That will upset some of the arrangements of the committees. We have a special meeting of the committee on Legislative and Executive Departments this evening.

A vote being taken, the amendment was carried, and a further vote being taken, the Convention recessed until 7:30 this evening.

EVENING SESSION.

The Convention was called to order by the president, and Mr. Antrim, having yielded to a motion to recess, was again recognized.

Mr. ANTRIM: To resume, Mr. President and Gentlemen of the Convention, in the brief introduction I gave before the Convention recessed I brought out just one fact and that was that nowhere else in the world has there ever been such a thing as guaranteeing bank deposits.

With this introduction we come to the question, What is the nation doing to make more perfect the system of 7500 national banks, and what are the forty-eight states doing to make more perfect the 17,500 banking institutions which came under their supervision?

I will devote a few minutes to the celebrated Aldrich monetary plan, one of the most ingenious devices to place a nation's banks on a more stable footing ever conceived by a world financier. A few years ago we had a disastrous panic in our country. This panic showed very clearly the weaknesses of our financial system. With the idea of eliminating these weaknesses a commission was appointed by congress to investigate carefully all the great banking systems of the world. The commission took its time and did its work, and a plan has been evolved which, if adopted by congress, will, in the estimation of the great majority of the leading bankers of the country, revolutionize banking conditions in the United States and inaugurate an unexampled period of prosperity in our nation.

The exigencies of the Civil War gave us our present monetary system and we have made few changes in it, with the result that it has become a brake on the wheels of progress. Aldrich tells us that two things have prevented our making changes that would put us on an equal footing financially with the other great nations of the world, and these are our almost inexhaustible natural resources and the wonderful energies of our people. However, after the experience of three very disastrous panics, in the years 1873, 1893 and 1907, each of which caused the loss of billions of dollars, years of business stagnation and indescribable suffering among the poorer classes, the fact is gradually dawning upon us that we can obviate all this by the adoption of a monetary system similar to the monetary systems of Europe, where they have had no panics during the last half century.

Three facts have impressed themselves on all financial experts in connection with the devising of a monetary plan, and these facts are:

1. The people will not accept a central bank, since the banking history of our country shows a strong repugnance to the idea of an institution similar to the government institutions in England, France and Germany.
2. The interests, or "big business," must have no connection with the scheme whatsoever.
3. The plan must be absolutely free from politics.

The Aldrich monetary plan would create a great number of local associations and would place each bank of the country in one of them. These local associations would be united through district associations. And the several district associations would be merged into a great central association, which would have a capital stock equal to one-fifth the capital stock of all the thousands of

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banks of the country; would be the chief reserve agent of the nation's bank; would handle the note issue of the country, thus giving the most perfect elasticity to our currency; would be the depository and fiscal agent of the government; would be managed by directors representing all the banks of the country; would render perfect the co-operation of all the nation's banks through rediscount, thus making their combined resources an element of strength in times of storm and stress; would make examinations, reports and publicity of all banks much more satisfactory; would give self-government in the banking business and make the financial interests of the country less dependent on Wall street; would give the United States the large profits arising from the handling of the great import and export business of the country, nearly ninety per cent of which is handled by foreign banks; would save the people millions of dollars annually through stable and uniform interest rates, and would be an absolute preventive of panics.

The Aldrich monetary plan is clearly illustrated by A. Piatt Andrew, assistant secretary of the treasury. The fire protection of towns and cities formerly depended on scattered cisterns. A large fire occurring, if the cisterns in the neighborhood of the fire became empty the burning buildings had to be abandoned, although there were millions of gallons of water in other cisterns. After the great Chicago fire a plan was devised of concentrating the water, and the result was our modern water works system. This makes it possible that all available water be concentrated in one place. We have in this country twenty-five thousand banks, each isolated like the fire cisterns of the middle of the last century. In the event of a local financial panic the banks of the locality must depend on themselves. If the strain on them is too great they must fail, though thousands of other banks have an abundance of resources. The Aldrich plan simply combines the resources of all banks, thus making the failure of any sound bank a practical impossibility. All banks would be given the protection guaranteed by the Aldrich plan if they should want it.

We all know that business rests on credit, that credit is based on confidence and that confidence is necessary to the life of our banking institutions with their twenty-one billions of assets, an amount equal to the assets of all the other banks of earth. Lack of confidence has caused every panic in our history. The one aim of the Aldrich monetary plan is to anchor confidence in our national life.

Looking to the safeguarding of depositors, what can we say of the Aldrich plan? We can say that it would be the most effective means ever suggested to any nation in the history of the world to protect the interests of the depositors of its banks. By uniting all banks, giving, in a way, each the strength of all, it would prevent panics and render bank failures extremely rare occurrences.

The next question is, what are the forty-eight states of the Union doing in the management of their seventeen thousand five hundred banking institutions? Within the past few weeks I have made, in connection with the work of the banking committee, sufficient investigation of the banking laws of a number of the states in the Union to warrant my hazarding a few general statements.

1. Many of the states of the Union already

have state banking departments, and the remaining, I believe, are soon likely to have them.

2. States are gradually raising the minimum bank capital. In Ohio the minimum capital of incorporated banks is \$25,000, which is higher than in many other states. However, the minimum capital of private banks in this state is absolutely nothing, which means that the private banker can operate wholly with the people's money.

3. Regarding the use of the word "bank", some states are very strict, some moderately strict and some have no restrictions whatsoever. A number of states allow only incorporated institutions to call themselves "banks"; other states permit simply those institutions that are supervised and examined by their state banking department to bear the name "bank"; many states have restrictions of a minor character. Ohio has no restrictions.

4. In the matter of the supervising and examining of banks the states are making rapid progress. Perhaps a majority of the states today supervise and examine their incorporated banks; many states insist on supervising and examining all their banks, both state and private; an increasing number of states do not permit private banks.

5. Double liability in the case of the stock of state banks has become so common that few states of the Union still have only single liability.

The tendency among the states, then, is the organization of state banking departments, the raising of the minimum capital of banks, greater strictness respecting the use of the word "bank", the extension of supervision and examination to all banks and the adoption of double liability for incorporated institutions receiving deposits.

Is it not plain to see that all this legislation looks to the protection of the depositor? The depositor seems to be the one person in the minds of legislators in all the bills pertaining to banks and banking that are enacted into law.

To recapitulate: I have given a hasty resume of the history of banking in foreign countries, as well as a brief statement of the history of banking in this country, and I have discovered before the present day only three cases of deposit guarantee, and they were failures; during the present day, five cases, and their future is dark.

Why should one urge a state law looking to the guaranteeing of bank deposits when the Aldrich plan, which I have briefly explained, in some form is sure to be enacted into law by congress, and when the legislatures of all the states of the Union, through rapidly increasing wise banking laws, will eventually make our great banking system by far the safest in the world?

A law guaranteeing bank deposits and requiring all banks to make good the losses of failed banks is a pernicious law that, I think, can point to only two groups of experiments in the history of banking. In the first group, New York, Michigan and Vermont, all were failures; in the second group Oklahoma may be considered a failure, and Kansas, Nebraska, South Dakota and Texas, which, influenced by Oklahoma, considered the most accommodating state in the country for trying out all kinds of legislative acts, and affected by the great panic of 1907, passed laws providing for the guaranteeing of bank deposits, have not yet had enough experience under these laws to enable one to pass intelligibly upon them. It may be stated, however, that letters from all

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these states indicate that enlightened public sentiment has unqualifiedly pronounced against this plan of the state guarantee deposit law.

A law guaranteeing bank deposits is a serious blunder because —

1. There is an absence of precedent in all foreign lands to justify its enactment; it was an absolute failure to New York, Michigan and Vermont many years ago, has in the past four years worked badly in Oklahoma and is likely to be repealed in Kansas, Nebraska, South Dakota and Texas. Postal savings banks give all persons who fear banks a chance to deposit their money on interest with the government; the adoption of the Aldrich plan by congress will make our banking systems almost impregnable, and practically all of the forty-eight states are passing better laws to regulate state banks.

2. It would discriminate against the business on which the nation is most dependent. Why force bankers to guarantee their credits and exempt all other business men from guaranteeing their credits? How would you like an amendment to our liquor proposal which would force all liquor men of the state to make good the losses resulting from inebriety, losses of a physical, intellectual and spiritual character, losses to the home, losses to society, losses to the state? Why not group the farmers, the grocers, the merchants and other business men in separate classes and require them to guarantee one another against losses?

3. It would guarantee depositors against loss, but would not guarantee bankers against losses that might be suffered at the hands of depositors who are borrowers. Why not ask all borrowers to insure all banks against losses resulting from bad loans? If this were done there would be no need of guaranteeing deposits. In the nation's banks the deposits reach fifteen billions, though there is only one and one-half billions of money. The thirteen and one-half billions' difference is purely credit. Why should the banker guarantee what he creates to foster the gigantic business of the nation?

4. It would penalize all banks and thousands of stockholders because a comparatively few people deposit their money in bad banks. Can not we trust the people to select safe banks when there are so very few bad banks? In the state of Oregon it has been eloquently said the people are capable of selecting the best men from a ticket containing more than a hundred names and of voting intelligently on thirty-two amendments and laws after having perused a two-hundred-page book. In the name of reason, if the Oregon people can do this are we to doubt the ability of Ohio people to pick one good bank? Moreover, is a whole state to suffer because of the bad judgment of a few people?

5. It would put a premium on dishonesty, recklessness and incompetency, placing them on the same plane with integrity, conservatism and ability. This would result in an increase of the former and a decrease of the latter quality in the banking business. An increase of the former and a decrease of the latter would inevitably lead to an expansion of credit through loans. A large expansion of credit through loans would mean a weakening of the investments of banks on which the safety of deposits depends. And a weakening of the investments of banks would culminate in ultimate demoralization in the financial world.

6. It would destroy millions of dollars in investment values. The stock of many banks, because of the excellence of their record, the superiority of their management and the profitableness of their business commands very high figures, the same being frequently one hundred per cent and more above book values. This difference would disappear if all banks were put on the same plane through a guarantee deposit law. Besides, what would inspire one to build fine buildings, install substantial equipments, select the best available officers and clerks and make an effort to conduct a high-grade business, if all banks would be equally safe? By way of illustration, do you think our young people would make many sacrifices to secure a thorough education, if when their work were all done they would be placed on exactly the same footing with the ignorant?

7. It would lower the business standing of a community. The business of a community is reflected by its banks. Let the banks maintain high standards and a high class of business men is developed; let the ideals of the banks be lowered and the results are soon manifest among the business men. The bank is to the community what the teacher is to the school. Study the teacher and you know the school. Study the bank and you know the community.

8. It would foster panicky times by lowering the standard of bank assets. Some people think panics result from fear that deposits are unsafe. Panics result when people suspect that bank assets have been impaired, and this suspicion developing into a complete loss of confidence, indiscriminate runs on banks start. This can be illustrated by a reference to the panic of 1907, which started on Wall street and spread over the whole country. A few speculators played fast and loose with several New York banks, the people became suspicious regarding the assets of these banks, runs began on scores of banks everywhere, deposits were withdrawn, reserves shrank, loans had to be called, the business world found it necessary to curtail its operations, thousands of men were discharged, business stagnation resulted, millions of money were lost and thousands of people suffered indescribably. Had we then had the government reserve association and the elastic currency contemplated under the Aldrich monetary plan, the damage in this panic would have been confined to the guilty alone, and the rest of the country would have serenely attended to its business. The great trouble was that business could not be fostered by renewals of old loans and the negotiating of new loans because of the withdrawals of deposits and the shrinking of reserves.

9. It would be committing a great evil to eliminate a small one, and one that will continue to grow less from year to year. When one remembers that the capital, surplus and stockholders' liability are all behind the depositor, and when one realizes that these frequently equal the whole sum of the deposits, one sees how unjust such a law would be. The capital, surplus and stockholders' liability of the First National Bank of Cincinnati are fourteen and one-half millions and the deposits twenty-five millions. In this great bank the depositor has over one and one-half dollars behind every dollar he has on deposit. The capital, surplus and stockholders' liability of the Winters National Bank, of Dayton, exceed the deposits by \$250,000. So every depositor of

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this bank has considerably over two dollars of protection for every dollar of deposit.

These are a few of the reasons why a state law guaranteeing bank deposits would be unwise. The committee on Banks and Banking decided such a proposal should not be embodied in our constitution, but recommend in its place double liability for state institutions receiving deposits, and this proposal I hope to see made a part of our organic law.

Mr. ROCKEL: Will the gentleman permit a question?

The PRESIDENT: The time of the gentleman is up. I recognize the delegate from Warren.

Mr. EARNHART: I shall speak only a few minutes. I believe it is in the interest of justice. I believe the depositors should have interest for their money when they place it in banks other than national banks. And I do not believe it will work any hardship against the banks; in fact, I believe there will be a spirit of fraternalism engendered. I mean by that that the banks will have the confidence of the patrons, and that will prevent a rumor making a run upon the banks and thereby embarrassing the banks. I am sure it will be in the interest of the bankers on that account, and I believe, while I am free to say that it does not afford absolute protection, that it goes a long way toward it. I went before the committee by invitation and I told them I was aware of the fact that there would be considerable opposition to an Oklahoma assessment plan and that I would be satisfied as the proponent to have a double liability, the same as we have in the national banks, and the committee has proceeded along that line. Now it seems to me, taking this view of the matter, and reviewing the past, that this proposal ought not to have a very great deal of opposition, because nothing wrong is being asked. It is not going to inflict any hardship, but rather a benefit upon the banks themselves and it needs no extended argument. I do not take any honor on myself for the introduction of this proposal. I want every member of the Convention to share equally with me in giving the people of Ohio the benefit of the provisions of this proposal, and I hope the Convention will consider it and pass it. If there is any amendment proposed that will strengthen this proposal it will meet with my approval. In the end I hope that we may have a measure that will accomplish the end desired.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

Between the words "corporations" and "authorized" in line 7 insert the words "other than building and loan associations".

Mr. WINN: I think perhaps a mere reading is sufficient explanation, but for fear that some may misunderstand it I want to say that this amendment is only for the purpose of excluding the building and loan associations from the operation of the proposed amendment to the constitution. It will then read:

Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders or corporations other than building and loan associations

authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

Mr. DOTY: First, on the amendment offered by the delegate from Defiance. I have been in two or three building and loan associations. Those associations in this state are very useful institutions. There is not any question about that. So are banks useful institutions. They each have their sphere, but they overlap in many functions. At any rate the building and loan associations have come to overlap the banks. If you will examine into the building and loan associations you will find that by a stretch of the law any kid lawyer can show you how to start a trust company with \$5,000 in cash.

Mr. WINN: You can't do that any more.

Mr. DOTY: That is the law today. I called the roll on it up there at the desk and I know. The only thing you can not do in the building and loan associations is to honor checks; you can not do a commercial banking business, but you can do a savings bank business and the building and loan associations are run as pure savings banks. They like the building and loan association plan better than the other plan and they escape taxes with some other things.

A DELEGATE: They have heretofore.

Mr. DOTY: And they are going to yet, and if any of you think you can come here and beat out the finest lobby that you ever saw, just try it. Just propose something that interferes with the building and loan associations and they fight. Why, gentlemen, this fight this afternoon would not be in it for a minute. They have the best system of getting legislation that they want—and I don't say they shouldn't have it, but they have the best system of getting the legislation they want of any set of people you ever saw in your life. They are the finest lot of gentlemen you ever saw in your life and you can't get away from them.

Mr. JONES: Do you know of any building and loan association in the state of Ohio where the depositors have lost out?

Mr. DOTY: No; I said they were a fine lot of institutions—

Mr. JONES: No, you said they were a fine lot of gentlemen.

Mr. DOTY: I never heard of any of them losing out.

Mr. PECK: I know of several of them that lost out in Cincinnati.

Mr. DOTY: Others have information that I have not. Be that as it may, what is the crying need of this proposal? Did any of you gentlemen ever think of the real reason why ordinary people, not business people as we are, but ordinary people who walk along the street, put money in bank? Why do they put money in bank not taking up the general proposition of saving money—but why do they go into a bank? There are many subsidiary reasons, but the only true reason is that they have the word "bank" over the front door. That may seem hard to substantiate, but I have had some practical experience. I was connected with an institution that was about to open and I put the word "Bank" on the front

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window. I put it in as big letters as I could, and it was finished about three weeks before we were ready to open, and the next day after that sign was painted, four different people walked in and laid their money down on the counter and wanted to deposit it. They didn't know whether we were in business, they didn't know who we were, but they simply saw that word "bank". That is the reason you put money in bank, and you never stop to think whether there is single liability or double liability.

The largest bank in the state of Ohio, the Society for Savings, has not any liability of stockholders—they haven't a single stockholder.

Mr. SHAFFER: It has not any stock and it is not a building and loan association.

Mr. DOTY: It is the largest bank in the state, the Society for Savings. It refuses more money than any bank in Cleveland or Cincinnati or more than the average large bank in any one year takes in, in their savings department, and they have no stockholders and never had any, and if this is passed they still would have no additional liability. What is the crying need for this proposal? Absolutely none. I don't say there is absolutely no need. I say there is absolutely no crying need.

There is much to be said in favor of double liability of banking institutions and much to be said against it, and comparatively speaking it is an unimportant subject. There is no tremendous demand on the part of the people of Ohio for any change in the stock liability of banks.

Mr. EARNHART: What opportunity have you had to find out what is the general opinion of the people of Ohio?

Mr. DOTY: I expect the same opportunities as any individual member has except what you get through the newspapers. I don't say there is absolutely no demand. The fact that the member has introduced it shows there is some demand. The fact that the member from Van Wert made the speech he did, and I suppose it was in favor of it—I didn't quite get the drift of that speech—shows that there is some demand.

Mr. EARNHART: About half of this committee are bankers, and every one on the committee is in favor of this proposition. If they are in favor of it, how can you say there is not a demand for it?

Mr. DOTY: I was in a bank once myself. I never got very far in, and the fact that the bankers do or do not advocate this would have the same effect as the support of any other business men. They are just like any other sort of business men.

Mr. ANTRIM: How did that bank that you refer to get out of having stockholders?

Mr. DOTY: It paid every stockholder in full.

Mr. ANTRIM: I heard it failed.

Mr. DOTY: No, sir; it did not.

Mr. ANTRIM: I understood that it did.

Mr. DOTY: That is like some of the rest of the information you gave us. That bank does not owe a dollar to any living man and it paid its depositors within two months.

Mr. ANTRIM: How much did it pay its stockholders?

Mr. DOTY: It didn't pay its stockholders a cent.

Mr. ANTRIM: They then lost it all?

Mr. DOTY: No; they didn't, and I can't see the drift of your inquiry.

Mr. ANTRIM: I was just paying you back for your complimentary remarks about my speech.

Mr. DOTY: I thought you made a very able speech and I said so. I was not trying to be uncomplimentary. If that is your idea of getting even, go ahead.

Now let us get down to the question of the necessity for the double liability of banks: There is no such necessity as long as the bank is running, and how many bank failures do we have?

Mr. EARNHART: Don't you remember this proposal was introduced just at the time the bank of Gallipolis went down and two other banks were pulled down with it?

Mr. DOTY: Yes.

Mr. EARNHART: Should not the depositors have some security for their deposits?

Mr. DOTY: Yes. And so ought the stockholders, but the stockholders were in about the same position as the depositors. What took down the two state banks? I don't happen to know myself.

Mr. EARNHART: I do not know that I can recall.

Mr. DOTY: Was it not the failure of a private bank that took the two state banks down and would this proposal have helped that situation any?

Mr. EARNHART: I am not talking about that. I am talking about the depositors.

Mr. DOTY: I don't think that this question is one of such vital importance that we should add it to the constitution to be submitted this fall, and I say that with all due deference to the gentleman who claimed that it ought to be a law. This is not the time to submit such amendments along with more important things in which we are interested, and I therefore move that the proposal and amendment be laid on the table.

Mr. WINN: The motion is not seconded and I ask to be recognized.

Mr. PECK: I second the motion.

The PRESIDENT: We have not been requiring seconds and I think the motion is fairly before the Convention.

Mr. EARNHART: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 14, nays 69, as follows:

Those who voted in the affirmative are:

Brattain,	Malin,	Shaffer,
Doty,	Mauck,	Shaw,
Dunlap,	Miller,	Smith, Hamilton,
FitzSimons,	Peck,	Mr. President.
Leslie,	Peters,	

Those who voted in the negative are:

Anderson,	Crosser,	Fox,
Antrim,	Cunningham,	Hahn,
Baum,	Donahay,	Halenkamp,
Beatty, Morrow,	Dunn,	Halfhill,
Beatty, Wood,	Earnhart,	Harbarger,
Brown, Highland,	Eby,	Harris, Ashtabula,
Brown, Lucas,	Evans,	Harris, Hamilton,
Brown, Pike,	Fackler,	Harter, Stark,
Campbell,	Farnsworth,	Hoffman,
Colton,	Farrell,	Holtz,
Cordes,	Fluke,	Johnson, Madison,

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Johnson, Williams,	Matthews,	Stewart,
Jones,	McClelland,	Stilwell,
Kehoe,	Miller, Fairfield,	Stokes,
Keller,	Miller, Ottawa,	Taggart,
Kerr,	Moore,	Tannehill,
Kilpatrick,	Nye,	Tetlow,
Knight,	Pettit,	Thomas,
Kramer,	Pierce,	Wagner,
Kunkel,	Rockel,	Walker,
Lambert,	Rorick,	Winn,
Lampson,	Smith, Geauga,	Wise,
Longstreth,	Stalter,	Woods.

So the motion to table was lost.

The delegate from Defiance was here recognized.

Mr. WINN: I just want to take a few minutes of time to answer some of the arguments offered by the delegate from Cuyahoga [Mr. Doty], or at least to attempt to answer some of them.

I am very much interested in this amendment and I do not believe that any person interested in the adoption of the proposal will seriously oppose the amendment. It is, as Mr. Doty has said, true that when persons connected with building and loan associations come to the general assembly to prevent certain legislation or to secure legislation which they think ought to pass, they come with arguments that can not be answered by members of the legislature or other persons. The reason they come thus fortified is because they come with the truth on their side. Building and loan associations are in the fullest sense of the word organizations for the benefit of the poor people in the state. Why, in the little town where I live, in a single year, one building and loan association built for the laboring men of that little city fifty-two homes, just one each week. That was a good many years ago and they have been building them ever since. The member from Cuyahoga [Mr. Doty] inquired as to who it is that is in favor of this proposal.

Mr. DOTY: No, who demands it?

Mr. WINN: He wants to know what demand there is for this proposal. There is the simplest answer you ever heard. There are now in Ohio approximately two hundred state banks. When this proposal shall become a part of our constitution it will apply to banks hereafter organized, but it will have no application to the banks now existing.

Mr. MILLER, of Crawford: Are you sure of that?

Mr. WINN: Absolutely sure. There is a contract between the state of Ohio and every bank in existence now and that contract is binding; no lawyer will dispute the proposition that an amendment to the constitution now will not have the effect of relating back and bringing within its provisions the stockholders of institutions that have been formed theretofore.

Mr. MILLER, of Crawford: Will the gentleman permit me to make a statement?

Mr. WINN: Yes.

Mr. MILLER, of Crawford. There was a special committee on banks. The chairman of that committee was Judge Worthington and I believe what I am going to say will be substantiated, that the report was made that this law may affect alike all banks organized hereafter or existing at this time.

Mr. BROWN, of Highland: Stockholders of a state bank might get together and agree to work under the provisions of this constitution and would not it be in their option?

Mr. WINN: That is it exactly. The stockholders of a given state bank might get together and surrender their charter, and take out one under the double liability law.

Mr. BROWN, of Highland: But they will not have to do it?

Mr. WINN: No.

Mr. CUNNINGHAM: This proposal does not apply to building and loan associations unless they receive deposits, and if they receive deposits, why should not they be liable?

Mr. WINN: I do not know what the courts may say about it. Of course the building and loan associations receive the money of their stockholders and instead of issuing certificates of deposit as a bank would do they issue certificates of stock and each depositor becomes a stockholder, but that is different from becoming a stockholder in a bank. Of course, that money can not be checked against, and lest some court might say that the words "authorized to receive money on deposit" apply to building and loan associations, I desire to insert these words. They can do no possible harm and they may do a whole lot of good.

Mr. WOODS: Do I understand the member to say this would not apply to the present state banks?

Mr. WINN: I said that.

Mr. WOODS: Then stockholders of most banks now doing business were, when they were organized, responsible under the former double liability clause?

Mr. WINN: A good many of them.

Mr. WOODS: But was not that double liability taken away a few years ago?

Mr. WINN: It never affected any institution organized before it went into effect, and I just collected the double liability from a stockholder of a corporation organized before the amendment to the constitution went into effect.

Mr. DOTY: Is not the double liability, compared with single liability, a handicap to a bank?

Mr. WINN: I do not know. Generally speaking it is, and that is the reason why I say there are two hundred banking institutions in Ohio that are interested in the passage of this proposal; and I say to the member who asked me the question a while ago, and who suggested the appointment of a committee that rendered the opinion to which he refers that I am as fully and firmly convinced as on any legal proposition—and it seems to me that every lawyer will agree to it—that to pass an amendment to the constitution now, as suggested by this proposal, can not apply its provisions to existing banking institutions.

Mr. DOTY: Then would not this proposal have a tendency to prevent the starting of new banks?

Mr. WINN: That is what I had been considering when I said that there are in Ohio two hundred other banking institutions that are interested in the passage of this proposal, and they are interested because it will not affect their institutions, but will hinder the organization of any new bank.

Mr. LAMPSON: If the existing provision in the constitution which exempts them from double liability did not affect those in existence when that provision was adopted, on what theory could this provision affect them?

Mr. WINN: I do not say it will not. It will not affect any then in existence. I perhaps was at fault in saying

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there were two hundred institutions interested. I should have included as interested only the number that have been organized since the constitution was amended by taking out the double liability.

Mr. EVANS: I rise to a point of order.

The PRESIDENT: The gentleman will state his point of order.

Mr. EVANS: My point of order is that the gentleman's amendment and his remarks are totally out of order and not germane to the question. He knows, as everybody knows, that a building and loan association deposit can only be invested in mortgages, and when banks are mentioned it can not possibly have any reference to this subject.

The PRESIDENT: The remarks of the gentleman are in order.

Mr. WINN: In answer to that I want to say there is nothing in this proposal that by express terms has reference to banks. It has reference to corporations. It reads, "except that stockholders of corporations authorized to receive deposits", and that might be held to apply to building and loan associations. I hope the amendment will be adopted.

Mr. HARRIS, of Hamilton: I came in late. I caught some part of this statement and some reference was made to an opinion expressed by a sub-committee on banking of which Judge Worthington was chairman. I should like to hear what that statement was.

Mr. MILLER, of Crawford: I made a statement that that sub-committee had stated that if this proposal passed it would affect all existing state banks.

Mr. HARRIS, of Hamilton: I was a member of the committee on Banking and my recollection is that when we asked that question of Judge Worthington the answer was diametrically opposite to the statement made by you, and the conclusion was—what we drew from it as a practical question—that all the old banks would be forced to reorganize as a business proposition in competition with the new banks, because the business man would say he would deposit with a new bank on account of the double liability rather than with the old bank that has only single liability.

Mr. MILLER, of Crawford: Mr. Cunningham was a member of that sub-committee.

Mr. CUNNINGHAM: I have been trying to get the floor to make a few remarks, but I will answer this inquiry. The committee was unanimously of the opinion that it did apply at once when adopted to every banking corporation in the state of Ohio, without any question. Just three or four years ago this very question came up and they took away the double liability, and if the gentleman's view is right these corporations are still subject to double liability. Nobody claims that. More than that, the corporation is a creature of the law. It is subject not only to the laws existing then, but to any other that may be passed thereafter. That is a fundamental principle of the present constitution and every lawyer ought to know it.

Mr. Brown, of Highland, here requested recognition.

The PRESIDENT: The member from Highland wants to ask the member from Defiance a question.

Mr. BROWN, of Highland: No; I want to make some remarks.

The PRESIDENT: The member from Highland is not seeking the floor to ask a question then.

Mr. KNIGHT: I want to ask a question.

Mr. BEATTY, of Wood: Just a minute: Did the member from Defiance say there were five hundred state banks that favored this proposition?

Mr. WINN: I said they were interested in this. I don't know whether they are all favorable to it or not.

Mr. BEATTY, of Wood: The president of the bankers' association sent out over two hundred letters to the bankers and state banks of Ohio and he made the statement before the committee that he had received seventy-five replies. Thirty-five were against it and forty favored it.

Mr. CUNNINGHAM: I want to call your attention to this proposal and to the terms of it. There was a unanimous opinion of the committee that this would not apply to building and loan associations unless they received deposits. There is a large class of associations that profess to be building and loan associations, but they are doing a banking business. Go into one of their offices and you will see persons coming in and depositing and checking money. You would not know that you were not in a real bank. I was in the town of Mansfield a short time ago and went into a bank, or I thought I had gone into a bank, and it turned out to be a building and loan association. They were receiving deposits, paying out on checks and doing every thing that any bank in the state of Ohio is allowed to do apparently. Now this would apply to that kind of a building and loan association; there is no question about that, and it ought to apply to a concern of that kind. The subcommittee thought so and the whole committee thought so. The amendment to section 3, article XIII, in substance provides, first that certain corporations shall have only single liability and it gives exceptions:

Except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such corporations, to the extent or amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

That amendment was intended simply to apply to corporations receiving deposits as banks receive deposits, and it applies not at all to the ordinary building and loan associations. It has not the slightest application to them. When the gentleman talks about five hundred private banks of Ohio he is mistaken. I think there are two hundred and thirty-one and not five hundred. This proposal is for the benefit of not only depositors, but the banks themselves, because they expressed themselves to the committee—at least some of them did to me—that they felt they were somewhat under a cloud from the fact that the national banks were doubly liable to their depositors and therefore they could demand deposits which the state banks could not demand. They therefore ask for their own benefit that their stockholders should be made subject to double liability also.

Now there have been failures in the private banks in the state of Ohio and depositors have lost. If this measure goes into effect I take it that there will be

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no opportunity of loss. If there is any loss to depositors it would be in a very special case.

As to the question whether a stockholder in a bank existing now is liable, I have not the least doubt in the world that he is liable. The instant the people pass this proposal every banking corporation becomes doubly liable on their stock. They become subject to double liability, because of what? Because they are creatures of the law. They have been created by law and are subject not only to existing laws, but any law that may be passed affecting them. There is no question about that. It was only three or four years ago that the legislature submitted an amendment taking away the double liability. What lawyer holds now that the stockholders of those banks existing at the time that amendment went into effect are doubly liable still under the present amendment?

Mr. KNIGHT: If there were a creditor of any one of those banks at the time the double liability existed and this amendment you referred to changed the double liability to single liability, could that creditor be deprived of his rights under the liability against the stockholders of that corporation?

Mr. CUNNINGHAM: No; and I didn't say any such nonsense as that, because the liability had existed at the time the amendment fixing single liability was passed. But if a liability came after that amendment providing single liability was passed, they would not be doubly liable. I take it for granted that a good many others know nearly as much as I do and some may know more, but I think I know enough to say that if this law passes it affects every corporation that is receiving deposits in the state of Ohio the instant it goes into effect.

Mr. MILLER, of Crawford: Do you mean it would affect private banks?

Mr. CUNNINGHAM: No; only corporations. That matter was considered in the committee and we considered we had no power or authority to require them to be doubly liable. They don't own stock. We don't know how to reach them.

Mr. LAMPSON: What effect would this proposal, if adopted, have upon the market value of the stock of state banks?

Mr. CUNNINGHAM: I do not think it would have any effect at all, because it is as much to the advantage of the banks to have this double liability as it can be to any one else. The credit of the bank has increased. Thereby its deposits are increased, and its profits are increased. Consequently, this proposal is for the benefit of the stockholder and not to his detriment. It is also to the benefit of the depositors of the bank. By these means the depositor secures himself against loss.

I can say, since this matter has come up, I have carefully examined the laws of Ohio and the laws of the several states, and we have, without question, the best banking law in the United States applicable to private banks, and it needs only this to make it as perfect as can be. Some of the other states have the double liability, and in that respect they are better off now than we are, but if we put this in, the state of Ohio will have the best banking system in the United States beyond any question.

Mr. KRAMER: I want to ask you about the liability of persons connected with private banks as compared with the liability of those connected with state banks. Is it not a fact that the men connected with the private banks are liable for all they are worth?

Mr. CUNNINGHAM: Certainly.

Mr. KRAMER: The member from Defiance [Mr. WINN] suggested the building and loan associations had the finest lobby ever organized in the state, and that they always got their demands. I would like to ask if there were any lobbies before the Convention on the part of the building and loan associations arguing against this proposition?

Mr. CUNNINGHAM: No; the superintendent of banks, at the request of the committee, wrote to the private corporations asking them how they felt about this matter of double liability, and a great many of them wrote back saying they preferred to have it, that it would increase their business and increase the confidence in the bank, and that they were altogether in favor of it.

Mr. KRAMER: Did you get any word from the building and loan associations in any way that they were opposing the measure?

Mr. CUNNINGHAM: Not at all, because they supposed they were not liable and did not come under this proposal in any way. And I don't think they do. If they received deposits, of course, they would come under.

Mr. SHAFFER: Do you hold this would not apply to the stockholders in the building and loan associations?

Mr. CUNNINGHAM: Certainly not.

Mr. SHAFFER: Then have you any objections to the amendment of the gentleman from Defiance [Mr. WINN]?

Mr. CUNNINGHAM: I turn that question over to Mr. Earnhart.

Mr. SHAFFER: In your mind there is some question that that might apply to the stockholders of the building and loan associations?

Mr. CUNNINGHAM: It will apply if they receive deposits. There is no question about that, and we intended that it should.

Mr. SHAFFER: I mean to all borrowers of building and loan associations. They are stockholders under the law of Ohio.

Mr. CUNNINGHAM: No; I don't think so.

Mr. SHAFFER: Is not that the law on which the building and loan associations are founded, that all borrowers from the building and loan association are stockholders and stock is issued to them for the amount of loans made to them?

Mr. CUNNINGHAM: Some of them.

Mr. SHAFFER: Is not that the law of Ohio?

Mr. CUNNINGHAM: I don't think so.

Mr. SHAFFER: It certainly is.

Mr. CUNNINGHAM: I will say frankly that I do not understand the law applicable to building and loan associations as well as many of the other members of the Convention. I was in a building and loan association for five years and president of it, and I know there was no stock liability in that association.

Mr. SHAFFER: Then would you object to the amendment of the member from Defiance [Mr. WINN]?

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Mr. CUNNINGHAM: I am not objecting. If Mr. Earnhart is willing to accept that amendment I am not objecting, but I do not think it is necessary; and if they receive deposits they ought to come within the provisions of this proposal.

Mr. STOKES: What do you mean by receiving "deposits"?

Mr. CUNNINGHAM: I mean just what the word says.

Mr. STOKES: The building and loan association receiving deposits and making loans on real estate—that is not a bank.

Mr. CUNNINGHAM: Oh, no; they pay in their assessments once a month or once a week.

Mr. STOKES: Then if they receive a deposit they are not banks?

Mr. CUNNINGHAM: Those are not deposits in the meaning of the law.

Mr. EARNHART: I am not a lawyer, but my impression of the whole matter is that it does not apply to the building and loan associations unless they are using that name and doing what we properly apply to a bank, in receiving deposits. Corporations of that kind ought to come under the provisions of this proposal. I think that ought to be clear.

Mr. BROWN, of Highland: Perhaps you have not noticed it, but I have made only one or two little speeches, and occasionally put a question. I have asked several questions, but really have made few speeches. But I have almost got out of the notion of making this speech because I have been so long in getting the floor, there being so many ahead of me. I can not realize why there should be any objection to the passage of this proposal even though it will disturb the banks in their present system, which I doubt very much. Notwithstanding the opinions expressed by able lawyers on the floor, I believe the stock itself has inherent rights when the stock is bought under the charter of single liability; that stock itself has rights, and you can not change it from the conditions under the charter after the innocent purchaser is in possession of it.

But that is neither here nor there. I stated to the member from Defiance, and he pooh-poohed the idea, that the bankers who are now doing business under the state laws of single liability could come together and agree with their depositors, even though this proposal did not bind them, that they would stand for double liability and it would hold. There is no question about that, I think, because that would be an agreement which would have the same effect as a contract or gift, neither of which can be nullified by the processes of law. There would not have to be any surrender of charter or anything of the sort for that kind of a thing, provided the proposal doesn't retroact and the stockholders of existing state banks want to come under this rule.

The gentleman from Harrison stated that when the tax was taken off municipal bonds of the state it went right on and everybody had the tax off his bonds and it was effective from the beginning; that is true, but it carried with it no damage to any one. But if those bonds had been bought with exemption from taxation and any other law had attempted to place taxation upon them, after contracting with the owners of the bonds that they should not be taxed, it would be a ques-

tion of damage and a question of whether or not they would have to stand it. The state bankers of Ohio, I think, are the people who are demanding it—in answer to the question of the gentleman from Cuyahoga [Mr. Dory]—and they are demanding it because they are working at a disadvantage in competition with national banks where national banks have a double liability and all the national banks of this state, I think, have a double liability. There are some national banks that have not double liability, but the state banks are laboring under a disadvantage of an argument from the national banks that the state banks have no responsibility other than the stock they have bought and the national banks have a double liability, and, besides, the government is behind them. They work that for all it is worth to the disadvantage of the state bankers, and the state bankers themselves therefore are demanding it, and if it has a retroactive effect they will voluntarily work under its provisions. I think there is no question about that, and I do not see why any one would object to passing this. I do not think it will affect anybody but the bankers, and if the bankers are demanding it, why not give it to them? If it is not of sufficient importance for us to put it in the constitution and submit it to the people as it is, then I think we can make it right by adding the amendment which the member from Medina has prepared.

Mr. SHAFFER: What was the amendment that was offered? Was it the one with reference to building and loan associations?

Mr. BROWN, of Highland: The member from Defiance wishes me to explain that the member from Medina has an amendment—

Mr. SHAFFER: Has he proposed it yet?

Mr. BROWN, of Highland: No.

Mr. SHAFFER: Then we don't know what it is.

Mr. BROWN, of Highland: No, but if this is not sufficiently important, as suggested by the member from Cuyahoga, I think the amendment of the gentleman from Medina will make it very important, if he submits it.

Mr. HARTER, of Stark: Did you say not all of the national banks have double liability?

Mr. BROWN, of Highland: Yes.

Mr. HARTER, of Stark: I would like to ask Mr. Brown if that is true? I was under the impression that all of the national banks did have double liability.

Mr. BROWN, of Highland: There are one or two banks in New York and one in Chicago which, under an act of congress, enjoy the same privilege they enjoyed before they became national banks. This was brought about by a process of special legislation by the congress of the United States. Congress is not confined to general legislation as we are in Ohio.

Mr. WINN: But I assume when congress passed the banking law they applied to those banks specially organized after that. Is not that correct?

Mr. BROWN, of Highland: The double liability was passed before these banks came in and they were made exempt by a special act.

Mr. HARTER, of Stark: The bank in Philadelphia had a right to retain its old name, I believe, the Bank of North America.

You will find there is no mention of its being a na-

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tional bank, but I did not know that they escaped double liability. I did not understand Mr. Antrim to say that.

Mr. BROWN, of Highland: Oh, there are several banks in the United States that are not under double liability, and if Mr. Antrim stated that all national banks had double liability he was in error.

Mr. ANTRIM: There are two or three national banks in the country that were organized under special charters, and for that reason they have the same single liabilities that they had before the national banks were organized.

Mr. HARTER, of Stark: But nearly every national bank in the country is under double liability?

Mr. ANTRIM: Yes; there are just two or three that are not.

Mr. WINN: They were organized before the passage of the law?

Mr. ANTRIM: No; they were private banks then.

Mr. SHAFFER: Does the gentleman from Highland tell us that the state bankers have asked for this proposal and have recommended that we pass such a proposal?

Mr. BROWN, of Highland: I didn't make it as strong as that, but, being connected with a state bank myself, I have talked with a good many state bankers. I looked for this proposal to come up and I have consulted with a number of persons connected with state banks. I have asked them what position they would take on it, should it come up, and they said they were perfectly indifferent to it, some of them, and others said they would favor the proposal because they have no fear of the double liability and it would benefit them in their business.

Mr. SHAFFER: Was there any suggestion made that this would be a better proposition for them than having the state guarantee the deposits?

Mr. BROWN, of Highland: No banker has any thought of indorsing such a wild-cat scheme as that.

Mr. SHAFFER: I know no banker would, but do not some people?

Mr. BROWN, of Highland: Nobody who really knows anything about the situation would advocate such a thing.

Mr. SHAFFER: Have not some of the states indorsed it?

Mr. BROWN, of Highland: Yes; and every one to their great regret and sorrow, and for the real and absolute destruction of the integrity of their banking business.

Mr. SHAFFER: Have not some of the states had this inaugurated and has it not proved successful?

Mr. HARRIS, of Hamilton: Never.

Mr. SHAFFER: Has not the state of Kansas?

Mr. HARRIS, of Hamilton: It has just gone through with it.

Mr. SHAFFER: Is it not satisfactory?

Mr. HARRIS, of Hamilton: No, sir; it is not.

Mr. SHAFFER: Is there any movement on foot to repeal that law?

Mr. HARRIS, of Hamilton: I don't know, but I know from the bankers of Kansas that they think it is an utter failure.

Mr. FLUKE: Have you any knowledge of any depositor having lost any money in Oklahoma?

Mr. HARRIS, of Hamilton: No; and I haven't any knowledge of any depositor having lost any money in Nebraska or any other of those states.

Mr. CUNNINGHAM: With reference to double liability, of course that doesn't apply to contracts before the law was passed, but it does adhere to all liability incurred after the law?

Mr. HARRIS, of Hamilton: Of course that is all I have contended for.

Mr. BEATTY, of Wood: I hadn't intended to speak on this matter, but I want to correct some things that have been stated.

It has been stated that the state banks of Ohio favor this proposal and want it to become a part of the constitution. Mr. Earnhart introduced a proposal which I believed in thoroughly. I spent four years in Oklahoma and know the working of the guarantee law there as well as any man, because I investigated it thoroughly, but I do not believe in Ohio, where we are lending money at five, six and seven per cent, we want the same laws that they do where they are lending money at ten, fifteen and twenty per cent, although I believe firmly in the guaranteeing of deposits. However, as I suggested to Mr. Earnhart, I do not believe the guaranteeing of deposits will work in the state of Ohio, and the best thing would be to get double liability. This suggestion was not from the state bank, but from the committee. I am interested in national banks and also state banks, and therefore I know whereof I am talking. I am also interested in national and state banks of Oklahoma, and I know what I am talking about there.

Now we have heard a good deal said about this being a detriment in Oklahoma. Go out there and you will find it different. I have been there when banks failed and I have investigated failures.

Mr. WINN: I don't understand, and I wish you would repeat the result of the workings of the guarantee law in Oklahoma?

Mr. BEATTY, of Wood: It would take too long for you to sit and listen to it. I saw four banks fail and there was not one of the stockholders lost a dollar, and three of the banks are still in existence. The first bank was the State Bank of Bartlesville. Then there was a Tulsa bank, which is still running, and one in Oklahoma City where the depositors were paid every dollar. There was not any run on any of the three banks when they failed three years ago. It was announced in all the papers of the state of Oklahoma that these banks had failed. The Bartlesville bank was reorganized and is now a national bank. There was no run at all, and only \$15,000 was drawn out.

Mr. WINN: I want to know whether the statement of the member from Highland to the effect that the people of Oklahoma are in sackcloth and ashes because of the passage of the guarantee law is confirmed by your experience?

Mr. BEATTY, of Wood: I can answer that question very thoroughly. I have seen reports in the newspapers that they were, but you could not find a stockholder or depositor out there who agrees with those reports. I have seen in the papers that the banks were dissatisfied in paying those assessments and that the committee had over \$1,000,000 out on mortgages, which upon investigation proved incorrect. As Mr. Brown said, the papers did

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make that report all over the state of Oklahoma, but the people of Bartlesville and Tulsa are not dissatisfied as claimed.

Now, as to the attitude of the banks of Ohio on this matter of double liability. As claimed in the committee, we called in the president of the Bankers' Association of the State of Ohio and asked him if the state banks would stand for this, and he sent out over two hundred inquiries to the banks. He received seventy-five replies and thirty-five were against double liability and forty favored it.

Mr. BROWN, of Highland: You stated a minute ago that the bank you had previously referred to had now become a national bank—I mean the one out at Bartlesville, Oklahoma.

Mr. BEATTY, of Wood: Yes.

Mr. BROWN, of Highland: Is it not true that, on account of the guarantee, a large percentage of state banks have become national banks in order to get out of being required to make all the wild-cat institutions of the state good?

Mr. BEATTY, of Wood: I believe in the last year there have been forty-five banks merged into national banks. It was reported last January that the assessment was too high, but it was not because of wild-cat banking but because of the failure of four banks.

Mr. BROWN, of Highland: Under that guaranty system is it not possible for any kind of a wild-cat bank to start business and have credit and standing on account of the high class banks?

Mr. BEATTY, of Wood: I don't think any more so than here.

Mr. BROWN, of Highland: Are you familiar with the failure of the—

Mr. BEATTY, of Wood: Yes, I know the president, Mr. Norton, very well. He was a personal acquaintance of mine and he is now on his way to the penitentiary.

Mr. BROWN, of Highland: Didn't that cause a tremendous draft on the guarantee fund, one that the state has never recovered from?

Mr. BEATTY, of Wood: No, and I know, for I was right there. I know that Mr. Norton, the president, went to Wellsville, New York, and brought back \$900,000.

Mr. BROWN, of Highland: Did not the stockholders lose something?

Mr. BEATTY, of Wood: I think they did, but Mr. Norton went to Wellsville, New York, negotiated \$900,000 and paid that into the bank three days after the failure and kept it running.

Mr. BROWN, of Highland: Didn't that failure depreciate and deplete the guaranty fund so the state of Oklahoma has never recovered from that failure? Is not that the reason the state banks are going out and becoming national banks?

Mr. BEATTY, of Wood: No; I don't think the guaranty fund paid much money into that. Mr. Norton made it good himself. We went to Wellsville, New York, and borrowed \$900,000. I don't think that was what depleted it. I think it was another one.

Now, I have forgotten just where I was when they interrupted me. I believe I was talking about the statement that the bankers of the state of Ohio favored this proposition. A lot of those banks were organized under double liability and that has been changed to single lia-

bility. We went to the president of the bankers' association, as I stated, and he sent out circulars, and out of seventy-five replies thirty-five were against the double liability and forty in favor of it. Then the committee was appointed to draw this substitute bill to provide double liability. That committee made a report back, and as far as the building and loan associations were concerned they made a statement, drawn up by five lawyers, and Mr. Worthington was chairman of that committee. That statement was in substance that this proposal didn't affect any building and loan association except those that did a banking business, which we know some of them are doing. It is only those that are receiving deposits that are checked out that will be affected. We were in two or three in Mansfield that were doing a banking business and there are others in Cincinnati, and these attorneys framed the proposal so it would affect the building and loan associations that do a banking business, but not those that are engaged strictly in the building and loan association business.

Mr. Doty said, "I have been up against the building and loan association lobby", and, like him, I say it is the finest lobby I ever went against in my life. I have seen the senate chamber so crowded with building and loan association men that you could hardly get through and it was the finest lot I ever went up against. I have only made this statement to clear off the effect of the statement that the state banks were wanting this bill. It was not suggested by the state banks, but by the committee, because we didn't want to apply in Ohio the guaranteeing of bank deposits by law.

Mr. KNIGHT: With the trend the discussion has taken we are in danger of losing the especial purpose of this proposal, namely, that it is in the interests of the people, of the depositors, and not in the interest of the banks themselves. We haven't been talking about the people. All the talk has been directed toward the banks and whether they were in favor of it. The proposition is in the interest of a majority of the people instead of the banks. It is for the people who are not stockholders, but who may sometimes become depositors. A bank acts in a fiduciary capacity and receives other peoples' money on deposit, and it may fairly be required to give better security than that of a single liability on the stock. Down to 1903 the incorporated banks of this state were like all other corporations of the state—the stockholders were subject to double liability. In the modification of the constitution at that time the banks were relieved of the double liability by what I think was a mistake. They should not have been relieved and other corporations should have been.

Now, it is another fact that single liability state banks in comparison with the national banks are under a handicap. The people of the state of Ohio in attempting to organize state banks as compared with national banks are handicapped, so there is a handicap on our people by the single liability, whether they are bankers or depositors. I fully agree with you about the bankers having no objection, and in fact some of them having a desire to have this passed so they can get deposits on the same plane as the national banks.

As to the building and loan associations, there are many of them which receive deposits and do a banking business under the guise of building and loan associa-

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tions, and there is absolutely no reason why the stockholders of a few of these building and loan associations, that really do a banking business and take money on deposit subject to withdrawal upon checks or upon expiration of the time certificate, should escape liability. They are doing a banking business and receiving deposits within the purview of the provision, and I do not see why the stockholders of such an organization should not be subject to double liability.

As to the desirability of the measure at this time, it seems to me it is one of the most important practical measures in behalf of the people of the state that has been suggested here since we were called together, and after we have disposed of four or five propositions I do not think we should turn everything else loose. I think this proposition is a highly meritorious one and it should be passed.

Mr. JONES: I was a member of the Banking committee and a member of the sub-committee to investigate the question which the member from Defiance [Mr. WINN] raised in the discussion of this matter. Judge Worthington was also on that committee.

Judge Worthington, when the question was first raised in the committee, expressed as his first impression of the question just what Mr. Harris, of Hamilton, has stated in your hearing. It did not strike me that way on first blush and I expressed a contrary opinion, and that is the reason probably why I was appointed on that sub-committee. Judge Worthington made a thorough investigation and submitted the result of his labors in a written memorandum. I did the same, and the conclusion that both of us reached was that there was no doubt that this provision, if enacted, would apply to existing banks the same as to banks that should hereafter be organized. It only takes a little reference to some fundamental principles to make that apparent. As suggested by one member a charter issued by the state in favor of a corporation sounds in contract, and on first impression one would say that such a contract can not be changed at the will of one of the parties, that it takes two to consent to the change of the contract just as it took two to make the contract; but we found when we came to examine the question that all cases decided by our supreme court that had arisen under the constitution of 1802, had repudiated that doctrine upon the theory that the people, being supreme, the state making the corporation had a right to unmake it, that that was power belonging to the people, and the legislature could not surrender it. Therefore, the supreme court of Ohio held, notwithstanding there was no constitutional provision to that effect, that the legislature could unmake and modify these charters. We found also in the case of the Piqua Branch of the State Bank of Ohio vs. Treasurer of Miami Co., 16 Howard, 369, that it was organized under a special statute enacted in 1845, which gave it certain privileges, among which was the right to be taxed, not as other persons were going to be taxed, but it was to pay as taxes six per cent on its net earnings, I believe, and there were some other provisions in its favor. An act was passed in 1851, requiring the property of the bank to be taxed by a different rule. In the litigation which followed, the contentions of the Piqua bank that the legislature could not change its charter were decided against it by

the supreme court of Ohio, and the bank carried the case to the supreme court of the United States. That court held that the charter issued by the state was in the nature of a contract between the corporation and the state, which the state, without the consent of the corporation, could not change. There were a number of other cases in which the same question had been raised. When the constitutional convention of 1851 met there was a provision put in the constitution to meet that situation. That was one of the principal things that induced the incorporation of the provision I am about to refer to in the constitution of 1851. The supreme court of the United States, having held that a charter was in the nature of a contract and could not be altered or abridged without the consent of the corporation, it was provided in section 2 of article XIII as follows: "Corporations may be formed under general laws, but all such laws may, from time to time, be altered or repealed." Therefore if gentlemen will take the pains to examine the decisions since 1851, they will find in every single one of them the court has held that there is a reservation of legislative power over those charters of corporations created under the authority of the constitution and the laws that might be enacted under it, to revoke, repeal or recall the charters at any time the legislature saw fit." So it has resulted since then that every corporation coming into existence does so with the knowledge that its rights under its charter may be changed, or that they may be entirely taken away from it. In other words, there is no longer any contractual relations between the state and the corporations such as existed prior to 1851 under the decision of the supreme court of the United States.

I can not take the time now to cite to you the cases in support of the proposition, but it is a mere matter of running them down. That being the case, every bank or other corporation that is now in existence receiving money on deposit, will be affected by this proposed amendment. The language "receiving money on deposit" was taken from the banking statutes of Ohio and the national banking act, because "receiving money on deposit" has many times received the construction of the courts and has a well-defined and definite meaning in law. It simply means a corporation which is receiving money with the expectation of paying it out on demand or at an agreed time. A corporation such as a building and loan association which issues stock and receives money from time to time merely as payments on that stock does not come within the definition of a corporation "receiving money on deposit." It is only those corporations that receive money under an implied or express contract that they will pay it out on demand or at a specified time that will come within the provisions of this amendment.

As has been suggested here, national banks have double liability. All those who are interested in private banks, and there are about as many of them as there are state banks, have unlimited liability. A man who has a share of stock in a joint stock company engaged in the banking business is liable for every dollar he is worth, and it was thought that state banks should at least be on the same footing as national banks. This matter did not come from the state banks. There was no demand from that source, and there can not be any reason why

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they should want it, such as suggested by the gentleman from Defiance. The depositors are the only ones primarily interested in the matter. The argument to the committee for asking this amendment was that the interest of the depositors were liable to suffer by having men permitted to engage in the banking business under the special privileges allowed by statute and be entirely relieved from any personal responsibility. I think if it could be done—and I concede that under the existing sentiment on the question it can not be done—but if it could be done, I would make every man that engages in the banking business either as a corporation or as an individual, liable without limit for the debts of the bank. I do not think the state should grant either a partial or entire exemption from liability to those who receive the money of the people on deposit in banks. This certainly would be in the interest of the depositor. There can be no objection to having the man who is a stockholder in a state bank at least fully liable with a stockholder in a national bank. As has been suggested here, no state banker should have any objection to double liability.

Mr. MILLER, of Crawford: Would you have any objection to placing private banks under the supervision of the banking department?

Mr. JONES: That is a matter that has no relevancy to the question at issue, but speaking on the question of liability, there can not be any complaint against the private banker, because he is liable for every dollar he is worth. He is not asking any special privileges. He is not doing business on any different footing from the merchant or the manufacturer. He is not asking any favors of exemptions or any privileges. He says to you, "I am willing that you depositors shall take every dollar I am worth to pay the debts of the business I am conducting," but the situation is different with reference to state banks. They ask special privileges. They are asking exemptions.

As I say, I do not think the state bankers as a rule will object to this double liability. Those that I have talked to say, "Certainly we are not objecting to it." Some of them were much in favor of it because it will prevent a criticism that is now sometimes directed against the state bank by those interested in national banks, that the national banks have more liability behind their concerns than the state banks have. Therefore, most of the state banks would not object to this liability, and certainly no depositor would object to it. Nobody, I think, could say for one moment that this provision would not be in the interest of the depositor. One gentleman on the floor asked, "Who is demanding this?" Everybody who has lost money in a corporation engaged in the banking business when there was double liability would certainly demand it, and everybody liable hereafter to lose money by reason of complete exemption from liability will demand it. A good many banks have failed in Ohio where depositors lost heavily. I know one within ten miles of our county seat which recently failed and wound up with a loss to the depositors of about \$70,000, even after the double liability of the stockholders was enforced. There was a double liability upon \$25,000 worth of stock and every stockholder who could respond paid up and it saved the depositors that much. That is one instance, and quite a number of others could be cited. It takes no stretch of imagina-

tion to see that in cases that may come, as they have come heretofore, when a large number of banks might fail, that it would be a protection to every depositor to have this double liability against the stockholders of state banks. In view of the fact the state banks themselves are not opposing it and the depositors can't oppose it, because it clearly is in the interest of the depositor, I think it certainly should be adopted.

Some objection is made on behalf of the building and loan associations. There can not be any objection on the part of the building and loan association that is conducting merely a building and loan association business. If a building and loan company is engaged in the banking business, is receiving money on deposit and is liable to have to pay it out on demand or at a specified time, it is doing a banking business and not doing a building and loan association business. It is securing money from depositors and giving the depositors in lieu of that money nothing but a contract obligation to repay it, just the same as a depositor in a state bank or in a national bank receives, and when a building and loan corporation puts itself in the attitude where it wants to substitute its promises to pay in lieu of hard cash, I submit there ought not to be any hesitancy about saying that a stockholder in such a corporation should be doubly liable. It certainly is not asking much to have them merely doubly liable upon their stock the same as stockholders will be in other corporations that are asking people to exchange hard cash for a mere promise to pay.

The delegate from Brown county [Mr. KEHOE] was here recognized.

Mr. THOMAS: I have been on the floor asking for recognition every time a speaker has yielded the floor, and I want to object to being overlooked by the president.

The PRESIDENT: The member from Cuyahoga has no rights superior to those of any other member.

Mr. THOMAS: But I have equal rights and I want them.

The PRESIDENT: The member from Brown has been recognized.

Mr. THOMAS: I have been on the floor every time trying to be recognized and I insist on my rights.

The PRESIDENT: The member from Cuyahoga county is out of order.

Mr. KEHOE: I, like the member from Highland [Mr. BROWN], am a little bit shy about sticking in my oar when the other members are talking. We are modest in our part of the state anyhow. But, gentlemen, I happen to be a member of this committee on Banking and I know something about this proposal and the way it came before this body. I offered Proposal No. 116, which contained the principal idea that is embodied in this proposal. The member from Warren [Mr. EARNHART] had in our committee a proposal something along the guarantee line, but we, of the Banking committee, in order to ease that down somewhat, concluded we would take the material we had offered and had in stock and give the Convention something that would be of an easy nature as compared with the original articles. Hence we have reported this Proposal No. 93. The proposal is simple. All that there is of it is good. I do not believe there is anything dangerous or harmful in it. If it were left to me I could stand it stronger

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than it is. In fact, I could stand for the bank guaranty. While some of my banker friends may cross their hands in horror, yet I absolutely believe if it were incorporated in the national banking laws today we would have the safest plan we would ever have and would be away ahead of the Aldrich plan, but I don't believe it would be a proper thing for the great state of Ohio to encounter the opposition that would come from everywhere if we were to adopt such a thing. That is the trouble with Oklahoma, Nebraska, Kansas and every other state that has attempted it. They are fighting the combined influence of the money power of the banks that oppose it all over the United States, and in those states where it is proposed as a remedy. Yet I say if it were in the national bank act and the national banks were under such a regime the whole United States, all the banks of the United States, would soon be under that system, and I can conceive of nothing better in the United States today than that. Do you know that you can not get a dollar of the state's money or the money of a township, county or municipality into any bank unless the bank absolutely guarantees its safe return? Why in the name of common sense, is it that the people's money—the money of the poor people—is not treated in the same way that the bigger money concerns are treated? It is not fair and it is not right. Although I am a national banker and interested in national banking and am running one I would be glad to see such a condition. I would be glad to see released that reserve now held intact in a bank, doing nothing—only remaining there. There are millions stored up in national banks, not in circulation and not in use, just standing there as a reserve against anything that might come along. Now, if we have an absolute guaranty there would be no run, there would be no panic and there would be no need of a surplus lying idle in our banks. In some large institutions the reserves are sealed up from the time the bank examiner comes around until he returns. If the seal is not open, he knows it is in there still untouched. All that money lies idle there for emergencies that might arise. I went through the panic of 1907 and I should not like to run into one oftener than every ten years.

Mr. HOSKINS: If you will yield for a minute I would like to send an amendment to the desk and you can discuss it.

Mr. KEHOE: No, I don't want to yield. I don't want any proposition to that effect in the state of Ohio. I don't want the state of Ohio to attempt to carry such a proposition. I do not want the state of Ohio to encounter the opposition that Kansas and Nebraska are encountering and be held up as a radical all over the country. I think the proposition is all right myself and I believe in it, but I have feeling for others. I am not the only pebble on the beach.

Mr. ANDERSON: I want to ask a question to find out how to vote. I see this language employed in the proposal "not one for another". As it is now would the depositors be better protected if this became a part of the constitution with "not one for another" in it? Would not the depositors receive less security with that language than they do now?

Mr. KEHOE: That language is copied from the national banking act.

Mr. ANDERSON: I don't care where it comes from. I want to know what it means.

Mr. KEHOE: That means that each stockholder stands for his own liability. I believe it is incorporated in the state constitution as a protection to the depositors, and as far as I can learn it is the wish of the state banks to comply with it. It puts them on the same footing as the national banks, and they will be in a position to compete equally and fairly with the national banks. The statement is constantly heard that the national banks are good for double their stock while the state banks are good only for single liability and that gives the national bank a little more prestige. There is also a feeling throughout the country that Uncle Sam looks after the national banks pretty carefully and that that has a tendency to make the stockholders and officers of the bank stand straight and do the proper kind of thing, although sometimes they do go wrong on the inside. Conversing with the superintendent of banks in this state, I find that he is highly in favor of this proposal to apply to state banks. It puts them in a better light in comparison with the national banks.

Mr. SHAFFER: What is your attitude toward the amendment of the gentleman from Defiance, excepting the stockholders of the building and loan associations?

Mr. KEHOE: That was discussed in the committee too. We think the plain building and loan associations, where they do not go into the banking business, are not included in this at all, but there are some building and loan associations that are doing business today, receiving deposits and holding them subject to check, and we think they should be under the same law as banks.

Mr. SHAFFER: In view of the large number of stockholders in the building and loan associations throughout the state, would it not add popularity to this proposal if we specifically except from the double liability the building and loan associations?

Mr. KEHOE: There is no objection to their being exempt where they do not attempt to do a banking business, but where they do attempt to do a banking business they should not be exempt and each member of the building and loan association—stockholder or shareholder—is the one that assumes the responsibility or liability.

Mr. SHAFFER: Where they borrow and thus become stockholders, to that amount under this proposal they will become liable?

Mr. KEHOE: Yes; if they are doing a banking business, but if they are doing straight building and loan association business they would not.

Mr. PECK: Does not this proposal make them liable for the face of their stock?

Mr. KEHOE: Yes.

Mr. PECK: Suppose a man takes stock for \$1,000, to be paid in in the ordinary manner and on this he has paid \$50 or \$100; is he to be assessed on the face of his stock if the concern fails?

Mr. KEHOE: He would not be assessed at all unless the association was doing a banking business.

Mr. PECK: Does not that stock represent a liability rather than an asset? Is not that the trouble—that he has stock, but it is something he has to pay on? The stock doesn't amount to anything like stock in a bank.

Mr. KEHOE: No; there is a question whether it would come under that proposal.

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Mr. PECK: That is it. You had better exempt it. You will raise a hornet's nest if you don't. You will wish you had never been born.

Mr. STOKES: Any company can take advantage of the sixty days' notice and they don't have to pay on demand.

Mr. KEHOE: That is the law.

Mr. STOKES: They don't have to pay on demand. They are entitled to sixty days.

Mr. KEHOE: Yes, and whenever they get in a close place they use that.

Mr. STOKES: But a bank has to pay on demand or close its doors.

Mr. KEHOE: Oh, no.

Mr. STOKES: I am not talking about savings banks, but about general banks. They have to pay out the money or close their doors, while the building and loan associations are entitled to sixty days' notice and you can not get your money in less than sixty days.

Mr. KEHOE: No, the national banks are not closed for refusing to pay. I know of a case where a depositor said, "You must pay or I will close you up," and they said, "Proceed; it takes sixty days or more to get action under the law, and by that time the whole trouble will be over." I know that some banks did that in the city, but we in the country didn't do it. We paid every depositor who asked for his money from day to day.

Mr. STOKES: But if you had refused to pay your depositors they could have closed you up?

Mr. KEHOE: Not except at the end of a process that would take about two months, but we didn't care to take advantage of that.

Mr. HALFHILL: This proposal seems to be one that deserves consideration of this Convention for the very good reasons that have been stated here, and if we do not take some step of this kind we are liable to be soon confronted in some form or manner with some attempt along the same line as in Oklahoma to get a state guaranty bank deposit law.

Mr. PECK: Do you think that will be a calamity?

Mr. HALFHILL: I think the adoption of a state guaranty bank deposit law in Ohio would be a calamity.

Mr. PECK: Well, I will put Mr. Kehoe's judgment against yours.

Mr. HALFHILL: I am not talking to you particularly, and I am not caring whether I can convince you or not. I am talking to the Convention, and the purpose of my address is to impress upon the Convention that if it passes this you will not be subjected to, or have to meet a state guaranty bank deposit law. I think for the reason suggested by Mr. Beatty, and all of us who are acquainted with him in northwestern Ohio know that he is a good business man, that a state guaranty bank deposit law in Ohio would be a calamity, because the rates of interest here are very low. It is only where you have speculative rates of interest and where our legal rate of interest can be exceeded two or three times, as it is in some of the western states, that such a thing can become necessary in the first instance, and you could not make the business of banking worth while in the state of Ohio if you had liability here by way of contribution to that sort of an indemnity fund. Here are the national banks, and there is a double liability of stockholders on them; here is the state bank with the single liability;

here are the building and loan associations, and if they are doing only building and loan association business, and not engaged in banking this proposal does not apply to them, and it ought not to apply to them; but I can not see any good reason—at least there has been no good reason furnished that I have heard—why, if a building and loan association is doing a banking business, it would not properly be within the purview of this proposal.

Now, I know, and I am certain some of the rest of you know, that building and loan companies in many places are conducting banking business. It is true, they don't conduct commercial banks in the sense that you write checks on them, neither do they discount bills, or do a regular commercial business, but they do take deposits of money and they do issue time certificates, and they do state on the time certificates that they will pay you certain rates of interest, which increases proportionately if you leave the money there a certain number of months. If you leave it there as much as six months they will pay you five per cent interest. That becomes an obligation and the contract is binding upon all the property of that building and loan association and is secured thereby, and every depositor or holder of such certificate knows that he has a first and best lien against all the property of such association, including the surplus or any assets it has.

I take it that practically every building and loan association that is doing anything like an extensive business in the larger cities is organized so that it can and does conduct a savings bank business, and when it conducts a savings bank business then it takes advantage of the sixty days after demand for payment, which the law has provided, if it is hard-cramped for funds; and it could not be forced into liquidation or compelled to pay instant, and to that extent it comes in just as an ordinary savings bank would come in under the same law. You can organize a savings bank or savings department under the same law. You take an ordinary commercial bank, a bank of loan and discount, and you can organize a savings department there and this savings department would come under the savings bank law, just as it is applied to the building and loan associations, which can organize a savings bank in connection with its business; so that the savings bank law applies to building and loan associations just the same as any other bank, and if they are doing a savings bank business why should not this proposal apply? That is what I want to know.

Now, it has been suggested that by this proposal the building and loan stock you own becomes a liability rather than an asset. It certainly does not become a liability rather than an asset, unless you are engaged in a business more hazardous than the regular building and loan business, and the only other business that is more hazardous in which you can engage as such an association is the savings bank business, or receiving money on deposit. You can run a building and loan association as a building and loan business and that was the idea when it originated under the laws of the state of Ohio; and they have been very beneficial and have helped many poor people to get a home; and if you are running them legally as building and loans the officers will find it practically impossible to lose anything for the security is first mortgage on real estate; but if you are engaged in bank-

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ing along with the building and loan business, it is possible to lose money. Therefore, if they are engaged in the banking business they ought to come within the purview of this proposal.

Mr. WINN: May I ask a question?

Mr. HALFHILL: When I get through with the remarks I am making I will try to answer any question that is put to me.

I think it was pretty thoroughly explained here, at least I believe it was, that this particular proposal would apply to existing banks. I think there can be no doubt about that. You have heard—many of you who are not of the legal profession, at least have heard—of the famous case of the trustees of Dartmouth College vs. Woodward, reported in fifth Wheaton, in which Daniel Webster was of counsel, and in which case the supreme court of the United States laid down the doctrine that a charter issued direct by a state legislature was a vested right, and that the state could not repeal it or modify it as an ordinary corporate contract created under general laws. That was just what happened in the early days of Ohio under the first constitution, and that is exactly why this great big bank in the city of Cleveland, referred to here in debate, the Society for Savings, is in existence now and not subject to any particular control, because it got its right to start in the first instance by a special charter issued by the legislature under the old constitution, and it is kept alive under that old charter, by virtue of the law laid down in the case of the trustees of Dartmouth College vs. Woodward; and I am informed there are a few insurance companies doing business in Ohio which got their charters under the old constitution and they consider them very valuable.

But as was explained here by a member of the banking committee, this proposal applies to existing banks which undoubtedly come within the purview of a corporation created under general law, and such a corporation the legislature at all times under the present constitution reserves the right to control, for such general laws may be altered or repealed; and it is not impairing the obligation of any contract to enact a fundamental law of this kind. So far as the liability that attaches after the enactment of this fundamental law is concerned, it most assuredly will apply to every existing corporation in the state of Ohio, notwithstanding the declaration of Mr. Winn. I do not think that he had considered this carefully at the time any more than I had at that moment. It was thoroughly new to me when the proposal came up for discussion here tonight.

Mr. ANDERSON: Will the gentleman yield for a question?

Mr. HALFHILL: When I get through—the time is so limited. I am therefore in favor of this proposal. I believe it will work well with the banking corporations of the state of Ohio. I have had several letters and several interviews about it, and I have had no objection, except from one man who is counsel for a state savings bank and trust company, and I don't think the reasons given by him are valid. I personally am interested in just the kind of institution that he was talking about, a state savings bank and trust company, and I am perfectly agreeable, so far as I am personally concerned, for this proposal to become a part of our organic law. I think it will be a benefit and create added confidence for state

institutions to be put upon a par with the national banks as to double liability of stockholders, so I hope this proposal, without any amendment, will be passed by the Convention.

Mr. WATSON: I want to ask a question purely for information. You spoke a while ago about the liability of stockholders of a building and loan association that becomes insolvent—

Mr. KING: I rise to a point of order—the gentleman directing the question should rise to his feet.

The PRESIDENT: The point is well taken.

Mr. WATSON: If a building and loan association doing a banking business breaks up, will that carry with it the laboring man who has borrowed money from the building and loan association? Will his property become part of the assets?

Mr. HALFHILL: I think whenever the building and loan association undertakes to carry on a banking business every stockholder in it, whether a laboring man or a rich man, or whoever he is, becomes responsible. His responsibility is fixed by law.

Mr. WATSON: Does he become a stockholder when he has a loan in the building and loan association?

Mr. HALFHILL: I do not see how he could be otherwise. From the very theory of the organization of building and loan companies, when he subscribes for shares and becomes a borrower he becomes a stockholder.

The PRESIDENT: The member's time has expired.

Mr. HOSKINS: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 93 as follows: At the end thereof insert the following: "And the legislature is hereby authorized to establish a system of guaranteeing deposits in state banks."

Mr. HARTER, of Stark: I move that the amendment be laid on the able.

A DELEGATE: The member from Auglaize has the floor. Will the member yield for a motion to recess?

Mr. HOSKINS: Yes.

DELEGATES: No.

Mr. HOSKINS: I am not going to discuss the merits pro and con of the original proposition. It has been thoroughly discussed and well presented and the merits of the case on both sides are before you. The double liability for state banks is probably only a substitute for the real thing, the thing that ought to be. The money of the nation or the money of a state is the lifeblood of that nation or state. It is the circulating medium of the state. All of our prosperity depends upon this thing we call money. We take that to the bank and deposit it. What is the present situation in Ohio? We say to the depositor,—the laboring man or the farmer or anyone else who deposits funds in the bank—that the state examines these banks, that they are under state supervision, and that fact is advertised. We give, in other words, a guaranty by our law to the depositing public that these banks are examined by the state banking department just as the national banks are examined by the national banking department. Now, when we say this to the public, that creates an obligation upon the part of the state, a moral obligation to make that examination good, to make that implied guaranty that we hold out to the people good, and I believe that any subterfuge

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of actually making that guaranty good is falling short of the real remedies the people demand at the hands of the legislature or at the hands of this Convention. Now if our state treasurer has millions of dollars of state money and he receives bids in the shape of the payment of interest for that money, and he awards it to the one offering the highest interest, he doesn't take that down and deposit it as an ordinary depositor without security. The laws of the state of Ohio compel that bank or association to put up municipal bonds or government bonds as a guaranty of the deposit of the state money, and yet the bank that receives such deposit of state money will put on its window "State Depository." They will put that on their letter heads, conveying the impression that the state of Ohio is trusting them as a depository of state funds, when the state of Ohio is not trusting them at all, but is requiring an iron-bound contract for the return of the money. Those desiring to become customers or depositors of the bank are simply fooled by this advertisement upon the front window and letter heads which says the government has chosen that bank as a depository for its money, when in fact the state government has exacted from them the most absolute guaranty for the return of the money. Really the public has been misled by the advertisements and signs. A man will say: "If the state can put its money in this bank I can," and on the face of this he walks in and makes the deposit without one single safeguard for that deposit. This amendment I have submitted simply puts the matter up to the legislature to devise a system for the guaranty of deposits in state banks. I believe that is the real true remedy for the situation.

Mr. ELSON: What is your idea as to where the authority shall be, where the money shall be to reimburse the depositors?

Mr. HOSKINS: That is a question of detail, but I can give you my idea. My idea is that when we are subjecting the banks of the state to supervision that a very small tax be placed upon the deposits or upon the stock of a bank or some other equitable means might be devised, and let this go into the guaranty fund. I think you will find out, if you take the failure of every national bank in this country for fifty years and figure out the losses to the depositors of those banks and calculate the amount of the assessment that should be put on each bank to make good the losses, that that assessment would be so small that the banks would not miss it. Some one a while ago spoke of wild-cat banking, that this would encourage wild-cat banking. Wild-cat banking is the last thing on earth it would encourage, because, first, when you organize a bank you must put \$100,000 into the the capital stock, and there is not one cent going out of the guaranty fund until that \$100,000 is exhausted. Why should a set of officers or directors in a bank be supposed to start out on any such idea as that, that they will lose \$100,000 of their own money to get a chance to take advantage of this guaranty fund?

Mr. BROWN, of Highland: What is there to hinder one who has charge of it from taking the paid-up capital stock and running away with it before he does any business at all and leaving it to the other banks to settle?

Mr. HOSKINS: Did you ever know of such a case as that?

Mr. BROWN, of Highland: No, but there is nothing to prevent it.

Mr. HOSKINS: If you properly organize your bank, that man who is going to run away with the funds will be under proper bond before he gets his hands on a dollar. What prevents the national banker from running away?

Mr. WINN: What is there hindering a cashier or any other officer having charge of a bank, state or national, from running away?

Mr. HOSKINS: Not a thing.

Mr. BROWN, of Highland: Who specifies the amount of the bond an officer of a bank shall give?

Mr. HOSKINS: No one but the directors as a rule.

Mr. BROWN, of Highland: They can make it larger or smaller according to prearrangement.

Mr. HOSKINS: It seems to me you are attempting to make an argument instead of asking a question.

Mr. HARRIS, of Hamilton: Do you think it sounds economic for the state of Ohio to guarantee the credit of those who loan money and not guarantee the credit of any other particular line of business, such as selling merchandise?

Mr. HOSKINS: I think whenever the state of Ohio undertakes to supervise the man who lends money before it authorizes that man to lend money or engage in the business it can and should guarantee him. It doesn't regulate or control the man selling goods.

Mr. HARRIS, of Hamilton: Is not the authorization to do business police regulation?

Mr. HOSKINS: No.

Mr. HARRIS, of Hamilton: There is no difference in the principle between that and the state doing anything else?

Mr. HOSKINS: Yes; there is. The bank is an artificial person which the state under law permits to be created. The state undertakes to supervise and the state ought to be responsible.

Mr. HARRIS, of Hamilton: The political subdivisions undertake to supervise anything.

Mr. HOSKINS: Under police regulation.

Mr. HARRIS, of Hamilton: That does not change the principle of the thing, whether you call it police regulation or anything else.

Mr. HOSKINS: It does not undertake to supervise natural persons.

Mr. HARRIS, of Hamilton: Whether artificial or natural it makes no difference.

Mr. THOMAS: The amendment offered by the member from Auglaize is a simple amendment.

The PRESIDENT: Has the member from Auglaize yielded the floor? If he has not he still has the floor.

Mr. ANDERSON: I would like to ask the member from Auglaize a question: The only objection you have to Proposal No. 93 is that it does not go far enough and give depositors enough protection?

Mr. HOSKINS: I think that is so.

Mr. ANDERSON: If your amendment fails are you in favor of Proposal No. 93?

Mr. HOSKINS: I never said I was opposed to it.

Mr. ANDERSON: If your amendment fails you are in favor of it?

Mr. HOSKINS: I signed the report to bring it out.

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. ANTRIM: Can you name one single successful precedent for guaranteeing bank deposits?

Mr. HOSKINS: That would necessitate going into a discussion of Oklahoma.

Mr. ANTRIM: There were a great many failures before that.

Mr. HOSKINS: There have been failures in the national banks too.

Mr. ANTRIM: I mean the failure of the plan in New York and Michigan—

Mr. HOSKINS: You can make your speech, you will have fifteen minutes to do it in.

Mr. THOMAS: The amendment I desired to offer on the question is simply the one that has been offered by the member from Auglaize. I do not think any better argument can be made for that amendment than has been made by the distinguished commoner of Nebraska who addressed us on the subject a few weeks ago, and the members who heard that argument made on behalf of guaranteeing bank deposits should not need any other argument to make them vote for it. It is the poor man who suffers, the working man who suffers from the bankrupt bank, and not as a rule the middle man. About one-half of the business men and the corporations that have money in that bank get some sort of inkling, either through the stockholders or some one else, that there is something liable to happen; they get their money away and it is the poor devil who is saving enough to keep him during his old age or to pay for a little home that suffers every time. He deposits his money in a bank because it does business under a state charter, and in some way he imagines, because the banks are doing business under a national or state charter, that the nation or state is guaranteeing him that he will get his money back, and yet the laws governing the banking business permit men to go into the banking business and fleece the people of a particular community deliberately, as was done in the case of the South Cleveland Banking Institution when they loaned nearly if not quite a million dollars to another banking concern and took the lifetime savings of scores of poor people for the purpose of holding up that institution. That is not the only instance that can be mentioned, but there are others, and there were just as many bankrupt banks under double liability of stockholders as there have been since that was changed to single liability. It is not a bit different. I insist that the time has come when the state of Ohio in granting charters to men who are doing banking business should guarantee the depositors that their savings, when they are needed, can be gotten back, so that the poor man will have a chance, as he should have, in the closing days of his life.

Mr. LAMPSON: Will the gentleman yield for a question?

Mr. THOMAS: Yes.

Mr. LAMPSON: Is not a bank failure a method of dividing up the poor man's savings?

Mr. THOMAS: But the trouble is it is always dividing up the poor man's savings with the other fellow; there is never any divide coming to the poor man.

Mr. LAMPSON: They simply don't all get in on it.

Mr. ELSON: I want to make a motion, but I want to say a word first. It seems to me that it is just as impossible for the state to guarantee deposits in a bank

as it is for the state to guarantee stock in a business. There are many businesses that have charters in the state outside of banks, and no one seems to want us to guarantee those other businesses. The fact has been referred to that the government in depositing money in a bank guarantees itself. That is true, but the government is simply an outside agency—the government is the whole people organized. It is true that the government could afford to lose better than any individual or class of people, but the government's money is in the hands of certain officials and it is those officials who give bonds to make good in case of loss, and it is on that ground that the government must guarantee itself. That is a kind of responsibility of these particular officials. It is not the government exactly as in the state guaranty scheme. It is merely a coercive mutual insurance. I believe in mutual insurance and in coercive insurance. I move to lay this amendment on the table.

Upon which the yeas and nays were regularly demanded, taken, and resulted—yeas 53, nays 40, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Miller, Crawford,
Baum,	Harris, Ashtabula,	Miller, Ottawa,
Beatty, Morrow,	Harris, Hamilton,	Nye,
Brattain,	Harter, Stark,	Peters,
Brown, Highland,	Holtz,	Redington,
Brown, Lucas,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Rorick,
Cassidy,	Jones,	Shaw,
Collett,	Kehoe,	Smith, Hamilton,
Colton,	Kerr,	Stalter,
Cunningham,	Knight,	Stevens,
Earnhart,	Kramer,	Taggart,
Eby,	Lampson,	Tallman,
Elson,	Longstreth,	Walker,
Fackler,	Ludey,	Weybrecht,
Farnsworth,	Matthews,	Wise,
Fess,	Mauck,	Woods,
Fox,	McClelland,	

Those who voted in the negative are:

Beatty, Wood,	Harbarger,	Pierce,
Bowdle,	Henderson,	Roehm,
Brown, Pike,	Hoffman,	Shaffer,
Cordes,	Hoskins,	Smith, Geauga,
Crosser,	Keller,	Stewart,
DeFrees,	Kilpatrick,	Stilwell,
Donahey,	Kunkel,	Stokes,
Doty,	Lambert,	Tannehill,
Dunlap,	Malin,	Tetlow,
Farrell,	Moore,	Thomas,
FitzSimons,	Okey,	Watson,
Fluke,	Peck,	Winn,
Hahn,	Pettit,	Mr. President.
Halenkamp,		

The motion was agreed to.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

At end of proposal strike out the period and insert comma and add: "and provided further, no person, partnership, association or corporation, not organized under the laws of this state or of the United States, shall use the words 'bank' or 'banker' as a designation or name under which business may be conducted in this state, unless they first submit to inspection, regulation and examination as provided or may be provided under the banking laws of this state."

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. Woods was recognized.

Mr. PECK: Will the gentleman yield to a motion to recess?

Mr. WOODS: Yes.

Mr. PECK: I move that the Convention recess until tomorrow morning at ten o'clock.

The motion was lost.

Mr. PECK: All right; good-night, I am going.

Mr. WOODS: This amendment means just what it says. You all know there are three kinds of banks in this state: First, national banks, which are examined under the laws of the United States; second, state banks, subject to the inspection and regulation under the laws of the state of Ohio; third, private banks. The number of these banks is just about the same in the state of Ohio. The private banks are not regulated by any law of any kind. I have a right to stick up over any door of any place that I own or rent "Farmers Savings Bank", or "Woods Savings Bank", or any other kind of a "bank" I see fit. This amendment provides that before I commenced doing business as a banker, unless I have a charter from the state of Ohio or the United States, I must submit to an examination, inspection and regulation under the banking laws of this state, and I could not use the word "bank" or "banker" in doing any such business unless I do so submit. This is simply to make me, or any other man who goes into the banking business, do business under my real name and not under some other name. It will not hurt anybody unless he is trying to do business under a name that he should not bear. I am not trying to put anything over on anybody, but I want the people of the state to face the music and do business in their own names. I have a right to lend money, but I ought not to be permitted unless I am inspected by the state or United States to use the word "bank" or "banker".

Now this can not be taken care of any place in the constitution except here. I was a member of the house when we passed the bank inspection bill, but we couldn't take care of the private banks. The people of this state—the ordinary individuals—never stop to think there is a difference between a state, national and private bank. They see "Bank" over the front door and they go in there and leave their money. Some private banks are all right and there won't be any trouble about standing the inspection from banks that are all right. It is those that are not all right that can't stand the inspection. I am now a receiver in bankruptcy of a private bank where a man went to Texas with about \$60,000 of the money of the people in my county. All the money he left was two counterfeit silver dollars. If there is any good we can do for the people of this state it is to stop the people from doing business under names of this kind when they ought not to do it. They can still do a banking business under this; it won't prohibit them from doing that, but it will prohibit them from using the words "bank" and "banker".

Mr. HALFHILL: Do I understand the gentleman to say that the legislature could not make the provision that nobody could use the word "banker"?

Mr. WOODS: I think that is right.

Mr. HALFHILL: It certainly is within the legislative power to do that.

Mr. WOODS: We tried and we came to the conclusion we could not do it.

Mr. NYE: I am a member of the Banking committee. This whole matter of private banks was considered by the Banking committee and it was thought best that this Constitutional Convention ought not to put anything into the constitution that would recognize the private banks, and therefore we left it out. I therefore move that the amendment be laid on the table.

Mr. WOODS: And on that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 26, nays 67, as follows:

Those who voted in the affirmative are:

Bowdle,	Hoskins,	McClelland,
Brattain,	Johnson,	Nye,
Cassidy,	Johnson, Madison,	Pierce,
Cordes,	Johnson, Williams,	Redington,
Cunningham,	Jones,	Smith, Hamilton,
Eby,	Kehoe,	Stalter,
Halfhill,	Kerr,	Stevens,
Harris, Hamilton,	Knight,	Wise.
Harter, Stark,	Malin,	
	Matthews,	

Those who voted in the negative are:

Anderson,	Fluke,	Peters,
Antrim,	Fox,	Pettit,
Baum,	Hahn,	Rockel,
Beatty, Morrow,	Halenkamp,	Roehm,
Beatty, Wood,	Harbarger,	Rorick,
Brown, Highland,	Harris, Ashtabula,	Shaffer,
Brown, Lucas,	Henderson,	Shaw,
Brown, Pike,	Hoffman,	Smith, Geauga,
Campbell,	Holtz,	Stewart,
Collett,	Keller,	Stilwell,
Colton,	Kilpatrick,	Stokes,
Crosser,	Kramer,	Taggart,
DeFrees,	Kunkel,	Tallman,
Donahey,	Lambert,	Tannehill,
Doty,	Lampson,	Tetlow,
Dunlap,	Longstreth,	Thomas,
Earnhart,	Ludey,	Walker,
Elson,	Mauck,	Watson,
Fackler,	Miller, Crawford,	Weybrecht,
Farnsworth,	Miller, Ottawa,	Winn,
Farrell,	Moore,	Woods,
Fess,	Okey,	Mr. President.
FitzSimons,		

So the motion to table was lost and a further vote being taken the amendment was agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Defiance.

The amendment was not agreed to.

Mr. TALLMAN: I have an amendment.

The amendment was read as follows:

After the word "shares" at the end of line 11 insert the following: "provided that the stockholders of building associations, that do a banking business, shall be liable in an amount equal to the amount paid in on their stock, in addition to the amount so paid in."

The PRESIDENT: The question is on the adoption of this amendment.

Mr. STOKES: I move that the amendment be laid on the table.

Mr. TALLMAN: I have the floor. I have not yielded it yet, and the gentleman making the motion to table it is not in order.

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. President and Gentlemen of the Convention: The representatives of state banks we have here who are engaged in the banking business have said they are in favor of double liability being imposed on their stockholders because it gives additional credit and solidity. It puts them more upon a par with national banks. It therefore has a tendency to draw business and depositors to their institutions.

Those who borrow money from them are required to give security, and it is certainly right that the depositor who deposits his money in a state bank (often without any interest) should have for his security not only the assets of the bank, but the personal liability of the stockholders as well, to the extent of the stock owned by them.

Why should any exception be made of building and loan associations who do a banking business? The stockholders in these associations should be subject to a double liability, to the amount at least that they have paid in on their stock. The association receives money on deposit, very frequently without paying any interest at all, and sometimes a mere nominal interest. The money so received, the association lends to home builders (often at seven per cent) and takes a mortgage security upon their property, requiring the home builder to pay the cost of furnishing an abstract of his title in addition. The profits derived from the loan of money deposited in these associations by persons who are not stockholders and who have no interest in the association is shared by the stockholders of the association, just the same as in the case of stockholders of state banks. Now there is no difference. This Convention proposes to make a difference. To discriminate against one and favor the other, to burden the stockholders of one that does a banking business with a double liability and let the stockholders in the building and loan associations that do a banking business go free, no matter how extensive the banking business such associations may do, is not just. It is not proposed by this amendment to make the stockholders of building and loan associations liable for any double liability except for deposits made with it, or for money borrowed by it, to be reloaned again at a higher rate of interest, and I confess that I am not able to see the propriety of saddling this double liability upon the stockholders of all corporations doing a banking business except one. On the contrary, the double liability should apply to all corporations that do a banking business.

Mr. WALKER: I move the previous question.

Mr. WINN: I demand the yeas and nays.

Mr. ELSON: Let us take a rising vote on it.

The PRESIDENT: Who joins in the demand for the yeas and nays? The yeas and nays are not demanded. All those in favor of ordering the main question will rise to be counted and the contrary will rise.

The main question was ordered by a vote of 74 to 7.

Mr. WINN: It requires a two-thirds majority.

Mr. LAMPSON: It requires two-thirds of those voting.

The PRESIDENT: The motion for the previous question is carried and the question is first on the adoption of the amendment offered by the member from Belmont.

A vote being taken the amendment was not agreed to. The PRESIDENT: The question is now on the adoption of the proposal as amended.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 23, as follows:

Those who voted in the affirmative are:

Anderson,	Fluke,	Miller, Ottawa,
Antrim,	Fox,	Nye,
Baum,	Hahn,	Peters,
Beatty, Morrow,	Halenkamp,	Pettit,
Beatty, Wood,	Halfhill,	Redington,
Bowdle,	Harbarger,	Rockel,
Brown, Highland,	Harris, Ashtabula,	Rorick,
Brown, Lucas,	Harris, Hamilton,	Shaw,
Brown, Pike,	Henderson,	Smith, Geauga,
Campbell,	Holtz,	Smith, Hamilton,
Collett,	Hoskins,	Stewart,
Crosser,	Johnson, Williams,	Stilwell,
Cunningham,	Keller,	Taggart,
Donahey,	Kerr,	Tallman,
Dunlap,	Kilpatrick,	Tannehill,
Earnhart,	Knight,	Tetlow,
Eby,	Kunkel,	Thomas,
Elson,	Lambert,	Walker,
Fackler,	Lampson,	Watson,
Farnsworth,	Ludey,	Weybrecht,
Farrell,	McClelland,	Wise,
Fess,	Miller, Crawford,	Woods.

Those who voted in the negative are:

Brattain,	Jones,	Roehm,
Cassidy,	Kehoe,	Shaffer,
Cordes,	Longstreth,	Stalter,
Doty,	Matthews,	Stevens,
FitzSimons,	Mauck,	Stokes,
Harter, Stark,	Moore,	Winn,
Hoffman,	Okey,	Mr. President.
Johnson, Madison,	Pierce,	

The roll call was verified.

So the proposal passed as follows:

Proposal No. 93—Mr. Earnhart. To submit an amendment to article XIII, section 3, of the constitution.—Relative to the protection of bank and other deposits.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value, thereof, in addition to the amount invested in such shares, and provided further, no person, partnership, association or corporation, not organized under the laws of this state or of the United States, shall use the words "bank" or "banker" as a designation or name under which business may be conducted in this state, unless they first submit to inspection, regulation and examination as provided or may be provided under the banking laws of this state.

Petitions and Memorials.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Indefinite leave of absence was granted to Mr. Leete.

Leave of absence for the remainder of the week was granted to Mr. Dwyer.

Leave of absence for Thursday and Friday was granted to Mr. Tallman.

Leave of absence for Wednesday was granted to Mr. Ludey.

PETITIONS AND MEMORIALS.

Mr. Matthews presented the petition of Mrs. L. C. Thomas and one hundred four other citizens of Putnam county, asking for woman's suffrage; which was referred to the committee on Equal Suffrage and Elective Franchise.

Mr. Anderson presented the petition of J. J. Hill and sixty other citizens of Struthers, protesting against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Anderson presented the petition of Mrs. J. H. Bowden and other members of the Clio club, of Youngstown, relative to reading the Bible in the public schools; which was referred to the committee on Education.

Mr. Campbell presented the petition of J. L. Cailey and other citizens of Henry county, protesting against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Bigelow presented the petition of the Hartwell Literary club, relative to women being appointed to of-

fice in institutions where women and children are involved; which was referred to the committee on Legislative and Executive Departments.

Mr. Antrim presented the petition of W. H. High and seventy-eight other citizens of Van Wert, protesting against the manufacture, sale and distribution of cigarettes; which was referred to the committee of the Whole.

Mr. Bigelow presented the petitions of the Seventh-Day Adventist churches, of Bellefontaine; of Columbus; of Mansfield; of Leesburg; of Cincinnati; of Chillicothe; of Piqua; of Mt. Vernon; of Medina; of Derwent; of New Philadelphia; of Akron; of Waterford; of Defiance; of Lake View; of Alliance; of Locust Point; of Newark; of Wheelersburg; of Canton; of Walnut Grove; of Zanesville; of Charloe; of Killbuck, protesting against the passage of Proposal No. 321; which were referred to the committee on Education.

Mr. Bigelow presented the petition of the United Shoe Workers of America, relative to private detective agencies; which was referred to the committee on Miscellaneous Subjects.

Mr. DOTY: I move to adjourn.

Mr. LAMPSON: I move that we recess until 9:30 o'clock tomorrow morning.

Mr. DOTY: I move that we adjourn until 10 o'clock in the morning.

The motion to adjourn was carried, and the Convention adjourned until tomorrow morning at 10 o'clock.

FIFTY-FIFTH DAY

MORNING SESSION.

Columbus, Ohio, Thursday April 11, 1912.

The Convention met pursuant to adjournment and was called to order by the president.

The journal of yesterday was read and approved.

Mr. EVANS: Several weeks ago I introduced Proposal No. 86 and it was referred to the committee on Taxation. I now ask that Proposal No. 86 be recalled from the committee on Taxation and placed at the head of the calendar.

The PRESIDENT: The member from Scioto under the rule calls up Proposal No. 86, and the question is on the engrossment of that proposal.

Mr. WOODS: There are something over three hundred proposals and if we commence this sort of work there is no telling when matters will be considered. I think we should stop this sort of thing right here.

Mr. JOHNSON, of Williams: I am opposed to this procedure. This calendar might as well be indefinitely postponed if matters are to be taken up in this manner. I hope the proposal will not be recalled.

Mr. KING: The member from Scioto [Mr. EVANS] has a right under the rule to call for the return of Proposal No. 86 from this committee, it having been there over two weeks.

The PRESIDENT: The right has been exercised before in some other matters.

Mr. WOODS: I move that the proposal be indefinitely postponed.

Mr. JOHNSON, of Williams: I second the motion.

Mr. DOTY: I was reading over in the corner a communication from my constituents when this matter was precipitated upon the Convention. Of course, the question of indefinite postponement goes to the merits of this proposal. I want to state for the committee on Taxation, of which I have the honor of being chairman, that the committee has had as many meetings—perhaps more; certainly as many meetings—and I think more public hearings than any other committee in this Convention. I do not say that to cast any reflection on any other committee, but simply as a matter of fact. I think if I had the committee's roll call I could show that the attendance upon our meetings has been very large. Out of twenty-one on the committee the average attendance has been from fourteen to sixteen. We have met sometimes three times a day, and we have attempted to give a hearing to every member who has introduced a proposal. It is barely possible that one or two proposals introduced toward the end have not had that consideration, but we have attempted to do it for all the members. This proposal was introduced somewhat early. The member from Scioto [Mr. EVANS] had a hearing, and there was a report signed at one time upon this particular proposal by our committee to the effect that it should be reported to the Convention without recommendation. It was our purpose at that time to report this proposal back for the

consideration of the Convention without prejudice to the proposal itself and without committing any of the members for or against the proposal itself. After that report was agreed to the committee took other action and agreed to report with recommendation certain other proposals with some modifications which were to be prepared by a sub-committee. That sub-committee is at work upon the proposal now. This particular proposal was looked upon by some of the members of the committee—speaking generally and not as to detail—as being the ideal proposal before our committee, but there were not enough members of the committee to agree to make that favorable report. I myself am one of those who preferred the Evans proposal to any other particular proposal, and for the reason that this proposal may be said to include every proposal that has been introduced in this Convention upon the subject of taxation, in some way or other, except two proposals, one introduced by the member from Ashtabula [Mr. LAMPSON] and one by the member from Allen [Mr. HALFHILL], which called for the inhibition of the sigle tax.

I believe there were also two others, a proposal by the member from Warren [Mr. EARNHART] and a proposal from the member from Franklin [Mr. HARBARGER] looking toward the restoration of public bonds on the tax list, and this Proposal No. 86 as it now stands does not include the principles they were advocating.

At the time we intended to bring this proposal for the consideration of the Convention to carry out the principle of it, I had in mind to offer an amendment which would take in the principle proposed by Mr. Earnhart and Mr. Harbarger and any others who desired to restore bonds to the tax list. This proposal leaves the question of taxation entirely to the general assembly. I have not the exact facts here now as to just how many states do that, but as I recall the figures of the thirteen original states eight still maintain the principle of allowing the legislature to tax in any way it sees fit, and that sort of program in those eight states has been going on for many years, over one hundred years in most of them. As I recall it, that provision comes down from the original constitution and that part of it has been perpetuated through any revisions made since that time. No person who appeared before our committee has been able to show that any legislature in any one of those states has done any particular harm or invaded the rights of the people, and some of them have made progress in tax reform and some of them have not. The power of taxation, however, is not limited in any of those states. The United States constitution only provides two limitations on the taxing power of congress. Ohio has a string of them. Now whether you believe the present system is a good system or that some other system is a better system, it strikes me that at least the best way of carrying on taxation is to make it easy to experiment. That cannot be done with an iron-clad rule, such as we have now. We call it the uniform rule. It is not uniform and it never was uniform. It never can be made uniform. It is called the uniform rule or general property tax.

Proposal No. 86, Relative to Taxation.

Mr. LAMPSON: Don't you think it would leave every legislature open to the opportunity to make a new experiment?

Mr. DOTY: That is exactly what I do think, and I want to say if we were to pass a law providing that all the chemists in the world could experiment in only one way the chemists would never put out anything new.

Mr. LAMPSON: Would not that very fact of itself continue to affect the value of all property all of the time, fluctuating up and down according to the proposed system of taxation in the legislature?

Mr. DOTY: The fluctuation would be in proportion to how much experimenting we did. The state of Rhode Island has no limitation on taxation and the fluctuation there has not been any greater than in this city.

Mr. LAMPSON: The policy has been pretty well settled?

Mr. DOTY: Not so well settled but that they have at times proposed systems that played hob with their present system. It they had the limitations that we have they couldn't make any change, and couldn't do anything but to follow in one rut. If the chemists had had to do that we would never have had any discoveries worthy of the name in that line.

Mr. HARRIS, of Hamilton: As chairman of the Taxation committee, are you willing to agree that this proposal be taken from the Taxation committee and be discussed now in view of the fact that two sub-committees are now considering the question of uniform taxation and classification and that they are expected to report back to the full committee with instructions to report out one of those propositions?

Mr. DOTY: I do not get the specific question.

Mr. HARRIS, of Hamilton: As chairman of the Taxation committee are you willing that the proposal be taken from the committee and be discussed now?

Mr. DOTY: I have no objection individually if the Convention has none. As I understand the situation the proposal is before the Convention and a motion has been made to indefinitely postpone the proposal. I don't think this proposal should be taken from the committee. We have had no opportunity to make a report on it.

Mr. HARRIS, of Hamilton: Are you going to argue the question of taxation on the propriety of the proposal's being indefinitely postponed?

Mr. DOTY: It is not for me as chairman of the committee or for any member to discuss the action of the member from Scioto [Mr. EVANS] when he is acting in his own right. The matter is past me and it is before the Convention.

Mr. LAMPSON: And the immediate question is a motion to indefinitely postpone.

Mr. DOTY: And that brings up the whole question.

Mr. LAMPSON: To a limited extent.

Mr. DOTY: To any extent that the Convention wants to discuss it.

Mr. WOODS: What do you want to do with the proposal?

Mr. DOTY: I want to discuss it.

Mr. WOODS: You don't want to pass on it and act on it right now?

Mr. DOTY: I have no choice; the member from Scioto [Mr. EVANS] calls it up.

Mr. LAMPSON: If the Convention refuses to indefinitely postpone, certainly.

Mr. DOTY: The whole question is whether we shall call this up now and discuss it and that goes to the merit.

Mr. LAMPSON: The next question would be whether the proposal should be engrossed.

Mr. DOTY: I think this is a question that the Convention understands pretty well.

Mr. KING: Will you yield for a motion to refer to the committee on Taxation?

The PRESIDENT: I recognize the gentleman from Hamilton [Mr. PECK].

Mr. PECK: Has not the committee on Taxation reported to the Convention some other proposal involving substantially this same question?

Mr. DOTY: I think I have stated that we had a sub-committee at work on the proposal of Judge Worthington, and Judge Worthington being sick this week we did not get a report on that.

Mr. PECK: Is not the report and the discussion now, before we have a report from the committee, premature?

Mr. DOTY: That is a question of opinion. The motion before the Convention involves the subject matter of this proposal. I am not trying to precipitate myself.

Mr. FESS: As I understand the rules of the Convention permit Captain Evans to call out this proposal from the committee. It is, therefore, before the Convention and the motion by the member from Medina [Mr. WOODS] to postpone it indefinitely must open the entire question to discussion. That is according to parliamentary law, and if the motion is carried the whole thing is defeated, and this means that this motion to postpone indefinitely supersedes all other motions, and we are in the Convention now to discuss this question simply on the opening up of the entire matter. Therefore, would it not be proper to withdraw the motion to postpone indefinitely and to refer it to the committee? We are not here now to discuss it and there is no way to avoid it.

Mr. DOTY: I can not assume in advance what the Convention is going to do, but if they are going to indefinitely postpone a proposal that has merit in it without knowing what the merit is, I think I should explain the proposal.

Mr. WOODS: If the Convention is willing to recommit, are you willing that it be recommitted?

Mr. DOTY: I am always willing. I am always willing to discuss a matter, too. I don't care much about it either way.

Mr. ELSON: We expect to spend several days discussing taxation. It is the biggest thing before us. Now shall we have two discussions, one now and another later? It seems to me that the motion to recommit is the proper thing.

Leave of absence was here granted the delegate from Erie [Mr. KING] until Tuesday.

Mr. DOTY: I do not want to do anything that will tend to put this proposal out of business. Judge Worthington's proposal is reported back to the committee and a majority have agreed to report it. Of course, that is all subject to the approval of the majority of the sub-committee. Mr. Worthington, Mr. Colton and Mr. Red-

Proposal No. 86, Relative to Taxation.

ington are the members, and we expect to be able to sign their report. If that proposal should be defeated it may be that our committee may feel that it is our duty to bring this proposal, or some other similar proposal, to the attention of the Convention, because, as the member from Athens has said, I think we all fully agree that this question of taxation is one of tremendous importance. Our committee has given no end of time to the consideration of all these proposals, and we did not anticipate that any member would take this proposal away from the committee. We have not reported any back for indefinite postponement, as other committees have, because we did not want to put upon the record anything that they might object to, and I think nearly every member who has a proposal before the committee understands that situation. We did not know that there was any likelihood of anybody taking a proposal away from us.

Mr. COLTON: Are you willing that this motion to postpone shall be withdrawn and that a motion shall be made to recommit to the committee?

Mr. DOTY: That is a question with Captain Evans. He should answer it. I am willing to yield long enough for Captain Evans to say what he wants done.

Mr. EVANS: I have done this at this time at the request of a number of members of the Convention. I am the author of this proposal and Mr. Doty from Cuyahoga has just said that it covers and embraces every proposition which has been put in or could be put in. It covers the whole subject. It is the result of forty years' study, and it embraces what some of the most wealthy and prosperous states have and what they have flourished under. It covers the whole subject of what ought to be or may be exempted. I have not examined any other proposal that covers, in my opinion, the matter to the same extent. I have looked over the calendar and I see a number of small subjects on the calendar. It is time that we should have a great subject for next week and this is one of them. In my judgment it ought to be before the Convention at this time, and in order to have one great subject for next week I have called this proposal out, and I would like to have it brought up and placed at the head of the calendar. That was my object in making the motion.

Mr. DOTY: Does the member object to recommitting?

Mr. EVANS: I desire to have it before the Convention next week.

Mr. DOTY: Do you make that motion?

Mr. EVANS: You can make it. You understand it thoroughly.

Mr. DOTY: I wish I did.

Mr. RILEY: Does the chairman see any objection to taking up the matter now?

Mr. DOTY: I have no objection to any course. If we want to do what the members suggest, I want to carry it out.

Mr. RILEY: Both sides seem to be ready, and I don't think there is any necessity for postponing or referring. You don't think any further light will be cast on it?

Mr. DOTY: The situation to me is this: This matter is before the Convention, and while I am precipitated into this thing and haven't any written speech, I probably never would have. There are some things about this mat-

ter I am as well prepared on as I ever shall be, and the matter is before the Convention. I do not, however, seem to be able to get anybody interested in the matter.

Mr. WOODS: I said that I would have my motion withdrawn and then we could have a motion to recommit.

Mr. DOTY: The member from Scioto is the one to answer that. The matter is here and I have no control over it.

Mr. JOHNSON, of Williams: If the proposal is re-committed would it come out next week?

Mr. EVANS: I have moved to withdraw this from the committee. I wish that this proposal might come out of the committee and be placed at the head of the calendar. That was the motion I made.

Mr. LAMPSON: Before it can be placed at the head of the calendar it would have to be engrossed.

Mr. DOTY: Have I the floor?

The PRESIDENT: The member from Allen was seeking the floor. I will recognize the member from Allen.

Mr. HALFHILL: As chairman of the committee on Taxation, Mr. Doty, are you not able to commence and discuss this question now and go right on?

Mr. DOTY: About as ready and able as I ever shall be. I am willing and ready to talk taxation on very slight provocation.

Mr. HALFHILL: Our calendar seems to be increasing right along and the day of adjournment is not far off. If this matter is now before the Convention why not discuss it? Is it a discourtesy to your committee to go on into it?

Mr. DOTY: It is not a question of courtesy or discourtesy. The gentleman from Scioto [Mr. EVANS] is within his rights.

Mr. HALFHILL: If we bring up a proposal and discuss it, is it not open to amendment by your committee?

Mr. DOTY: Yes; any kind of parliamentary proposition any member may put up. The whole question is before the Convention. The question of the merits of this proposal is now before the Convention.

Mr. HALFHILL: You are agreed and the author of the proposal agrees. Don't you think that the Convention had better agree to go ahead?

Mr. DOTY: I don't know what the unexpressed opinion is.

Mr. EVANS: Will you yield to a motion to postpone until Tuesday and to make it a special order?

Mr. DOTY: I am willing to yield, but not my rights to discuss.

The PRESIDENT: The member from Scioto moves that this matter be postponed until Tuesday and made a special order for that day.

Mr. DOTY: Do I have the floor if that motion is voted down?

Mr. ANDERSON: If this is made a special order and goes on the calendar it does not mean that we have taken any action on the merits, does it?

Mr. DOTY: No.

Mr. ANDERSON: It simply means that whatever we have finally adopted will bear the name of Evans?

Mr. DOTY: Not necessarily so. If he is as smart as you are, it will. If somebody else is smarter, it won't.

The PRESIDENT: The member from Scioto moves that the proposal be engrossed and placed at the head of

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the calendar and made a special order for Tuesday at two o'clock.

Mr. LAMPSON: That motion does not take precedence over the motion to commit.

Mr. DOTY: The motion to postpone does.

Mr. LAMPSON: The first part is that it be engrossed.

Mr. WOODS: I am absolutely opposed to the proposal and I do not want to do any thing to let this pass one parliamentary stage.

The PRESIDENT: If this motion is lost, the member from Medina will be recognized to renew his motion.

Mr. THOMAS: Is it in order to move to amend Captain Evans' motion? If so, I move that this proposal be recommitted.

Mr. DOTY: But that is not an amendment.

The PRESIDENT: The question is shall the proposal be engrossed and made a special order for Tuesday at two o'clock?

Mr. LAMPSON: And on that the yeas and nays are demanded.

Mr. DOTY: I didn't understand that the member made a motion to engross?

Mr. EVANS: Yes, I did.

Mr. MARSHALL: I would like to amend and make it Monday a week. I feel that I would like to hear all that is said on this taxation question and I cannot be here next week.

The PRESIDENT: The first question is on the engrossment.

Mr. LAMPSON: And on that I have demanded the yeas and nays.

Mr. DOTY: I demand a division of the two questions and upon that I have a few remarks.

Mr. FESS: I would like to know if it is necessary to involve "to engross" in that motion?

Mr. DOTY: No; of course not.

Mr. FESS: I think that is the trouble.

Mr. DOTY: I didn't understand the member to make a motion to engross.

Mr. FESS: Neither did I.

Mr. DOTY: I think the question should be divided and I would like to have it divided.

The PRESIDENT: In view of the explanation made by the vice president I think the question should be, "Shall the question of engrossment of this proposal be made a special order for Tuesday at two o'clock?"

Mr. EVANS: That is all right.

Mr. ELSON: If that carries, will the whole subject of taxation be brought before the Convention and threshed out at that time once for all?

Mr. DOTY: It may be.

Mr. ELSON: It is unusual to do that before a report from a committee.

Mr. DOTY: No, we did that on Mr. Anderson's suggestion as to the liquor proposal.

Mr. LAMPSON: Upon that question I have demanded the yeas and nays.

The yeas and nays were taken, and resulted—yeas 18, nays 80, as follows:

Those who voted in the affirmative are:

Anderson,	Beyer,	Cassidy,
Antrim,	Bowdle,	Cunningham,
Beatty, Morrow,	Brown, Highland,	DeFrees,

Evans,
Fackler,
Fess,

Fox,
Hahn,
Halfhill,

Jones,
Kerr,
Malin.

Those who voted in the negative are:

Baum,
Beatty, Wood,
Brown, Pike,
Campbell,
Cody,
Collett,
Colton,
Cordes,
Crites,
Crosser,
Davio,
Donahey,
Doty,
Dunlap,
Dunn,
Earnhart,
Eby,
Elson,
Farnsworth,
FitzSimons,
Fluke,
Halenkamp,
Harbarger,
Harris, Ashtabula,
Harris, Hamilton,
Harter, Stark,
Henderson,

Hoffman,
Holtz,
Hursh,
Johnson, Madison,
Johnson, Williams,
Kehoe,
Keller,
Kilpatrick,
Knight,
Kunkel,
Lampson,
Leslie,
Longstreth,
Marshall,
Matthews,
Mauck,
McClelland,
Miller, Crawford,
Miller, Fairfield,
Miller, Ottawa,
Moore,
Nye,
Okey,
Partington,
Peck,
Peters,
Pierce,

Read,
Redington,
Riley,
Rockel,
Roehm,
Rorick,
Shaffer,
Shaw,
Smith, Geauga,
Smith, Hamilton,
Stalter,
Stamm,
Stevens,
Stewart,
Stokes,
Taggart,
Tannehill,
Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Watson,
Winn,
Wise,
Woods.

The motion was lost.

Mr. DOTY: I cannot interpret just what this vote means. If I should interpret, the Convention now decides to start in on taxation and go forward. That is one thing.

The PRESIDENT: The member from Medina [Mr. Woods] withdraws his motion with the understanding that he was to be permitted to renew it or any other motion, and the member from Medina will be recognized.

Mr. DOTY: I am willing to do this if I can maintain what few rights I have left.

Mr. KILPATRICK: A point of order. Who has the floor?

The PRESIDENT: The member from Medina [Mr. Woods].

Mr. WOODS: I move to lay this proposal on the table.

Mr. DOTY: I demand the yeas and nays on that. That is not according to the agreement. That precipitates the whole matter.

Mr. WOODS: I don't want to precipitate it.

Mr. ELSON: May I ask a question?

Mr. DOTY: I was trying to get out of a tangle and I was interrupted with a point of order.

Mr. WOODS: So that there can be no misunderstanding I want to move to postpone indefinitely.

Mr. DOTY: Now I will explain. The vote we have had and the one we are going to have will interpret what the Convention desires. I move that this proposal be recommitted to the committee on Taxation and on that I demand the yeas and nays.

A vote being taken viva voce the president announced that the nays seemed to have it.

The PRESIDENT: Does the member insist upon his demand for the yeas and nays?

Mr. DOTY: Yes.

The PRESIDENT: It has not been seconded.

Proposal No. 86, Relative to Taxation — Compulsory Attendance at Elections.

Sufficient delegates joined in the call to make it regular.

The yeas and nays were taken, and resulted—yeas 87, nays 19, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Peck,
Antrim,	Harris, Ashtabula,	Peters,
Baum,	Harris, Hamilton,	Pettit,
Beyer,	Henderson,	Pierce,
Bowdle,	Hoffman,	Read,
Brattain,	Holtz,	Redington,
Brown, Highland,	Johnson, Madison,	Rockel,
Brown, Lucas,	Jones,	Roehm,
Brown, Pike,	Kehoe,	Rorick,
Campbell,	Keller,	Shaffer,
Cody,	Knight,	Shaw,
Collett,	Kramer,	Smith, Geauga,
Colton,	Kunkel,	Smith, Hamilton,
Cordes,	Lambert,	Stalter,
Crites,	Lampson,	Stamm,
Cunningham,	Leslie,	Stewart,
Davio,	Longstreth,	Stilwell,
DeFrees,	Ludey,	Stokes,
Dunlap,	Marshall,	Taggart,
Dunn,	Matthews,	Tannehill,
Eby,	Mauck,	Tetlow,
Elson,	McClelland,	Thomas,
Farnsworth,	Miller, Crawford,	Ulmer,
Farrell,	Miller, Fairfield,	Wagner,
Fess,	Miller, Ottawa,	Walker,
Fluke,	Moore,	Watson,
Fox,	Nve,	Winn,
Hahn,	Okey,	Wise,
Halenkamp,	Partington,	Woods.

Those who voted in the negative are:

Beatty, Wood,	Fackler,	Kerr.
Cassidy,	FitzSimons,	Kilpatrick,
Crosser,	Halfhill,	Malin,
Donahey,	Harter, Stark,	Riley,
Doty,	Hursh,	Stevens,
Earnhart,	Johnson, Williams,	Mr. President.
Evans,		

So the motion was carried.

The PRESIDENT: The next thing in order is Proposal No. 211—Mr. Taggart, relative to the elective franchise.

The proposal was read the second time.

Mr. ANDERSON: Will the gentleman please yield for a second to allow me to ask for unanimous consent to move that 2,500 copies of the Peck proposal relative to the judiciary be printed as we have passed it?

Consent was given and the motion was carried.

Mr. TAGGART: Mr. President and Gentlemen of the Convention: Let me say in the outset that this proposal, although it seems to come from the committee simply for the purpose of consideration by the Convention, had a majority of the committee in favor of its adoption. The minority, not desiring to present a minority report and yet not willing to concur in the majority report, suggested that the proposal be sent to the floor of the Convention for the consideration of the Convention itself. It is needless to say that this is the most important proposal that has up to this time been before the Convention.

The constitution of the United States in its opening words declares:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the com-

mon defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity do ordain and establish this constitution for the United States of America.

And the present constitution of this state, under which we have lived for sixty years, provides that "We the people of the state of Ohio * * * do establish this constitution." In section 2 of the bill of rights it is provided that "All political power is inherent in the people" and "Government is instituted for their equal protection and benefit."

In many of the states of the Union similar declarations are made in their constitutions.

Now the question occurs, who are we to understand are included in the term "the people"? For it is by these words that all conjure when they go upon the hustings. Everybody is in favor of "the people," but whom do you mean when you speak of "the people"? In whom is the sovereign power of a state reposed when it is said to be reposed in "the people"? It is not reposed, I submit, in the voters, or those designated as representatives of the people, because the people in the aggregate include male and females, infants and adults, and in this aggregation the sovereign power of the state resides. It is only a few of the whole people who are the delegated persons called on to enact the laws, or to select those who are to enact the laws, to execute the laws and to interpret the laws. So you have at the foundation a delegated portion of the people who exercise the sovereignty, but the sovereignty at all times resides in all the people.

Now it is manifestly impossible that the whole people could exercise this sovereignty, and therefore certain machinery is devised whereby certain individuals are designated to accomplish this result, and the designation of the individuals is what we understand to be the conferring of the suffrage or the elective franchise.

This selection is indeed sometimes very arbitrary and not based at all times on logical reasons. Aliens are excluded, no matter what their moral worth or intelligence may be, and although some of the greatest interpreters of our constitution are foreigners, yet they cannot at any time exercise the right of suffrage or the elective franchise. Females are generally excluded from this right of suffrage. Minors are excluded, although the War of the Rebellion on both sides was fought by boys under the age now fixed for the exercise of this right. The unfortunate, whose reason is partially clouded, for obvious reasons is excluded. So that the number in whom is reposed this trust is comparatively limited. In the state of Ohio in round numbers there are 4,700,000 inhabitants, yet the highest vote ever cast in this state was 1,123,000. Therefore there was but one-fourth of the entire people who exercised this privilege.

Now, it is too often stated that this elective franchise is a mere privilege or right, personal with the individual in whom it is reposed. But it is not a mere right or privilege. It is a trust reposed in this class of inhabitants for the benefit of all the rest of the community—all the rest of the people. There is no legal reason upon which it can be classed or denominated anything other than a trust, obligation or duty. If it is a mere personal right, if it is a mere privilege, you cannot perhaps com-

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pel' it. But it is more than a mere privilege or right; it is a trust or obligation for the benefit of the individual himself and everyone else concerned, within the geographical limits of the state. If it is a mere personal right it can be sold, bartered or given away at the option of the person himself. Yet every state in the Union, when an elector attempts to exercise this as a mere personal privilege by barter or sale, condemns him as a felon and incarcerates him in jails or penitentiaries. If, therefore, gentlemen of the Convention, this is a trust, obligation or duty, then every elector and voter is a trustee for the benefit of himself and everyone else. Where else, gentlemen, can you find a trustee who, violating his trust, failing to exercise his trust, is not called on and compelled to perform that trust.

A trustee of a meager, beggarly sum of ten dollars, if he fails to perform that trust, can be called before a court and compelled to perform it. But here are all the vital interests of the state and of every individual in the state involved and a failure to perform that trust may seriously affect the whole course and progress of a state. That whole course and progress may be impeded or changed by a failure to perform it. What logic is there that argues you cannot compel the performance of that trust so far as you impose it in this proposal, that the elector shall be present and in attendance at all the elections held by authority of law?

Mr. OKEY: Do you think the legislature can enact a law compelling a man to vote?

Mr. TAGGART: No, and this does not compel a man to vote. You cannot compel him to exercise the suffrage by making a choice of men or measures, but you can compel him to be in attendance at the election, and the presumption is, if he is there he will vote.

Mr. ELSON: As a punishment for non-voting, would you contemplate anything in the way of disfranchisement, temporary or permanent?

Mr. TAGGART: That is for the legislature. If you ask for my personal opinion I would have a graded disfranchisement. If a voter fails to attend at one election disfranchise him for the next. I would not fine him or visit on him any pecuniary penalties. I would not have a poll tax, but if he failed to vote at an election I would disfranchise him at the next election. That is a detail that can be worked out in the general assembly. Now, this is not the mere argument of the schools or the sentiment of a mere doctrinaire. It is of practical importance. If you will look to it, you condemn men for selling their votes and yet you can accomplish the same act of corruption by paying a man to refrain from voting or remaining away from the polls; you accomplish at least one-half of the same result. The stay-at-home vote includes largely workmen, farmers, business men and professional men, classes of our citizenship who ought to perform this duty. Professional politicians and office holders and those dependent on them always vote. Take the votes in the various cities of the state, for example. I have compiled a few of them.

In this county in 1906 the vote was 35,000; in 1908, 54,000; in 1910, 45,000. There were 9,000 trustees who failed to perform their duties.

In Hamilton county in 1906, 94,000 voted; in 1908, 114,000 voted; in 1910, 100,000 voted. There were from

13,000 to 20,000 voters who failed to register and failed to perform their duty.

In Lucas county in 1906 there were 24,000 votes cast; in 1908, 39,000; in 1910, 29,000.

In Mahoning county in 1906, 10,000 votes were cast; in 1908, 21,000; in 1910, 15,000. There were from 6,000 to 10,000 voters there who did not vote.

In Montgomery county in 1906 there were 30,000 votes; in 1908, 43,000 votes; in 1910, 37,000 votes; 13,000 votes were short there. Twenty to thirty per cent of the votes were not cast at these elections. We must presume that had the votes been cast the result might have been different and we do not know what serious effects may have resulted from the failure of these men to perform their trust.

The adoption of this proposal would remove all excuse for the use of money at election time under the pretence and guise of securing the attendance of voters, but in fact distributed as a corruption fund.

Mr. HALFHILL: What do you think is the best means to compel the attendance of the voter?

Mr. TAGGART: I think that it is within the wisdom of the legislature to compel attendance, and this will secure the largest attendance.

Mr. BOWDLE: Let us suppose that the republican organization is in charge of a community and the organization should attempt to use the courts for the purpose of disfranchising a man. Would not the republican organization be thereby manufacturing democrats?

Mr. TAGGART: I don't know. That might be a desirable result in some localities. In certain other localities it might be proper for the democrats to produce some republicans.

Mr. FESS: Is there any state in the Union where they have this requirement?

Mr. TAGGART: Not that I know of, and yet that is nothing against this reform. Every reform we have, every salutary law and every salutary constitutional enactment, had a beginning. This is no new doctrine which has suddenly come to plague us or reform this people. I see in the picture group of the general assembly of 1877 a photograph of General Aquila Wiley, one of the greatest soldiers in the state and one of the best lawyers and judges. He introduced a bill in 1872 in the general assembly for the purpose of compelling the electors to attend election. It was argued against his bill that it was unconstitutional because of a penalty fixed for the failure to attend at the election. I am attempting to meet that very objection so that the legislature of the state may and shall provide that all electors shall attend and perform their duty.

Mr. DOTY: Is not the tendency of this sort of a provision toward limitation of the franchise?

Mr. TAGGART: No.

Mr. DOTY: For instance, if we have an election tomorrow in town and sixty per cent of the voters vote and forty per cent do not; the forty percent would be disfranchised.

Mr. TAGGART: Yes.

Mr. DOTY: Then we have lessened the franchise that much. Then we have another election, and if only ninety per cent of those sixty per cent voted that would cut off over five per cent more of the original?

Mr. TAGGART: Your arithmetic is all right.

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Mr. DOTY: So, is not there a tendency toward a limitation of the franchise?

Mr. TAGGART: I think not.

Mr. DOTY: You have admitted my arithmetic is correct?

Mr. TAGGART: But with this law promulgated, and known, the citizens would recognize their civic duty and would perform their civic duty. The records show that within seven or eight per cent of those under compulsory elections attend at the election. They may not vote but they attend, because every citizen will perform his civic duties better if he is compelled to than if he is not.

Mr. DOTY: Is it not a fact that every citizen will attend to his civic duties when you make it easy for him to perform those duties?

Mr. TAGGART: Does he perform his civic duties when he fails to attend?

Mr. DOTY: I mean with reference to voting.

Mr. TAGGART: Does he not perform his civic duties when he pays his taxes, when he is called on jury duty, when he is sent across the state as a witness in a criminal case or twenty or forty miles to testify in a civil case? And yet you compel him to attend, and but few citizens voluntarily pay taxes, serve on juries, or join a sheriff's posse.

Mr. DOTY: I don't deny that we may do it, but I am getting at the advisability of doing it and the effect of it. If my arithmetic is right and we keep on a few years we will cut down the franchise so that only a small part of those who now have the right to vote would still have it.

Mr. TAGGART: No, because with the graded disfranchisement those that were disfranchised the first year could be restored after one year, and having been once disfranchised they will be ready to perform their civic duties. They will not want their rights taken away from them again, and they will be more zealous to perform their duty. Your arithmetic is all right, but your deductions and conclusions are all wrong. Now I need say very little more. It seems to me this ought to receive practically the unanimous indorsement of this Convention and ought to be submitted to the electors of the state, receive their indorsement at the polls and become a part of the organic law of the state. I have trespassed as long as I should and I thank you for your attention.

Mr. WATSON: Does not the right to vote carry with it the duty to vote?

Mr. TAGGART: The right to associate with you or any other citizen carries with it the idea and duty that I shall be a gentleman, but it does not follow that I do at all times perform that duty; so the right and the duty to vote at all times may be co-existent. It is the duty of every trustee to perform his trust, and yet there are recreant trustees. There are stewards who fail to perform their duty.

Mr. BROWN, of Highland: I have thought for a long time that the provision in the constitution for a law to this effect would be a splendid thing, but on reading this proposal I feel that it will not cover that part of the evils which have been most practiced in my observation. Down in my county I have seen on election day scores of voters lined up along the fences and drygoods boxes the whole day long, sitting in

groups to be voted. They were in attendance as required by this proposal, but they were not voting, and under this proposal they would be under no obligation to vote. They were simply holding off the whole livelong day waiting for some one. At the last minute some one appears with a bag full of silver dollars and worms his way through them; in a little while they all are voting. I have seen that done time and time again in Hillsboro, which is in Highland county, adjoining Adams county, and I have always felt the need of some provision that would cure the situation. I believe that this proposal of the gentleman from Wayne [Mr. TAGGART] does not quite reach it. The gentleman stated in his remarks that a proposal which would have for its object the coercion of voters would not be constitutional. I do not know whether it will be constitutional or not under the federal law, but I have taken the risk and I offer an amendment to that proposal.

The amendment was read as follows:

Strike out lines 4 and 5 and insert: "The general assembly shall by appropriate legislation, compel participation of all qualified electors in all elections held by authority of law."

Mr. BROWN, of Highland: I wish to state further that those persons whom I have seen by the scores waiting all day to be purchased, and whom I have seen purchased outright, open and above board, without any disposition to hide it, year after year, would under this proposal be cut out of that nefarious method of having their votes bought. They would be compelled to vote without the persuasion of which they have usually been the recipients.

Mr. MAUCK: You suggest that the general assembly shall do certain things. How are you going to enforce your command?

Mr. BROWN, of Highland: In this case I think the demand would be made good by public opinion. I do not know of any way of compelling the legislature to do a thing, but it would be the duty, under the constitution, of the legislature to enact such laws and it would be their sworn duty. I believe public opinion would compel the legislature to enact the law.

Mr. DOTY: The action of the Convention the other day seemed to kill the short ballot proposal and that necessitates our passing this particular proposal. We have, at least so far as we can judge the action of the Convention, killed the short ballot, although the Convention may reverse the action of the other day.

Mr. HARRIS, of Ashtabula: Does referring a matter mean that it is killed?

Mr. DOTY: Sometimes.

Mr. HARRIS, of Ashtabula: Does the referring or recommitting of the taxation proposal mean that it is killed?

Mr. DOTY: Not necessarily, but it may.

Mr. HARRIS, of Ashtabula: You said that the short ballot was killed?

Mr. DOTY: No; I didn't say that. I said so far as I can judge the temper of the Convention was that the short ballot proposal was killed. I may be at least allowed to judge that, although my judgment may be poor, and for the purpose of my remarks I am still going on to judge it that way. Assuming that my judgment is

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correct and if the short ballot is killed—and I am sure the gentleman has enough imagination left that he can imagine with me on that proposition—assuming that is the temper of the Convention, that the short ballot proposal is or will be killed, I think we ought to put this proposal in the constitution. If we make it as difficult as possible for the citizens to vote by making the ballot so long that it is difficult to vote, we must have a spur behind them to make them perform the duty. I am in favor of this proposal. I was in favor of the short ballot, and, speaking consistently—as we are advised once in a while—every body who was in favor of the conglomerate ballot ought to be in favor of a burr under the saddle to make people use that ballot. Whenever the city of Cleveland has an election in which the people are interested in the election of one man, even, when there is no long ballot to be voted, but the whole of it hinges upon one man, there is no trouble in getting the people out to vote. The people come out if the issues are drawn, and if they are of sufficient importance to elicit the support and antagonism of the people they will come out and vote if you make it easy for them to register their will; but when you make a ballot long and the issues are distributed all up and down the ballot, the people won't vote. The vote at the last election shows just how they varied. The majorities of the successful candidates varied from eight thousand to over one hundred thousand and they were scattered, showing a grouping on the part of the people to do something, to meet this issue here and that issue there, and select this man and that man. But it was so difficult that apparently only a few could register their desires. And so the people will stay at home when you have that kind of a conglomerate ballot. They say, "What is the use? The politicians have fixed the tickets up anyhow. We have no voice and it makes no difference who is elected and we will stay at home."

Mr. HALFHILL: Do you think there is any difference in the short ballot between a state ticket and municipal ticket which are long conglomerated ones?

Mr. DOTY: There is no difference in principle.

Mr. HALFHILL: Is there any practical difference whatever?

Mr. DOTY: In the municipality, even if you do have a long ballot, you are much more apt to know everybody on the ballot, even if there are twenty-five, than you are to know twenty-five or thirty on a party ticket when they are scattered all over the state.

Mr. HALFHILL: Do you recognize that one may favor a short ballot and object to this proposition?

Mr. DOTY: I can readily see that some citizens might have those notions, but in the matter of consistency I cannot indorse their consistency.

Mr. HARRIS, of Hamilton: I rise to a point of order. The discussion is on Mr. Taggart's Proposal, No. 211, and not on the short ballot.

The PRESIDENT: The point of order is not well taken.

Mr. DOTY: The member from Hamilton was against the short ballot and he does not like to hear it mentioned. Of course the discussion is upon this proposal, but if there is any subject in this state, whether we have considered it or not, that touches on this, it is

within the province of any member to bring it up in the discussion.

Mr. BEATTY, of Wood: I rise to a point of order. We have some rules as to time and I have been watching the clock.

The PRESIDENT: The point is not well taken.

Mr. DOTY: How much time have we?

The PRESIDENT: We are talking under the fifteen-minute rule.

Mr. DOTY: If I had been let alone I would have been through now. I only want to say that we can pass this proposal and if the people adopt it you simply have another law on the book that is not worth having and we well know it. The member from Wayne may take a horse to water, but he can't make him drink. That is the way with this voting proposition. If people are allowed to exercise their privilege or right of voting in the same direct way you will find them using their power easily and certainly. But you can't get all the people to vote. There never was an election in Ohio where one hundred per cent of those entitled to vote voted. In Cleveland when we have the most hotly contested elections for president and mayor I don't recall ever seeing a vote of over ninety-five per cent. Are you going to disfranchise that five percent because they were sick or out of town or at work and not able to get to the polls? If we get the proportion we are accustomed to under the long ballot and you will shorten the ballot so that the power of the people can be used with discrimination, you will have no cause for attempting this clumsy method of producing the result the member desires to bring about.

Mr. MALIN: I move that the proposal and amendment be laid on the table.

The motion was carried.

So the proposal and amendment were laid on the table.

The PRESIDENT: The next proposal is No. 212, which the secretary will read.

The proposal was read the second time.

The PRESIDENT: The secretary will read the minority report.

The SECRETARY: It will be found on page 5 of the journal of March 4. It is as follows:

A minority of the standing committee on Legislative and Executive Departments, to which was referred Proposal No. 212—Mr. Johnson, of Williams, having had the same under consideration, recommend the following substitute:

Strike out all after the resolving clause and insert the following:

ARTICLE II.

"SECTION 16. Every bill shall be fully and distinctly read three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended, unless the new act contain the entire act revived, or the section or

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sections amended, and the section or sections so amended shall be repealed."

HARRY D. THOMAS,
FRANK G. HURSH.

Mr. THOMAS: I shall take only a few minutes to add to what I said the other evening in favor of abolishing the governor's veto altogether. The argument made on behalf of the governor's veto, so far as I have heard it, is that it prevents hasty and ill considered legislation. I want to repeat, in part at least, what Judge Ranney said on this subject in the convention of 1851. I think he states the matter in a far better manner than I can. Judge Ranney said in substance:

Now, so far as the first proposition is concerned, I will agree with the gentleman that it is most desirable that the convention should fix upon some expedient by which hasty and ill-considered legislation shall be prevented hereafter.

I would concede this at once. But what is the cause of this serious evil? It arises from the fact, in my humble opinion, that the people of Ohio have heretofore delegated too much power to the departments of government.

Where will you go to apply the remedy? Will you look to the nature of the disease? It has arisen from the fact that the legislature has exercised powers which never ought to have belonged to it.

Therein has been found the great evil of our system. Now where shall we go to find the remedy? The remedy is found in retaining among the people very many of the powers which have been exercised by the legislature, the power to confer office.

At that time the constitution provided that the legislature elect a number of the officers. Judge Ranney continued:

Again, sir, I would not give to the legislators the power to enact all laws until they have been submitted to a direct vote of the people. That will cut down their power again. Take from them all the power of local government, and you have left nothing for the legislature to do but make general laws to which all should be subject under such a state of things. I cannot conceive that there would be any great danger of the legislature being led into the enactment of any deleterious laws.

I wish to see pursued in practice that the powers of government should be divided, that distinct branches of government should be charged with distinct duties, and I wish to see them made responsible for their exercise and their respective duties clearly defined.

Judge Ranney called attention to Mr. Jefferson's opposition to the veto, and in making reference to the dignity that belongs to executive officers, such as governor and other officials to whom the veto power might be given, said that he had not much use for dignity in any form and wound up as follows:

I conclude by declaring here that I shall vote against all vetoes, everywhere, in every form, and upon all occasions.

At the present time there are five checks against ill-considered and hasty legislation by the legislature.

1. The constitution of the United States.
2. The constitution of Ohio.
3. Supreme court of the United States.
4. The supreme court of Ohio.
5. Division into two separate bodies of the legislature.

And it strikes me that these ought to be sufficient to prevent any hasty legislation of any character without the necessity of the governor's veto.

This state got along without the governor's veto for a period of over one hundred years and there never was any particular complaint, after the legislature ceased electing officers, that the power of the legislature was any more abused in making laws than it has been since the governor has had the veto power, and this taking away from the hands of the people through their representatives the right to legislate for their own benefit and placing it in the power of one individual, whether it be the governor or any one else, to say the people shall not have what their chosen representatives have determined they should have is entirely contrary to the declaration of independence and the powers of government that, in my opinion, the people should reserve to themselves. We have decided here upon giving the people this veto power in the future and it seems to me that is sufficient without any governor's veto.

Mr. MOORE: The veto power given to the president of the United States by a constitutional convention was merely the lingering relic of monarchy which they did not have the nerve to abolish entirely. They created a legislative department to make the laws and then the judicial department and then they seemed to fear the people would legislate themselves into trouble and they gave the president the prototype of a king, the power to veto the laws under certain circumstances. They clothed the president with power to execute the laws and to make reports to the legislative body and to advise the legislators as to the necessities based upon his experience in trying to execute the laws they had made. They did not intend that the executives should become legislators as they have become in modern times. For half a century the state of Ohio managed to drag along without the governor's veto, and that veto was given to us by the use of the Longworth law, which we all understand was an infamous law, and the people who voted to give the governor veto power did not find out—a great many of them—that they had voted to give him that power until some time afterward. I feel about giving the veto power to an executive as Abraham Lincoln did when he said, "In this I hear the footsteps of returning despotism." And with the initiative and referendum I feel as though all the people should make the laws and no one man in the commonwealth should have as much power as two-thirds of the legislative body. I trust this minority report will be carried.

Mr. CASSIDY: I move to lay the substitute on the table.

The yeas and nays were taken, and resulted—yeas 69, nays 31, as follows:

Limiting Veto Power of the Governor — Resolution for Payment of Claims.

Those who voted in the affirmative are:

Anderson,	Fess,	Partington,
Antrim,	Fluke,	Peters,
Baum,	Fox,	Pettit,
Beatty, Morrow,	Halfhill,	Redington,
Beatty, Wood,	Harris, Ashtabula,	Riley,
Beyer,	Harris, Hamilton,	Rockel,
Brattain,	Hoffman,	Roehm,
Brown, Highland,	Holtz,	Rorick,
Campbell,	Johnson, Madison,	Shaw,
Cassidy,	Johnson, Williams,	Smith, Geauga,
Cody,	Jones,	Smith, Hamilton,
Collett,	Kehoe,	Stamm,
Colton,	Keller,	Stevens,
Cordes,	Kerr,	Stewart,
Crites,	Knight,	Stokes,
Cunningham,	Kramer,	Taggart,
Dunlap,	Longstreth,	Tannehill,
Earnhart,	Ludey,	Wagner,
Eby,	Malin,	Weybrecht,
Elson,	Mauck,	Winn,
Evans,	Miller, Fairfield,	Wise,
Fackler,	Miller, Ottawa,	Woods,
Farnsworth,	Nye,	Mr. President.

Those who voted in the negative are:

Brown, Pike,	Harbarger,	Pierce,
Crosser,	Hursh,	Read,
Davio,	Kilpatrick,	Shaffer,
DeFrees,	Kunkel,	Stalter,
Donahay,	Lambert,	Stilwell,
Doty,	Lampson,	Tetlow,
Dunn,	Leslie,	Thomas,
Farrell,	Moore,	Ulmer,
FitzSimons,	Okey,	Walker,
Hahn,	Peck,	Watson,
Halenkamp,		

The roll call was verified.

So the motion to table was carried.

The PRESIDENT: The question is on agreeing to the report of the committee. If there is no objection it will be considered agreed to.

Mr. JOHNSON, of Williams: I move that the report be engrossed and discussed now. Why postpone it when we are ready to discuss it?

The motion was carried.

Mr. DOTY: Has the proposal been engrossed?

The PRESIDENT: No.

Mr. DOTY: It has to be engrossed.

Mr. JOHNSON, of Williams: My motion was that it be engrossed and that we proceed with it now.

The PRESIDENT: That was the motion.

Mr. PECK: Will the gentleman from Cuyahoga [Mr. Doty] please tell me what is engrossment. I have been trying to find out what sort of a business that is ever since I have been here. Nobody ever sees it done. You just hear a motion to do it.

The delegate from Williams [Mr. JOHNSON] was recognized and yielded to Mr. Harris, of Hamilton, for a motion to recess.

Mr. DOTY: This matter is not straight; we ought to straighten it.

Mr. JOHNSON, of Williams: The gentleman is out of order. It was decided that I have the floor.

Mr. DOTY: True, if you want to go on all wrong you may.

Mr. JOHNSON, of Williams: I have yielded for a motion to recess.

Leave of absence was granted to the delegate from Wyandot [Mr. STALTER] for Tuesday.

The motion to recess was carried and the Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

The Convention was called to order pursuant to recess by the vice president.

Mr. DOTY: I have examined the journal and I find that the amendment has been engrossed. Under the rule it would not come up for two days. In order that it may come up regularly I move that the rules be suspended and the proposal be read the second time now.

The motion was carried.

The VICE PRESIDENT: It is so ordered and the secretary will read the proposal.

The proposal was again read.

Mr. Johnson, of Williams, was recognized.

Mr. DOTY: I want to make a privileged statement. It appears that some weeks ago when it was decided that we should attempt to have Friday sessions there was an implied promise not to force a vote on Friday on any matter. I want to serve notice that so far as I am concerned if there are Friday sessions I shall be here and I shall attempt to bring about a vote on any subject I can, and I shall begin tomorrow if there is a session tomorrow. I want to give notice that I withdraw from that deal.

Mr. BEYER: I wish this question might be decided.

Mr. DOTY: How can we decide it?

The VICE PRESIDENT: It is not a matter before the Convention. It was only a question of privilege and the gentleman from Williams is recognized.

Mr. CASSIDY: Will the gentleman yield for a moment? Some of our creditors are making life a burden for the members of the Convention and I would move that we suspend the consideration of the pending matter five minutes.

The motion was carried.

By unanimous consent Mr. Cassidy submitted the following report:

The standing committee on Claims against the Convention, to which was referred Resolution No. 98—Mr. Cassidy, having had the same under consideration, reports it back with the following amendments, and recommends its adoption when so amended:

In line 5 strike out the figures "\$161.65" and in lieu thereof insert the figures "\$135.30."

In line 6 strike out the figures "\$168.50" and in lieu thereof insert the figures "\$167.85."

Strike out line 9, "T. J. Dundon & Co., labor supplies, \$5.00."

Add at the end of said resolution the following:

"George F. Jelleff, labor and materials, \$20.85."

The VICE PRESIDENT: The question is on the adoption of that report.

The question being "Shall the resolution, as amended, be adopted?"

Resolution for Payment of Claims—Limiting the Veto Power of the Governor.

The yeas and nays were taken, and resulted—yeas 78, nays none, as follows:

Those who voted in the affirmative are:

Antrim,	Harbarger,	Peck,
Baum,	Harris, Ashtabula,	Peters,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beatty, Wood,	Harter, Stark,	Read,
Beyer,	Hoffman,	Redington,
Brattain,	Holtz,	Riley,
Campbell,	Hursh,	Rockel,
Cassidy,	Johnson, Madison,	Rorick,
Colton,	Johnson, Williams,	Shaffer,
Cordes,	Kehoe,	Smith, Geauga,
Crites,	Kerr,	Smith, Hamilton,
Crosser,	Kilpatrick,	Stalter,
Cunningham,	Knight,	Stevens,
Davio,	Kramer,	Stewart,
Donahey,	Lampson,	Stilwell,
Doty,	Longstreth,	Stokes,
Dunlap,	Ludey,	Taggart,
Dunn,	Malin,	Tannehill,
Earnhart,	Mauck,	Tetlow,
Elson,	McClelland,	Thomas,
Fackler,	Miller, Crawford,	Ulmer,
Farnsworth,	Miller, Fairfield,	Wagner,
Fess,	Miller, Ottawa,	Watson,
Fox,	Moore,	Winn,
Hahn,	Okey,	Wise,
Halfhill,	Partington,	Woods.

The resolution, as amended, was adopted.

Mr. JOHNSON, of Williams: Mr. President and Gentlemen of the Convention: I shall occupy but little of your time.

Proposal No. 212 is designed to change the veto power of the governor and make it less arbitrary than it is at present. The constitution as it now stands not only requires a two-thirds vote to pass a law over the governor's veto, but it must also have in every case as many votes as it received upon its first passage. Cases might arise in which the general assembly might repass a law by a two-thirds vote and yet the constitution as it now stands would prevent it from becoming a law. Not only that, it might repass it by a three-fourths vote and yet it could not become a law if it did not receive as large a vote as it received upon its first passage. Such a provision in the constitution gives the governor too much authority, if he desires to use it. Let me illustrate: In a house of representatives composed of 120 members and a senate of 30 members, a bill is passed receiving 110 votes in the house, and then it goes to the senate and receives 30 votes. It is presented to the governor and he vetoes it. It must then be returned to the general assembly; the house may repass it by 100 votes and the senate repass it by a unanimous vote and yet it cannot become a law. Mr. President, I do not know who wrote that constitutional amendment, but it is one of the most arbitrary and unjust provisions in the constitution of any of the states of this Union. In fact, the general assembly of this state might pass a bill unanimously in each branch and the governor might veto that bill; one member of either branch of the general assembly might become sick and, although every other member of each branch might be present and vote to repass the bill over the veto, yet it would be impossible to do so.

It is, however, unnecessary to discuss this branch of the subject more at length because during the short time that the veto power has been in existence in Ohio it has

been found unsatisfactory, and on January 31, 1906, a resolution was introduced in the senate providing for the submission of a constitutional amendment which was designed to correct this evil. That resolution passed the senate by a vote of 32 to 1, and on March 6 this senate resolution passed the house unanimously, receiving 93 votes. This proposition to amend the constitution was submitted to the voters at the November election in 1908. The vote of every county in the state showed a large majority in favor of the amendment. Of those who voted more than five to one were in favor of the proposition, yet it did not carry because so many who voted for state officers neglected to vote on this amendment. A good, fair constitutional provision in regard to the veto power of the governor will not only have the merit of being just, but it will make votes for the proposed constitution among all lovers of justice and fair play.

Mr. President and Gentlemen, in this proposal I seek to make another change in the veto power. Under the present constitution it requires at least two-thirds of each house to pass a bill over the veto. I desire to change it so that three-fifths may repass a bill over the veto. Many of the states in the Union require a two-thirds vote, which I think gives the governor too much arbitrary power. In fact, it might be best to allow any bill to be repassed over the veto by a bare majority of all the members elected to each house, and perhaps the trend of modern constitutions seems to be in that direction. In my opinion, however, it is best not to make the changes too radical at present. There is a difference of opinion as to what the veto power is for. In my opinion its main use, if not its only use, should be to check hasty and ill-advised legislation. In fact, the constitution of Maryland reads as follows: The veto is given "to guard against hasty or partial legislation and encroachment of the legislative department upon the coordinate executive and judicial departments. Every bill that shall pass shall be presented to the governor."

The general assemblies of Florida, Idaho, Iowa, Minnesota, Oregon, South Dakota and perhaps some other states can pass a bill over the veto of the governor by a vote of two-thirds of those present. The Virginia constitution of 1902, provides that two-thirds of those present may pass a bill over the veto, but the two-thirds must be a majority of the members elected. In Maryland and Nebraska a bill can be passed over the veto by a three-fifths vote. In Arkansas, Connecticut, Indiana, Kentucky, New Jersey, Tennessee, Vermont and West Virginia the general assembly may pass a bill over the veto by a majority of the members elected to each house. These facts will show the modern trend in regard to the veto. As before stated, I think the main, and perhaps the only, use of the veto should be to prevent hasty or ill-advised legislation. It may be claimed that if the people approve of the initiative and referendum that we do not need the veto. In my opinion it would be as necessary then as now, and perhaps more so. The governor of a great state like this will surely possess more ability than the average legislator, and he will surely have just as sincere a desire to serve the people. In the confusion and tumult that sometimes exist in legislative bodies, is it any wonder that sometimes laws

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are passed that are detrimental to the best interests of the people? Sometimes such laws may be passed by the influence of a few schemers and it certainly can do no harm to have the governor review the work. I am sure that if the work of the general assembly of Ohio were reviewed by a first-class governor there would be less likelihood of the people to make much use of the referendum, even if they had the power, as they otherwise would do.

When this proposal was reported to the Convention on March 4, it was asserted by the member from Cuyahoga county [Mr. Dory] that it would give the governor an absolute veto. It does nothing of the kind. I will not say that he knows that it does not, but I know that when he makes that assertion he does not comprehend the scope of the proposal. A great many people take delight in setting up a straw man and then knocking it down, and I sometimes think my friend from Cuyahoga county, to whom I have just referred, likes that sort of business. No, there is nothing arbitrary about this veto unless the general assembly should rush some bill through at the end of the session so that the governor could not report it before adjournment. The general assembly has no right to rush bills through during the last days of the sessions, and if it does so it should take the responsibility. What is an absolute veto? It is one that cannot be overcome. The governor has no veto of that kind as proposed in this amendment. I hope this proposal will pass.

Mr. CUNNINGHAM: I would like to ask the gentleman a question.

Mr. JOHNSON, of Williams: All right.

Mr. CUNNINGHAM: I may be stupid—I think I am—

Mr. JOHNSON, of Williams: You can not be more so than I am.

Mr. CUNNINGHAM: The amendment in committee provided for the omission of the period after the word "governor," and the insertion of the following words: "Except that in no case can a bill be repassed by a smaller vote than is required by the constitution on its first passage." It requires a majority. Why was that put in?

Mr. JOHNSON, of Williams: This amendment was put in to make it foolproof. There are bills in cases of an emergency that require a two-thirds vote to pass in the first instance. I never believed that the supreme court would knock that out, but to please the committee, not myself, I inserted that amendment to refer to bills requiring a two-thirds vote on the first passage.

If there is a single objection to this proposition that cannot be answered, I will myself move to indefinitely postpone it.

Mr. PIERCE: Has the gentleman from Williams any good reason to assign why a bare majority should not be sufficient to pass it over the governor's veto?

Mr. JOHNSON, of Williams: I have a reason and I am afraid it is a thin one, but I would rather always expose myself than for the other fellow to do it. We had this veto proposition passed and recommended by the republican party in 1903 on its first passage and the whole republican party wanted it. I suppose there is a great demand for this proposal, but I thought when I presented it to the committee that all I dare ask for in the way of reform was the three-fifths. My own per-

sonal opinion is that it would be best to have just a majority of those elected to repass a bill over the veto, but the reason I did not provide for that was that I thought the people who do not believe in the veto would be so pleased to get this liberal provision that they would vote for it as against the veto as it now is. When we get the initiative and referendum our socialist friends can vote the whole thing out and I will be happy. If I thought it would make more votes for it I would like to have it require only a bare majority to repass it over the veto because that is my position. I believe that our first duty in submitting a constitution to the people is to submit one better than the present, and the next is to submit one that will carry. I don't think we should violate our conscience to get one adopted by the people, but if we can get one reform up to a certain point and can't do better we ought to take what we can get. I would rather take three-fifths than leave it two-thirds, and I had hard work to get three-fifths from the committee. There were several proposals and mine was the most liberal. I had a right to suppose, if the delegates represented their different sections, that this was as much liberality as I dare ask for.

Mr. DOTY: Don't you think that if we have the veto power there ought to be a provision in it that shall make it impossible for the governor to veto without a review by the legislature?

Mr. JOHNSON, of Williams: No; if the legislature, after having its attention called to any proposition, is willing to take the responsibility I don't know why it should be deprived of the opportunity to pass it.

Mr. DOTY: I agree with that, but perhaps I didn't make myself clear. I may make it clearer by an illustration: The general assembly adjourns today at noon, sine die. Up to noon today in the last three days they have made fifteen new laws. The governor has ten days from today at noon to approve or veto those fifteen laws. The legislature, having adjourned sine die, will never have a chance to review the governor's veto.

Mr. JOHNSON, of Williams: I see what you are aiming at. Why should not the legislature of the state of Ohio take a recess for a few days? What prevents it? You are assuming that the legislature wants to put something over on the people when they adjourn and the governor won't allow it. That whole thing can be handled by adjourning for a few days, so that the governor can report the bills.

Mr. DOTY: The member has inadvertently misstated what I had in mind. What I object to is the ability of the governor to put something over on the people.

Mr. JOHNSON, of Williams: Has he ever done it?

Mr. DOTY: Yes.

Mr. JOHNSON, of Williams: Do you mean to say that it has ever been done by a governor of Ohio?

Mr. DOTY: Yes.

Mr. JOHNSON, of Williams: Can you imagine a legislature of Ohio so stupid then that they would give the governor of this state another opportunity? I cannot.

Mr. DOTY: That doesn't affect the governor.

Mr. JOHNSON, of Williams: I see the point, but I don't want to put that in there. The legislature has a remedy in its hands by refusing to pass any laws during the last ten days of the session.

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Mr. KNIGHT: I want to ask if most of the bills that do need careful inspection by the governor are not those that are passed in the last ten days and that they need inspection to see that there is no skullduggery.

Mr. DOTY: Yes.

Mr. KNIGHT: Is it not possible for the legislature to have stopped ten days sooner?

Mr. DOTY: Yes; theoretically it is, but practically it is not.

Mr. KNIGHT: Haven't they the power to remain in session for ten days after the last bill is passed?

Mr. DOTY: They have, but they ought not to have. I see here two former members of the legislature besides myself. Just ask them if they think such a provision would be carried out.

Mr. KNIGHT: Then it is not the fault of the people of Ohio if the legislature won't stay on the job.

Mr. JOHNSON, of Williams: I have had some little experience and I know they could always get my vote on a proposition of that kind. It might be because I am so stupid.

Mr. DOTY: I don't think so.

Mr. JONES: Why not carry into your proposal the provision now in the constitution with reference to submitting to the succeeding legislature the bills vetoed by the governor at the close of a session?

Mr. JOHNSON, of Williams: I believe it is one of the most pernicious things in the whole matter, and I think I could clearly show you why.

Mr. JONES: I would like to know what is the pernicious thing about the provision?

Mr. JOHNSON, of Williams: There might be a new legislature. Some years ago when I was in the legislature they passed a law requiring business men to file their names and addresses in the recorder's office. They got a whole lot of books for that purpose and they repealed the law next year. So the legislature might not want a law that was passed by a preceding one. The people don't suffer because the legislature doesn't pass laws; it is because they pass laws not in the interest of the people. What do you want to refer things to the next general assembly for? I don't believe in stringing it out when we don't see the necessity for it.

Mr. JONES: If this right is given to the governor to veto after the legislature adjourns, ought not the next legislature be given the power to pass the law over the veto?

Mr. JOHNSON, of Williams: I don't think we should arrange for anything like that. I believe it is more practical and sensible to have the legislature refuse to pass laws in the last few days of the session and thus obviate the whole difficulty you are talking about. From the ordinary man's standpoint I believe that is better than the provision in the present constitution.

Mr. KNIGHT: Is not the point of Mr. Jones accomplished this way: There is nothing to prevent the subsequent general assembly from introducing and passing the measure de novo.

Mr. JOHNSON, of Williams: In my opinion that is a good deal more businesslike.

Mr. KNIGHT: Sometimes we have pretty nearly a brand new legislature. Would it be wise to let them pass it by a single vote?

Mr. JOHNSON, of Williams: I think it would be wiser to pass an entirely new bill. I may be wrong, but that is where I stand.

Mr. JONES: Then in respect to those bills sent to the governor and not returned until after the legislature adjourns, do you not in effect give the governor an absolute veto?

Mr. JOHNSON, of Williams: It gives him an absolute veto if the legislature puts itself in the governor's hands, but I deny its right to do that.

Mr. JONES: Is not one of the main things that we have been seeking to provide against improper action on the part of the legislature?

Mr. JOHNSON, of Williams: If we assume it is improper action on the part of the legislature the governor ought to veto it and the legislature should not have a right to do it again. I am not assuming that we have a scoundrel in the governor's chair. If his judgment is wrong, it is better to give him the right to veto and then correct it at the polls the next election than to hook all of this on so that the interests will get together and elect another legislature for the purpose of passing the law.

Mr. KRAMER: You suggest that you are in favor of allowing the legislature to pass the law by a bare majority?

Mr. JOHNSON, of Williams: That is my personal view.

Mr. KRAMER: Do you think that would be fair, inasmuch as the people just a few years ago voted by a majority of a hundred and twenty thousand to give the governor an absolute veto, that now in a year or two you try to take it away?

Mr. JOHNSON, of Williams: It might not be fair; at any rate I am opposed to it because it may be making it too liberal for the people to satisfy the radical members of this Convention, and certainly you have seen from this discussion that this is liberal enough.

Mr. WATSON: On the matter on which Mr. Kramer asked a question is it not almost impossible to defeat any amendment to the constitution when each of the political parties puts it in its platform and it is voted for as this was?

Mr. JOHNSON, of Williams: If both political parties put it in the platform and on the ballot you can not avoid it. You take boss rule every time when both of the parties try to beat the people.

Mr. DOTY: If it is put on the ballot and we had the short ballot would not the people have a chance?

Mr. JOHNSON, of Williams: I don't know. It is hard to tell what an election will bring forth. We can have all sorts of theories as to what this or that will do but nobody can foresee exactly what will come to pass. I want this proposition to stand on its own merits. My friend from Cuyahoga [Mr. THOMAS] said that we have four or five checks now against the passing of bad laws, and we don't need another. The constitution of the United States was named as the first one, and then he spoke of the constitution of Ohio. Now I am sure that no one could suppose that the legislature came here for the express purpose of passing an unconstitutional law. I didn't know that the governor's veto was to decide the constitutionality of the laws, but whether they were first class and in the interest of the people. There are

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many laws passed that are constitutional, but the people don't want them.

The time of the gentleman here expired and on motion was extended.

Mr. JOHNSON, of Williams: I am so pleased with your kindness, gentlemen, I never in my life paid much attention to kickers and have never tried to please them, but you will pardon me now if I stop to satisfy the kickers.

Mr. KNIGHT: I hope the proposal will pass as presented here. It distinctly removes from the veto power as now contained in the constitution two features which make it more drastic than in any other state in the Union. One has been referred to by the gentleman who just preceded me, and the other is the provision which allows the governor to veto any section of a bill that he pleases. You can take the life out of any bill by cutting a section out of it. That provision is contained in no other veto power in any state in the Union, so far as I know, and the proposal of the gentleman from Williams [Mr. JOHNSON] excludes that and limits the veto power to vetoing entire measures and items in appropriation bills. I think we are all agreed that it is desirable to have some sort of pruning process on some of these appropriation bills which are logrolled through usually during the last few days of the session. If we can make this veto power a moderate one that will work for the good of the people, and take out the extreme features of the present veto power, I think we shall have accomplished good for the people of Ohio, and I hope no change will be made in the substance of this proposal.

I want to suggest, with the entire consent and approval of the gentleman from Williams, that I have an amendment to restore a line or two that has been left out. And that is this: There is no provision in this for any official recording of the veto message of the governor, which message will contain the only official statement of his reasons for objecting to the measure. This provision is contained in the constitution of forty-two states of the Union and is in the veto clause of the present constitution. It seems not to be in this one, and therefore I offer this amendment to restore it.

The amendment was read as follows:

In line 14, after the second word "which," insert the words "shall enter the objections at large upon its journal, and."

Mr. KNIGHT: The idea of that is that the veto message shall be spread at large upon the journal of the house.

Mr. THOMAS: Is not that done now?

Mr. KNIGHT: The present constitution requires it, but the pending amendment does not contain any such provision.

Mr. ELSON: I want to put a question on a subject that is long past, but I want to inquire about the governor vetoing items. Did any of you ever know of the governor tearing a bill to pieces by vetoing some sections?

Mr. KNIGHT: Yes; the corrupt practices act.

Mr. ELSON: Does not the gentleman know that in the corrupt practices act if the governor had not vetoed

certain items the bill would have been absurd and absolutely unworkable?

Mr. KNIGHT: Very well, then; he had his option to veto the entire thing or send it back and let the legislature remedy it. I object to the executive having a right to tear a bill to pieces.

Mr. SHAFFER: I want to offer an amendment.

The amendment was read as follows:

Strike out in line 15, the words "three-fifths" and insert the words "a majority."

Strike out in lines 17 and 18 the words "three-fifths" and insert the words "a majority."

Mr. SHAFFER: I think the time has come when we are ready to take up the progressive idea embodied in this amendment. This preserves the governor's dignity and the right to a veto and in his veto he can state the reasons why he vetoes it. He can go upon the record and the legislature then has the additional responsibility for its action when it votes upon that matter again, but it should only require a majority of all the members elected to each branch. It seems to me it embodies all the safeguards that are necessary and will bring about just what the people desire.

Mr. STOKES: I move that that amendment be laid on the table.

The VICE PRESIDENT: You refer to the last amendment?

Mr. STOKES: Yes.

Mr. DOTY: On that I call the yeas and nays.

The yeas and nays were taken, and resulted—yeas 49, nays 42, as follows:

Those who voted in the affirmative are:

Anderson,	Fess,	Miller, Crawford,
Antrim,	Fluke,	Nye,
Baum,	Fox,	Partington,
Beatty, Morrow,	Harris, Ashtabula,	Redington,
Beatty, Wood,	Holtz,	Riley,
Beyer,	Johnson, Madison,	Rockel,
Brown, Pike,	Johnson, Williams,	Rorick,
Campbell,	Jones,	Smith, Hamilton,
Colton,	Kehoe,	Stevens,
Crites,	Keller,	Stewart,
Cunningham,	Kerr,	Stokes,
Dunlap,	Knight,	Taggart,
Earnhart,	Kramer,	Tannehill,
Elson,	Ludey,	Wagner,
Evans,	Marshall,	Wise,
Fackler,	McClelland,	Woods,
Farnsworth,		

Those who voted in the negative are:

Brattain,	Harbarger,	Okey,
Cassidy,	Harter, Stark,	Peck,
Cody,	Henderson,	Pierce,
Collett,	Hoffman,	Read,
Cordes,	Hoskins,	Roehm,
Crosser,	Hursh,	Shaffer,
Davio,	Kilpatrick,	Smith, Geauga,
DeFrees,	Kunkel,	Stilwell,
Donahey,	Lambert,	Tetlow,
Doty,	Lampson,	Thomas,
Dunn,	Leslie,	Ulmer,
Hahn,	Longstreth,	Walker,
Halenkamp,	Malin,	Watson,
Halfhill,	Moore,	Winn,

So the amendment offered by the gentleman from Butler [Mr. SHAFFER] was tabled.

Mr. DOTY: As the law is now, no extended reports are spread on the journal of either house. That

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has been the rule. So far as the advisability of providing that the governor's veto shall be spread upon the journal of either house under the ordinary practice there are very few messages from him—

Mr. KNIGHT: Are the Doty rules to be applied to the constitution. There is nothing in the constitution to say what shall be spread?

Mr. DOTY: That is the way it is done and it is provided somewhere I think in the constitution, but not having read the constitution recently I cannot say positively—

Mr. KNIGHT: It is not in the constitution.

Mr. DOTY: It is in the constitution somewhere and it is a wise provision from a practical standpoint. Now, as to the advisability of having the governor's messages put upon the journal. Very few of those messages vetoing measures come in in time to be acted upon by the general assembly.

A word on the question of sending vetoes to the next general assembly for consideration and passage. The law requires that each bill shall be read three separate times in each house. When a vetoed bill comes to the next general assembly it hasn't been read in that house at all. So far as that house is concerned it is absolutely new matter.

Mr. KNIGHT: I wonder if the gentleman has read the amendment. It does not contain any proposition such as that. It provides that after the legislature adjourns the governor shall file them with the secretary of state, but during the session of the legislature they are to be spread on the journal.

Mr. DOTY: There is an objection to putting extraneous matter on the journal. It is a lumbering up of a matter that is already lumbered up too much. This is simply putting on a lot of material that doesn't belong there. As to sending it to the secretary of state, you will find that the secretary of state will simply deliver the messages to the next general assembly and they will go in and be piled in with a lot of other stuff.

Mr. HURSH: I move to table the amendment.

The motion to table was put to a vote and lost. A further vote being taken, the amendment offered by the delegate from Franklin [Mr. KNIGHT] was agreed to.

Mr. KNIGHT: I have a second amendment, not dealing with substance, but simply to bring the question in line with the usage in most of the states. After it is read I will explain the amendment. This also is consented to by the proponent of the measure.

The amendment was read as follows:

After the period in line 19 insert the words, "In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal."

Mr. KNIGHT: The object of this is simply that there shall be a record by roll call of the way in which the members vote on the repassage of the bill. The journal will then contain both the governor's reason for vetoing the law and the official vote in each house. The present constitution leaves this out. Without this a viva voce vote might be taken and it seems desirable to check up the members of the legislature. Something over thirty states in the Union require this. This is not a new fea-

ture, but simply in order that the record may be complete. I can see no objection to it and the gentleman from Williams [Mr. JOHNSON] agrees to it.

Mr. ROEHM: This says that it shall be done by a three-fifths vote. Would not that absolutely require a roll call?

Mr. KNIGHT: Then it doesn't add anything, but makes it specific.

Mr. JOHNSON, of Williams: The gentleman stated the matter to me, and while I do not think there is any necessity for the amendment I knew the objection might be raised. I think as my friend from Montgomery [Mr. ROEHM] that you can't make a record except by a yeas and nays vote, but I agree with the gentleman from Franklin [Mr. KNIGHT] and I have no objections to the amendment. I do not see any harm in it, although I do not think we need it.

Mr. THOMAS: It has been said that the governor never vetoes a law on account of the unconstitutionality.

Mr. JOHNSON, of Williams: I understood that; I may be wrong. I think I said it was not the special function of the governor to look after the constitutionality, but to see that the people were protected.

Mr. THOMAS: He did it two years ago.

Mr. JOHNSON, of Williams: You ought to elect a farmer governor then.

The amendment offered by the member from Franklin [Mr. KNIGHT] was agreed to.

Mr. MILLER, of Crawford: I offer an amendment.

The amendment was read as follows:

At the end of line 10 strike out the period and insert a comma and add, "but no repeal of any law shall become operative or effective unless the statute or act sought to be repealed is specifically mentioned."

Mr. MILLER, of Crawford: I introduced Proposal No. 285 at the solicitation of some of the members of our bar in Crawford county, seeking to accomplish the purpose of preventing the legislature from enacting laws wherein they could provide that "any statute inconsistent herewith shall be repealed." They feel that that burden should be placed upon the legislature and not upon the litigants. They told me it works a hardship in many cases.

Mr. HARRIS, of Ashtabula: That is part of the proposal which just repeals the constitution as it is.

The VICE PRESIDENT: Are you asking a question?

Mr. HARRIS, of Ashtabula: I am rising to a point of order.

The VICE PRESIDENT: State the point.

Mr. HARRIS, of Ashtabula: I think this amendment put in in this way is out of order. It is new matter. The proposal does not refer to this same thing.

The VICE PRESIDENT: The presiding officer thinks the amendment is in order.

Mr. MILLER, of Crawford: The object in presenting the amendment at this time is not to show any discourtesy to the committee. I don't know how they feel about the proposal, but I do know we are endeavoring to save as much time as possible. If I can get this provision into the present proposal it will satisfy the desire of those who have asked me to introduce it, and it seems to me that it is a matter that ought to be given some careful

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consideration. I believe there is considerable merit in it, and I hope the attorneys present will express themselves upon this, as I am only acting under the advice of some members of the bar of our county.

Mr. WINN: Mr. President and Gentlemen of the Convention: I have not had time to think very much about this amendment, but my attention was called to it once before, or to some proposal in our proposal book aiming at this same purpose. It will take only a moment to see the importance of it. It is not an unusual thing to find in our statutes measures concluding like this: "And all statutes and parts of statutes and all sections and parts of sections of a statute in any way conflicting herewith are hereby repealed." That is a lazy means of repealing laws. This proposal says in plain terms that no bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. And as every conflicting section is repealed by this particular provision, it is a habit of the members of the legislature to go ahead with their bills and then say at the end, "all sections or parts of sections in conflict herewith are hereby repealed," and the lawyers that have to deal with such a law as that know how almost impossible it is to find out just what has been repealed by this language. By this amendment it is proposed to have the law say in expressed terms "and section so and so of such and such an act is repealed," pointing out which one is repealed.

Mr. PECK: I want to say that there is a practical difficulty about this which has not been touched upon. You pass a new law and you say nothing about some other law that the general assembly doesn't know about. Under ordinary construction of language as laid down in the books, whether there is any mention of a previous law or not, or whether there is any such general clause as is alluded to at the end of the bill, the former act would be held repealed by implication. The doctrine of repeal by implication is that where there is an existing act and the new act flatly contradicts it the former is necessarily repealed. Now suppose you pass this provision here and the general assembly passes a law and undertakes to say what laws it intends to repeal, but overlooks something and passes this law, and then you have on the statute books two statutes conflicting with each other. Which shall take effect? I don't think you can get away from the doctrine of repeal by implication.

Mr. WINN: I want to ask you, if sometime, somewhere, some lawyer will not have to hunt that out?

Mr. JOHNSON, of Williams: Let him do it. He is paid for it.

Mr. PECK: He can't get away from it.

Mr. WINN: This would be the result of it, unless that particular section or particular statute is set out in the act, then it is not repealed by implication.

Mr. PECK: But they both are standing.

Mr. WINN: They both stand anyway.

Mr. PECK: No. Under the law as it stands now there is a repeal by implication, and the first statute is repealed by the enactment of the last. With this you would have them both standing, conflicting.

Mr. WINN: The legislature would not pass laws of that sort.

Mr. PECK: But unfortunately they do.

Mr. WINN: If members of the legislature know that unless they were particular to point out the sections of the statute that would be repealed their work would go for nothing, the statute books would not be encumbered by a lot of conflicting statutes.

Mr. PECK: I don't think it is altogether due to their carelessness or inefficiency. There are provisions of statutes hidden away in some verbiage that nobody notices. They come to the front unexpectedly to everybody and when you come across them you have a new act on the subject which takes effect. Of course, the idea generally is, and the rule laid down by the books is, that the latest law in point of time takes effect. That is the doctrine of repeal by implication. You will find it laid down in all the books on statutory laws that where two laws conflict the latest one in point of time takes effect. I don't see how you can get rid of that by this provision, because, as a matter of fact, if you do find there is a preceding law that has been overlooked and not mentioned I believe the court would ultimately decide that it was necessarily repealed and that the latest law on the subject must take effect.

Mr. JOHNSON, of Williams: This was just what I wanted to avoid in this proposal, the lawyers getting at logger-heads. I want to say what Judge Peck said, but I can't say it nearly so well. I am going to say this; I know it won't be looked upon as bright or smart by the lawyers of the Convention, but I don't care. The constitution now says that a statute or a section to be repealed should be mentioned and it was my uniform custom when I was a member of the general assembly to do that. But we are to have a general assembly composed of all classes. If a farmer, doctor, or business man or some one who doesn't understand these things has something good for the people of Ohio, simply because he doesn't know what the law is—of course he ought to know—but simply because he doesn't know the law generally he should not be denied getting that through for the people. And yet if he would pass it without mentioning the things the whole law would be in question. This is a legislative matter. Let the legislature provide for things of that kind, if the difficulty arises, that need to be taken care of. There is nothing in the present constitution or in the new one that will prevent the thing that the gentleman from Crawford proposes, but I would rather that this would be kept out for the reason that Judge Peck has mentioned, and also for the reason that the members may be just as capable of passing a first-class law for their constituents if they are not versed in the technicalities of the law. I insist this amendment should not go in. It is said that it has been a law for sixty years, but if a law is a law for years and years and is wrong it should be repealed and a better one put in its place.

Mr. CASSIDY: I want to ask you a question on the proposal. Does not your proposal, if adopted, take away from the governor the power to veto a section of a bill?

Mr. JOHNSON, of Williams: It does, except an item in an appropriation bill. What is the use of letting him veto a section of a law? If a law is bad let

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him veto the whole thing and let the legislature repass it.

Mr. CASSIDY: Do you propose to take away from the governor the power to veto a section or part of a law?

Mr. JOHNSON, of Williams: Yes.

Mr. HARBARGER: I move that the amendment offered by Mr. Miller, of Crawford, be laid on the table.

Mr. HALFHILL: On that I demand the yeas and nays. That is too important to be disposed of in that manner.

The yeas and nays were taken, and resulted—yeas 63, nays 21, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Marshall,
Antrim,	Hahn,	Matthews,
Baum,	Halenkamp,	McClelland,
Beatty, Morrow,	Harbarger,	Nye,
Beatty, Wood,	Harris, Ashtabula,	Partington,
Beyer,	Henderson,	Peck,
Campbell,	Hoffman,	Roehm,
Cassidy,	Holtz,	Rorick,
Cody,	Johnson, Madison,	Shaffer,
Collett,	Johnson, Williams,	Smith, Geauga,
Colton,	Jones,	Smith, Hamilton,
Cordes,	Kehoe,	Stewart,
DeFrees,	Keller,	Stilwell,
Donahy,	Kerr,	Stokes,
Dunlap,	Knight,	Tannehill,
Dunn,	Kramer,	Tetlow,
Earnhart,	Lambert,	Thomas,
Elson,	Lampson,	Ulmer,
Evans,	Longstreth,	Walker,
Fackler,	Ludey,	Wise,
Fluke,	Malin,	Woods,

Those who voted in the negative are:

Cunningham,	Miller, Crawford,	Riley,
Davio,	Miller, Fairfield,	Rockel,
Doty,	Moore,	Stevens,
Fess,	Okey,	Taggart,
Halfhill,	Peters,	Wagner,
Hursh,	Pierce,	Watson,
Kilpatrick,	Read,	Winn,

So the motion to table was carried.

The VICE PRESIDENT: The vote now goes on the proposal.

Mr. HARRIS, of Ashtabula: I move the previous question.

The main question was ordered.

The VICE PRESIDENT: The motion now goes on the passage of the proposal and the secretary will call the roll.

The yeas and nays were taken, and resulted — yeas 76, nays 10, as follows:

Those who voted in the affirmative are:

Antrim,	Donahy,	Hoskins,
Baum,	Dunlap,	Johnson, Madison,
Beatty, Morrow,	Earnhart,	Johnson, Williams,
Beatty, Wood,	Elson,	Jones,
Beyer,	Evans,	Kehoe,
Brown, Pike,	Fess,	Keller,
Campbell,	Fluke,	Kerr,
Cody,	Fox,	Kilpatrick,
Collett,	Hahn,	Knight,
Colton,	Halenkamp,	Kramer,
Cordes,	Halfhill,	Lambert,
Crites,	Harbarger,	Lampson,
Cunningham,	Harris, Ashtabula,	Longstreth,
Davio,	Hoffman,	Marshall,
DeFrees,	Holtz,	McClelland,

Miller, Crawford,	Rockel,	Taggart,
Miller, Fairfield,	Roehm,	Tannehill,
Moore,	Rorick,	Tetlow,
Nye,	Shaffer,	Thomas,
Okey,	Smith, Geauga,	Ulmer,
Partington,	Smith, Hamilton,	Wagner,
Peck,	Stevens,	Walker,
Peters,	Stewart,	Watson,
Pierce,	Stilwell,	Winn,
Read,	Stokes,	Wise,
Riley,		

Those who voted in the negative are:

Anderson,	Fackler,	Ludey,
Cassidy,	Henderson,	Malin,
Doty,	Hursh,	Woods,
Dunn,		

So the proposal passed as follows:

Proposal No. 212 — Mr. Johnson, of Williams. To submit an amendment to article II, section 16, of the constitution. Relative to amending veto power of the governor.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 16. Every bill shall be fully and distinctly read three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rules. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed.

(a) Every bill passed by the general assembly shall before it can become a law, be presented to the governor for his approval. If he approve it, he shall sign it. If he does not approve it, he shall send it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house then agree to repass the bill, it shall be sent, with the objections of the governor to the other house which may also reconsider the vote on its passage. If three-fifths of the members elected to that house then agree to repass it, it shall become a law notwithstanding the objections of the governor except that in no case can a bill be repassed by a smaller vote than is required by the constitution on its first passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law, unless the general assembly, by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment it shall be filed by him, with his objections, in the office of the secretary of state. The governor may disapprove any item or items in any bill.

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making an appropriation of money and the item or items, so disapproved, shall be stricken therefrom, unless repassed in the manner herein prescribed for the repassage of the bill.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The VICE PRESIDENT: The next proposal is No. 174.

Mr. WOODS: Before we enter upon the consideration of that I want to move that when we adjourn tonight we adjourn to meet Monday evening at seven o'clock.

Mr. DOTY: I move to lay that motion on the table.

The motion to table was lost.

Mr. WATSON: I demand the roll call on the motion to adjourn.

The yeas and nays were taken, and resulted — yeas 53, nays 36, as follows:

Those who voted in the affirmative are:

Baum,	Hahn,	McClelland,
Beatty, Morrow,	Halfhill,	Nye,
Beatty, Wood,	Harbarger,	Okey,
Beyer,	Harter, Stark,	Partington,
Brattain,	Henderson,	Pierce,
Cassidy,	Hoffman,	Read,
Collett,	Holtz,	Rockel,
Cordes,	Hoskins,	Roehm,
Crites,	Hursh,	Shaffer,
DeFrees,	Johnson, Madison,	Stewart,
Donahey,	Jones,	Stokes,
Dunlap,	Kehoe,	Ulmer,
Earnhart,	Kerr,	Wagner,
Elson,	Kilpatrick,	Walker,
Evans,	Kramer,	Winn,
Fackler,	Longstreth,	Wise,
Fluke,	Ludey,	Woods,
Fox,	Malin,	

Those who voted in the negative are:

Anderson,	Halenkamp,	Moore,
Antrim,	Harris, Ashtabula,	Peck,
Brown, Pike,	Johnson, Williams,	Riley,
Campbell,	Keller,	Rorick,
Cody,	Knight,	Smith, Geauga,
Colton,	Lambert,	Smith, Hamilton,
Cunningham,	Lampson,	Stevens,
Davio,	Marshall,	Stilwell,
Donahey,	Mauck,	Tannehill,
Doty,	Miller, Crawford,	Tetlow,
Dunn,	Miller, Fairfield,	Thomas,
Fess,	Miller, Ottawa,	Watson,

So the motion was carried.

Mr. DOTY: I would like to ask as a special privilege that those who voted no, but have their grips out in the cloak room packed, be allowed to have their votes counted in the affirmative.

The VICE PRESIDENT: When we adjourn we will adjourn until Monday evening.

Mr. KERR: I now move that we adjourn.

Mr. STILWELL: I demand a roll call on that.

The VICE PRESIDENT: Are the yeas and nays regularly demanded?

A proper number joined in the demand for the yeas and nays.

The yeas and nays were taken, and resulted — yeas 21, nays 60, as follows:

Those who voted in the affirmative are:

Baum,	Evans,	Knight,
Brattain,	Hahn,	Malin,
Collett,	Harbarger,	Roehm,
Cordes,	Harter, Stark,	Ulmer,
DeFrees,	Hursh,	Wagner,
Earnhart,	Kerr,	Walker,
Elson,	Kilpatrick,	Wise.

Those who voted in the negative are:

Anderson,	Hoffman,	Peters,
Antrim,	Holtz,	Pierce,
Beatty, Morrow,	Hoskins,	Read,
Beyer,	Johnson, Madison,	Riley,
Campbell,	Johnson, Williams,	Rockel,
Cassidy,	Jones,	Rorick,
Cody,	Keller,	Shaffer,
Colton,	Kramer,	Smith, Geauga,
Crites,	Lambert,	Smith, Hamilton,
Cunningham,	Lampson,	Stevens,
Davio,	Longstreth,	Stewart,
Donahey,	Ludey,	Stilwell,
Doty,	Mauck,	Stokes,
Dunlap,	McClelland,	Taggart,
Dunn,	Miller, Crawford,	Tannehill,
Fess,	Miller, Fairfield,	Tetlow,
Halenkamp,	Moore,	Thomas,
Halfhill,	Okey,	Watson,
Harris, Ashtabula,	Partington,	Winn,
Henderson,	Peck,	Woods.

So the motion was lost.

The VICE PRESIDENT: The next thing in order is Proposal No. 174 — Mr. Mauck.

The proposal was read the second time.

Mr. MAUCK: I think this proposal justifies not only my introduction of it but also the favorable report made upon it by the committee on Judiciary. However, I shall not press it further, and for this reason: We have adopted a method of procedure by which we propose to submit all proposals to the people separately. To submit so many different proposals as are proposed here separately will create the utmost confusion. For that reason I have voted against both of the proposals submitted. In the utmost fairness, therefore, I propose to move to indefinitely postpone my own dearest proposal.

Mr. WOODS: The author of this proposal may be ready and willing to indefinitely postpone it, but I for one am not. We were sent down here to do certain work. We were not sent down here to do one or two things and then go back home. This proposal is a good one, and the proposition that the general assembly should have the right to regulate the sale and transfer of stocks and bonds of corporations that are creatures of this state should be written into the constitution, and that is one of the things we were sent here to do. Having been sent here to do these things, I for one am in favor of sitting here as long as it takes to do them. I am not going to vote against any proposal that is right because some other proposals are going to be submitted separately. I said when we decided to submit separately that it was a mistake. I said we ought first to act on the proposals and then decide how to submit them. But now let us face the music. Let us adopt these things that we ought to adopt and then if we see fit to put some of them together we can do so. Now this proposal is right. I do not believe there is a man on the floor who can say there is anything wrong about this proposal.

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Mr. HOSKINS: I want to ask this question: Is it not a fact that section 1 of the bill of rights is not the proper place for a declaration of this kind? Ought it not be incorporated elsewhere? I ask that for information. I think it should be among the regulations of corporations —

Mr. WOODS: If I were writing this proposal I probably would put it in the other place in the constitution, but we have not now this provision in the constitution. I want it in there. If I can get it in this place it satisfies me and will accomplish its purpose, although I might have been originally in favor of putting it in some other place.

Mr. HOSKINS: The committee on Corporations has prepared a proposal that seems to contain everything this contains and one that takes care of some other matters, and it seems to me it goes in the regulation of corporations instead of the bill of rights.

Mr. WOODS: I don't doubt that the committee on Corporations has done wisely, but I am on this Judiciary committee. We considered this proposal and everybody on the committee was for it. It ought to be passed in five minutes. We are going to have an election where these things can be voted on. If there is anything that is important, the one thing is that the general assembly should be given the right to regulate its own creatures. There is nothing indefinite about the thing. It is plain; it means just what it says. If you adopt this proposal it will be approved by the people and will influence the people to approve some other proposals.

Mr. ANDERSON: When the question came up as to the manner in which to submit this constitution, whether each proposal should be submitted separately or the constitution as a whole, I opposed the proposition to submit separately because we were not ready, just as the delegate from Medina suggests, and we couldn't tell in advance the best course to pursue. We were then told whatever action we took could not in any way interfere with the acts of the Convention, and that after we got ready to adjourn and had completed our work we would decide what was best to do.

We were not sent down here for the purpose of determining in advance what we were to do some weeks or months hence to the exclusion of good proposals such as this. I am one who believes that when we finish our work we should submit it as a whole with "new constitution, yes" and "new constitution, no." We are not sent here for the purpose of legislating alone in favor of the great mass of people, but we are sent here for the purpose of legislating in favor of the people who need help. Proposal No. 174 is offered to extend to the legislature certain powers that it does not possess. I agree with the gentleman from Medina that this ought to be voted through immediately. I know the tendency — and I know why it is — that we have this rushed to get through. We have got a resolution passed that we should adjourn at a certain time and there is a disposition to slight matters. We shouldn't do it.

Mr. ELSON: If we adopt this, which we can do without much debate, and then discover afterward that it would be better to put it in another place, cannot the committee attend to that?

Mr. ANDERSON: That is the reason we have the committee.

Mr. ELSON: And it wouldn't take more than three minutes.

Mr. ANDERSON: Yes; that is the fact. The question is, Is this proposal right or wrong? But I understand that we are trying to cut out all of the minor things that may come before the Convention, although they may be right, to defeat them so we may adjourn quickly and submit everything separately. It has been suggested by the member from Medina [Mr. Woods] if the committee on Corporations sends out something better than this proposal we could then adopt it. As a Convention we have the power to do with it as we please, but this proposal is before us now and we should properly consider it. Why, if some gentlemen have their way we would adjourn before the committee on Corporations brings in any report.

Take some of the measures that have been proposed by our labor friends. They have introduced some very important proposals. But there are certain delegates who want to adjourn. It is they who say that there are only two remaining proposals that should be submitted to the people, home rule and taxation. But there are more citizens of Ohio interested in two or three of the proposals introduced by the labor delegates than there are in home rule for cities.

Mr. WINN: I wish while you are on your feet you would explain what injury, if any, any person in Ohio has suffered, may suffer or it is possible for them to suffer because this was not heretofore in the constitution.

Mr. HARRIS, of Hamilton: I would like to supplement that inquiry too. If it is in the power of the gentlemen from Mahoning [Mr. ANDERSON], I would like for him to enlighten us. If this is a good thing I would like for the gentleman to show it to us.

The VICE PRESIDENT: The gentlemen are out of order. The gentleman from Mahoning [Mr. ANDERSON] has the floor.

Mr. ANDERSON: I am not speaking so much in favor of the proposal as in reference to the apparent desire to not give it proper consideration. My remarks are directed to another phase of the question. I am rather inclined to be in favor of the proposal, but I intend to listen to the debate and obtain light from the men who are back of it. I have received some light from members who came before the Judiciary committee and I understand that in several instances fraud has been perpetrated by means that would be prevented by the passage of this amendment. I understand the legislature has endeavored to correct that and that those laws have been declared unconstitutional, and it is now sought by this proposal to make such laws constitutional.

Now, in reference to what the other delegates have just said about adjourning, I am as anxious as anybody to finish and go home. I am sacrificing just as much by staying away from home as any delegate, but it is our duty to obtain all the information we can in reference to these proposals and do the work that the people have sent us here to do. Now let us analyze the consistency of the action of this Convention. Resolutions were adopted stating we must adjourn at a certain time. To carry them out we adopt a rule that we will have sessions on Friday. The time required offering those resolutions and adopting them was much time wasted, because we

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have never observed them. Every rule adopted about holding sessions on Friday has been a pure bluff. If we want to adjourn at the time stated in the Beatty resolution, let us have sessions on Friday, let us have night sessions, let us remain here on Saturday, but let us be sure to give a full hearing and consideration to everything that comes before the Convention.

Mr. STEVENS: The matter before us is Proposal No. 174, although you would never suspect it from the remarks of the gentleman last on the floor. I simply want to read this proposal. It seems to me the mere reading of it will show we have reached the depth of the ridiculous, even if we never do get to the height of sublimity. "All men are by nature free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and seeking and obtaining happiness and safety." That sounds all right. Then we have, "The general assembly may, however, make such regulations as it may deem proper for the conveyance and sale of stocks, bonds, securities and other personal property." Isn't that ridiculous? Why, that last clause sounds as a calico patch would look on a pair of broadcloth trousers. I haven't a thing to say for or against the addition of those last three lines, which is the only change made in this. But if we are going to adopt it, let us adopt it in some reasonable place where it will fit the case, where it will sound right and where it will not add incongruity to an already too-much-patched-up piece of work.

Mr. ANDERSON: Will the gentleman yield for a question?

The VICE PRESIDENT: Does the gentleman yield?

Mr. STEVENS: Yes, for a real question.

Mr. ANDERSON: I don't know what you consider a real question.

Mr. STEVENS: I will be the judge of that.

Mr. ANDERSON: Is it not a part of the duty of the Convention to take the ridiculous things out of our law?

Mr. STEVENS: Well, this thing is before us now, and it certainly is ridiculous. I thought when the gentleman spoke that he didn't know what the subject was and now I am sure of it. This reminds me of a little boy saying the Lord's Prayer, when he said, "Give us this day our daily bread and cake and pie." Leave the first clause as it is. It is a hundred years old in the state of Ohio, but why do we want to nail a patch on it like this last section?

Mr. PECK: This discussion grows out of ignorance to considerable extent. The supreme court decided unconstitutional a law passed by the legislature regulating the sale of stocks of goods and similar property on account of this section 1 of article I of the bill of rights. They said that it interfered with the right of property and that you couldn't pass a law which would say to a man who was engaged in business that if he proposed to sell out his whole stock in trade and he had creditors that he must give notice before he could do it. In other words it was found that this provision of our constitution was made a frequent means of defrauding creditors. A man would have a lot of creditors for a recently bought stock of goods, and he would sell the

whole lot between dark and daybreak and the creditors would have to hold the bag. The legislature tried to remedy that, and the supreme court said that that law was unconstitutional because the right to hold property included the right to dispose of it and the right to hold was guaranteed by section 1 of the bill of rights. This simply provides that a remedy may be found for the fraudulent sale of goods we have had heretofore. It is the necessary thing and is the proper thing; it is the best thing we can have to protect our people against fraudulent sales.

Mr. HOSKINS: With all due respect to the committee on Judiciary I think the speech made by Mr. Stevens was a very proper one and the criticism he made was also proper. I think we should at least attempt to avoid doing ridiculous things and to attach this proposal to section 1 of article I would be ridiculous.

Mr. PECK: The supreme court has rendered it necessary that we do attach it.

Mr. HOSKINS: If you will just wait I will be through in a little while.

Mr. PECK: I will be here when you get through.

Mr. HOSKINS: I will vote for the proposal as suggested, but I do not think it ought to be lugged in here at an improper place. It hits a wrong chord. You spoil a little the music of the constitution. You make it sound out of harmony. That provision properly belongs in article XIII of the constitution, and there is a proposal reported out here that was introduced by Mr. Stokes, Proposal No. 17, which is now on the calendar.

Mr. ANDERSON: Why not take this matter up now and discuss it and dispose of it and then recommit it to the committee, as we do practically everything else?

Mr. HOSKINS: That is acceptable. I would be glad to have it as a substitute.

Mr. ANDERSON: I object to indefinite postponement though.

Mr. HALFHILL: If I understand the statement, the purpose of Proposal No. 174 is to reach and obviate a condition declared by the supreme court to exist when it held unconstitutional the statute forbidding the sale of stock.

The supreme court said a man selling out often defrauded creditors, but you couldn't pass a statute of that kind. This doesn't have anything to do with corporations. It doesn't reach the same point at all.

Mr. PECK: That is right. There is no reference at all to corporations. That refers to the sale of personal property.

Mr. HOSKINS. I have the floor. Was that supposed to be a question?

Mr. HALFHILL: Yes; I was making a preliminary statement. Suppose we say that Proposal No. 174 reaches the sale of personal property such as I have stated, would this proposition that is objected to, Proposal No. 72, which relates only to the sale of the securities of corporations, in any way help this situation?

Mr. HOSKINS: We want to get right on this proposition. If this is not designed to cover the sale of property outside of stocks and bonds it is a different proposition from what I understand it to be. But at any rate this is the wrong place to insert it. I want to call attention to Proposal No. 72, which is intended to cover the

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whole situation as to these stock and bond concerns. I understand that is what you are seeking to do.

Mr. ANDERSON: No; I don't understand that to be the aim.

Mr. HOSKINS: Then you are not getting at it right, and it is not drawn properly.

Mr. WINN: May I ask a question?

Mr. HOSKINS: Wait until I get through and I will then try to answer you. There were four or five proposals. There has been a demand for classification of corporations. There has been a demand to meet the fraudulent sale of stock of corporations and to correct the evils growing out of corporate organizations, and the power of the legislature has heretofore been limited. There were three or four proposals that the committee thought they would embody in one. There was one proposal by Judge King, one by Mr. Dunn and one by Mr. Evans, and we thought Proposal No. 72 would cover them all:

Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stock and securities, and over the business and sale of the stock and securities of foreign corporations in this state, as may be prescribed by law.

If you are simply seeking to reach personal property you should confine it to personal property other than stocks and bonds, because before this Convention adjourns, in my judgment, we must pass something that will permit the legislature to confer upon the proper board the right to supervise not only existing corporations, but the issue of their securities and the amount of stocks and the amount of bonds they may issue and sell in the state of Ohio. In other words, you will not be able to destroy these corporate evils unless we have some power that will regulate the sale of securities and stocks by those artificial persons known as corporations.

Mr. PECK: If you will read Proposal No. 174 you will find it does regulate personal property.

Mr. HOSKINS: I have read it since I got on the floor. I had supposed the way you started out that it was to regulate corporations.

Mr. PECK: It is simply to regulate the transfer of personal property, stocks of goods, etc.

Mr. HOSKINS: If you are seeking to reach personal property other than stocks and bonds in Proposal No. 174 it ought to say so.

Mr. PECK: It does say so. That is what I wanted you to read.

Mr. HOSKINS: Will the chair please tell me who has the floor?

Mr. PECK: If you just read it you will see it.

Mr. HOSKINS: I want to know who owns this Convention. If you will just let me alone I will be through in a moment. There is no earthly use in getting technical or smart. We are just simply trying to reach the same object and I don't think because of years any man has any right to assume more privileges than any other member of the Convention.

The VICE PRESIDENT: The member will confine himself to the discussion.

Mr. HOSKINS: I wish you would confine the rest of them too.

The VICE PRESIDENT: I am doing the best I can.

Mr. HOSKINS: We tried to get a proposal similar to the Kansas blue-sky law. We have had a lot of blue sky sold in Ohio and we want to reach that. I do not think Proposal No. 174 ought to be passed in its present form. I am in sympathy with the object sought to be accomplished, but you should not pass it in its present form because it is not in proper form and is not in the proper place. When this question of corporations is reached we can then take up this whole matter.

Mr. WOODS: Are you in favor of Proposal No. 72?

Mr. HOSKINS: Yes.

Mr. WOODS: Are you in favor of doing what Proposal No. 174 provides for?

Mr. HOSKINS: If I understand it, I am, and I have so stated.

Mr. WOODS: Do you think those two conflict with each other?

Mr. HOSKINS: Yes; I think the provisions of Proposal No. 174 with reference to the power to regulate corporations are not broad enough. Your proposal is too narrow.

Mr. WOODS: Does not Proposal No. 72 apply just to corporations?

Mr. HOSKINS: Yes.

Mr. WOODS: I am for Proposal No. 72, but I don't think it takes care of all the things Proposal No. 174 takes care of.

Mr. HOSKINS: I admit that, as to your last three lines applying to personal property. When you get outside of stocks and bonds it doesn't fit the other classes of personal property and was not so intended, but the provisions of Proposals No. 72 and No. 174 would conflict on the question of stocks and bonds.

Mr. WOODS: Just another question: Does not article I of the bill of rights deal with personal rights, and when you regulate the sale of stocks and bonds, should not the regulation be handled so you could catch them even if it is an individual that is handling them?

Mr. HOSKINS: Yes.

Mr. WOODS: Then haven't you to amend article I of the bill of rights to do that? I want to take care of this matter both ways. Why not pass both of them. It certainly can't hurt anything.

Mr. HOSKINS: If you are willing to trust the committee on Phraseology to straighten it out I will be willing to trust it too.

Mr. HALFHILL: I think there has been a little misunderstanding here on the relative province of Proposal No. 174 and Proposal No. 72. Proposal No. 174, notwithstanding the rather funny remarks about pinning that last sentence on to the bill of rights, is in my judgment absolutely and legally correct, and for this reason: A few years ago the legislature of Ohio passed a law which forbade one who was conducting an ordinary mercantile business from selling out that business without certain notice to creditors, and it was an attempt on the part of the legislature to prevent a dishonest person from stocking up with a lot of goods and merchandise and then making a sale, real or fictitious, and permitting his creditors to go unpaid. In other words, it was a righteous attempt to defeat a practice that was altogether too

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common and often fraudulent. But the legislature was without power to do that under the bill of rights, and it was held by the supreme court to be an interference with personal rights, and with the free transfer of property. Now this Proposal No. 174 is drawn, if I understand it correctly, so the last three words of it meet the very condition that the supreme court found that the legislature could not get around under the present constitution. If I am not correct on that point I want some member of the Judiciary committee to inform me.

Mr. PECK: That is the way the Judiciary committee looked at it and we adopted it for that reason.

Mr. HALFHILL: That being the situation this proposal contains a very important addition to the constitution because it relates to all personal property, whether held by an individual or corporation or partnership. Now then, to that extent Proposal No. 174 has met that condition which the supreme court of Ohio has declared to exist and unfetters the legislature so that it can proceed to pass this needed legislation. I undertake to say, and I believe if to be true, that all of this that is put in Proposal No. 174 pertaining to the regulation of conveyances and sales of stocks, bonds and securities, is not necessary in order to reach the end that is desired to be reached by what is called the "blue sky" law of Kansas which has been referred to by gentlemen in debate. I believe that that power is unquestionably found within the present constitution. But suppose it is not? Suppose the legislature were to endeavor to draw a statute which would be somewhere nearly as broad as the Kansas statute, so that these bits of paper with a gold seal on the corner that are peddled around the state as stocks and bonds could not be sold promiscuously as they have been heretofore, and suppose we should again encounter some decision of the supreme court which said the present constitution is not broad enough, then while we are amending the constitution we should put this provision into it, and I believe the Judiciary committee has combined the two features necessary to cover the entire question. I think this Proposal No. 174 should be adopted right now, because it is important, and then the committee on Arrangement and Phraseology may put it in some other place if they think it belongs there, but I think it belongs right where it is, and is properly a part of section 1 of the bill of rights.

Mr. MAUCK: In making the motion to indefinitely postpone I was sacrificing some personal and professional pride because I was giving something I thought I ought to have. Inasmuch as the question has been raised, and inasmuch as the gentleman from Tuscarawas has denounced this proposal as ridiculous and absurd, I propose to fight for it and I withdraw the motion to indefinitely postpone.

Mr. STEVENS: Then I move to indefinitely postpone it.

Mr. MAUCK: You have not the floor to make that motion. I have the floor. The supreme court of Ohio, after two general assemblies had passed an act providing that bulk sales of stocks of goods should not be made in certain ways, declared the acts unconstitutional and when I observed that the failure to enforce such acts as that had resulted in great hardship to a great many wholesalers and retailers, it struck me that it

would be a wise thing to give the general assembly the power to make such a law. In connection with that it struck me, inasmuch as the general assembly of Kansas made what is called the blue sky law—an act of that state regulating the disposition of stocks and bonds and other securities—that we could not have that last thing—that is, the regulation of stocks and bonds and other securities—if we could not have the regulation of personal property generally. This proposal was therefore framed with a view to giving the general assembly all of those powers, and I am gratified that the great big lawyer from Allen county joins with me in saying this proposal does actually accomplish what I thought it would accomplish and what it will accomplish, and I therefore withdraw the motion to indefinitely postpone and insist that this proposal be passed.

Mr. FACKLER: I think with the gentleman from Allen that this proposal can be amended so as to regulate the whole matter. I am preparing such an amendment. In order to see what this seeks to accomplish, let us review the legislation relative to it. The legislature passed a law providing that a man who owned a stock of goods and kept that stock of goods for sale—a shoe-store, a dry goods store or a grocery store—could not sell that stock of goods other than in the course of trade unless he first filed with the recorder a notice of his intention to sell. That was for the purpose of protecting creditors of a man engaged in that kind of a business. It had been found that many times a man would sell out his business between sundown and sunrise, take the money and get out, and the creditors would be left without any recourse whatever. In a case from Mahoning county the law passed to correct that evil was declared unconstitutional by reason of being in violation of section 1 of the bill of rights. This proposal seeks to provide a means whereby laws may be passed that will prevent that kind of fraud upon a business community. You are going to leave the business community subject to that kind of fraud unless you take the action that is offered here. I am in favor of this proposal after taking out of it all reference to stocks and bonds and then putting it on final passage.

Mr. PECK: Why take that out?

Mr. FACKLER: Leave it to the committee on Corporations other than Municipal.

Mr. PECK: Stocks and bonds are personal property.

Mr. FACKLER: Yes. I offer an amendment.

The amendment was read as follows:

Strike out all of line 9, after the period. Strike out all of lines 10 and 11 and insert in lieu thereof the following: "Laws may be passed regulating the transfer and sale of all personal property."

Mr. MAUCK: I would like to ask the gentleman what difference he thinks that makes in the proposal. Is there any difference in personal property of one kind or another which you seek to protect? Is the fact that I enumerate stocks, bonds and securities in order to be doubly sure something that you object to?

Mr. FACKLER: The object of this is twofold, to shorten the language and strike out "general assembly." Under the initiative and referendum proposal, submitted

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laws may be passed in other ways than by the general assembly.

Mr. JONES: I am in favor of the amendment just offered, but I call attention to the gentleman of an inadvertence. There is a misuse of language. The word "conveyance" has no application to personal property. What it really means is "transfer". With this change I have no objection whatever to the proposal. I happened to be assigned on the sub-committee of the committee on Corporations other than Municipal, and drafted Proposal No. 72. Part of it covers a number of proposals before the committee, and it met with the approval of the sub-committee and of the whole committee. The objects, however, sought to be accomplished by Proposal No. 72 are similar to this, to give the legislature full power over the organization of corporations and over their issue and sale of stock, and full power over anybody who offers those stocks and securities for sale. The further purpose was to provide that anybody selling or dealing in stocks for foreign corporations should be subject to licensed regulation and control. This other object is entirely a distinct one from that, and as has been suggested this decision of the supreme court prevents the exercise of the power that was attempted by the legislature with reference to the transfer and sale of personal property. This proposal, instead of fettering the hands of the legislature, is simply to untie the hands of the legislature and give it such power that it will be possible for the legislature to exercise it for the protection of the people, and I think both of these proposals ought to pass.

Mr. COLTON: I am heartily in favor of this with the understanding that personal property includes stocks and bonds. This will prevent the sale of worthless stocks and bonds of wild-cat gold mining property and it will prevent such stocks and bonds from being placed on the market. If this be done it will give great protection to the innocent people who might otherwise be induced to invest in them. I admit it looks incongruous to attach this to section 1 of the bill of rights. I regret that somewhat, and yet I would put that calico patch on the broadcloth trousers if the calico patch is the only thing at hand to close the rent and if the rent is one that seriously needs closing.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

After the word "sale" insert "stocks, bonds and securities".

Mr. WOODS: I can not see what objection there can be to having those words "stocks, bonds and securities".

Individuals may sell them and I think the general assembly should be given this power. Certainly nobody has pointed out how the use of these three words can ever hurt anybody. I might come here from New York and undertake to sell stocks, bonds and securities of a New York corporation and why should not the general assembly have the right to regulate the manner and the way that I can offer and sell that stock to the people of Ohio? Many people here have been swindled out of all sorts of money because there was no way to get at these things. Those three words can not hurt anybody, and in my judgment it gives the general assembly

power which may be used for good. I think we should leave those three words in there. I think it is a good thing, however, to change the words "general assembly" to "laws may be passed". Then adopt my amendment and the whole matter is in proper shape.

Mr. THOMAS: Then you must change the word "all" to "other".

Mr. WOODS: The Phraseology committee can straighten that out.

Mr. DOTY: We are getting familiar with that kind of talk. There are six other members of that committee, but I am on it and for the seventh member of the committee I want to say that I don't like this hop-skip-and-jump method of making a constitution by writing an amendment here and an amendment there and then leaving it to the Phraseology committee to put in shape. You complain of the legislature doing that and you want to do it yourself. It appears that if we would postpone action on this and put it on the calendar right after Proposal No. 72, with all its pending amendments, we could then consider the whole thing and dispose of it, but for heaven's sake let us have it so that some of us can know something about it and the whole thing can be kept straight. It is all very easy for you gentlemen to vote on this, that and the other thing and then say the committee on Phraseology can get it in proper form, but there is a limit to what you ought to put on that committee.

Mr. KRAMER: Oh, some of us are smarter than you think.

Mr. DOTY: I move the further consideration of Proposal No. 174 with pending amendments be postponed until tomorrow and that it be placed upon tomorrow's calendar right after Proposal No. 72 by Mr. Stokes.

Mr. KILPATRICK: I move that Mr. Doty's motion be laid on the table.

The VICE PRESIDENT: The motion was not seconded and is lost.

Mr. CUNNINGHAM: I think most of the troubles we are encountering could be obviated by adding two or three words to the present proposal. There is no question at all about the legislature of Ohio having had control of the subject, and I think they could pass a blue-sky law like Kansas, but the only question is whether the legislature can pass a law regulating the sales of bonds of foreign corporations, and I therefore move as a substitute for both amendments the insertion after the word "bond" at the end of line 10 of the words "domestic and foreign". That would give the legislature power over both sorts of bonds. There is no question that they have the power to regulate the sale of domestic bonds. The only question is whether they have the right to regulate foreign bonds too.

Mr. MAUCK: I am perfectly willing to agree to that amendment.

Mr. HOSKINS: I just want to say this: I hope the Convention will bear in mind that I am ready to vote for this proposal, but I believe three or four delegates could go out and reconcile all differences. I favor Mr. Fackler's amendment, and if you pass this I want you to remember that I am going to ask you to examine Proposal No. 72, because in my judgment the provisions of Proposal No. 174 only go half far enough; they do

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not meet the situation which the committee on Corporations wanted to meet, because they leave out some vital point. However, I am not prepared on the spur of the moment to draw an amendment to cover it. We had this submitted to the sub-committee and I want to warn you that in passing this proposal you have not covered the subject; you have only gone half way; you have a whole lot left. In the end we don't want two provisions in different sections of the constitution on the same proposition. What I would like to do is to reconcile those and get them in the same proposal. I am willing to pass this if you will give fair consideration to Proposal No. 72 when we reach that.

Mr. WATSON: I hope this will pass as originally drawn without so many amendments. It is designed to cover one point and I think it covers it. There is hardly a community in Ohio that has not seen some of its members pillaged by this method. I have seen it in my community and I have seen widows and orphans robbed. I have seen property taken away from fathers and sons. Whatever we do, let us pass this.

Mr. MILLER, of Fairfield: I move the previous question on the whole matter.

The main question was ordered.

The VICE PRESIDENT: The vote is first on the substitute of the member from Harrison.

Mr. KNIGHT: I move that that amendment be laid on the table.

Mr. DOTY: The main question has been ordered. That motion is out of order.

The VICE PRESIDENT: I think not. The question is on the motion to table.

The motion was carried.

The VICE PRESIDENT: The motion goes upon the second amendment by Mr. Woods.

Mr. JONES: I move that that be tabled.

The motion was carried.

The VICE PRESIDENT: The motion now is on the amendment offered by Mr. Fackler.

Mr. WOODS: I move that that be tabled.

The motion was carried.

The VICE PRESIDENT: The motion now is upon the proposal as amended. All in favor will signify it when your name is called.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 73, nays 3, as follows:

Those who voted in the affirmative are:

Anderson,	Crosser,	Fackler,
Antrim,	Cunningham,	Farrell,
Beyer,	Davio,	Fess,
Brown, Lucas,	DeFrees,	Fluke,
Campbell,	Donahey,	Fox,
Collett,	Dunlap,	Hahn,
Colton,	Dunn,	Halenkamp,
Cordes,	Earnhart,	Halfhill,
Crites,	Elson,	Harbarger,

Harris, Ashtabula,	Ludey,	Rockel,
Henderson,	Marshall,	Rorick,
Hoffman,	Mauck,	Shaffer,
Holtz,	McClelland,	Smith, Geauga,
Hoskins,	Miller, Crawford,	Smith, Hamilton,
Hursh,	Miller, Fairfield,	Stewart,
Johnson, Madison,	Moore,	Stilwell,
Johnson, Williams,	Nye,	Taggart,
Kehoe,	Okey,	Tannehill,
Kerr,	Partington,	Tetlow,
Kilpatrick,	Peck,	Thomas,
Knight,	Peters,	Watson,
Kramer,	Pierce,	Winn,
Lambert,	Read,	Wise,
Lampson,	Riley,	Woods.
Longstreth,		

Those who voted in the negative are: Messrs. Doty, Malin, Stevens.

So the proposal passed as follows:

Proposal No. 174—Mr. Mauck. Relative to bill of rights.

Resolved, by the Constitutional Convention of the state of Ohio, That section 1, of article I, of the constitution of the state of Ohio be and the same is hereby revised, altered and amended so as to read as follows:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All men are by nature free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and seeking and obtaining happiness and safety. The general assembly may, however, make such regulations as it may deem proper for the conveyance and sale of stocks, bonds, securities and other personal property.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Leave of absence until next Wednesday was granted to Mr. Evans.

Leave of absence until next Tuesday was granted to Mr. Stokes.

Leave of absence for all of next week was granted to Messrs. Marshall, Okey and Shaffer.

Mr. STILWELL: I move that we recess until 7:30 o'clock this evening.

Mr. KERR: I move that we adjourn until Monday at 10 o'clock a. m.

Mr. DOTY: You can't do that; we have already decided when we adjourned we would adjourn to meet Monday evening at 7 o'clock.

Mr. KNIGHT: I move that we adjourn.

The motion to adjourn was carried and the Convention adjourned until Monday evening at 7 o'clock.

FIFTY-SIXTH DAY

EVENING SESSION.

MONDAY, April 15, 1912.

The Convention met pursuant to adjournment, was called to order by the vice president and opened with prayer by the Rev. Harry B. Lewis, of Columbus, Ohio.

The journal of yesterday was read and approved.

The VICE PRESIDENT: The first order of business is motions and resolutions.

MOTIONS AND RESOLUTIONS.

Mr. DOTY: I think it is pretty well recognized that at least two of the standing committees that have not yet reported will have important reports to make, and it can not now be determined when they will make their reports. Of course, if they are not ready there will be time next Monday. If they are ready this week we should like to have the privilege of offering those reports when they are ready. Therefore, I move that the reports of the standing committees on Municipal Government and Taxation be received at any time.

The motion was seconded.

Mr. KNIGHT: I move to amend that by adding also the committee on Education, because immediately following the report of the committee on Municipal Government the committee on Education will want to make a report.

Mr. WOODS: I do not see why they should ask that. Some of us may not be here and this may be shot in at any time.

Mr. DOTY: All I ask is that I shall have leave to make the report. I know something about the scope of the report on municipal government. It will require reprinting. It can not be put on the calendar. The bill will have to be engrossed. There can not be any engrossing unless a majority of the Convention vote for it, and before it can be put ahead of anybody else a two-thirds vote will be required. I am not trying to get ahead of anybody.

Mr. WOODS: What is the purpose of making this motion?

Mr. DOTY: There will not be any chance between now and a week from now to make this report. We do not know when we shall be ready. I understand the committee on Municipal Government will be ready in a day or two and I hope the committee on Taxation will be ready in a day or two. We want to be allowed to put the reports in without a suspension of the rule. It will not take as many votes now as it would later under a motion to suspend the rules.

Mr. WOODS: I believe in going by rule until we get through here. There has been a purpose here on the part of some to kill off everything after certain other things have been taken care of. If we go according to rule we will know when these things are reached. I won't object to these committees reporting whenever they are ready, but I hate to vote for something that gives the committee a right to do something whenever

they want to. I can not see any reason for it. I think the chairmen of these committees can get up at any time and ask leave to make a report and it will be granted. I do not see why we should bind ourselves to let these committees report at any time. I am opposed to the motion.

Mr. HARRIS, of Ashtabula: I am of the same opinion as the gentleman from Medina [Mr. Woods]. I do not think any committee should be privileged to break into the regular order of business. The importance of a report is a matter of individual opinion, possibly a little collective opinion, and I shall strenuously object to this motion. If this is intended to make any exceptions as to these two committees I certainly do object.

The motion was lost.

Indefinite leave of absence was granted to Mr. Kerr.

Indefinite leave of absence was granted to Judge Dwyer, of Montgomery, on account of illness.

Leave of absence was granted to Mr. Hoskins for Monday, Tuesday and Wednesday of this week.

Leave of absence for Monday and Tuesday was granted to Mr. Norris.

The VICE PRESIDENT: The next order of business is introduction of proposals. Unless there is objection we will not call the roll of the counties.

INTRODUCTION OF PROPOSALS.

The following proposal was introduced and read the first time:

Proposal No. 331—Mr. Walker. To submit an amendment to article VIII, sections 12 and 13, of the constitution—Relating to the board of public works.

The VICE PRESIDENT: Is there any other proposal? If none, the next order is reference of proposals to committees.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposal on the calendar was read the second time by its title and referred as follows:

Proposal No. 330—Mr. Dwyer. To the committee on Judiciary and Bill of Rights.

RESOLUTIONS LAID OVER.

The VICE PRESIDENT: The next order of business is resolutions laid over. The first resolution laid over is Resolution No. 99—Mr. Pierce, which the secretary will read.

The resolution was read.

Mr. PIERCE: Mr. President and Gentlemen of the Convention. I introduced this resolution last Monday night for the purpose of getting the Convention to work to get through with its labors. It has been said all the time during this Convention that there has been considerable complaint over our delay; that we are putting the people to a good deal of expense, and that we ought to get through with our labors and go home. Inasmuch as the gentleman from Wood [Mr. BEATTY]

Resolution Relative to Sessions and Limiting Debate.

introduced a resolution to adjourn at a time definite, I think to adjourn within that time it is absolutely necessary for the Convention to settle down to work and try to get through with its labors. In this resolution I have provided for three sessions a day on Tuesday, Wednesday, Thursday and Friday of each week. I apprehend there will be considerable difficulty in passing that resolution, especially that part of it relating to Friday, and, so far as I am personally concerned, I am willing that that part of the resolution may be amended. I believe with that exception we ought to hold three sessions a day. If we hold three sessions a day and do not make them too long it will not tire the Convention as much as it does the way we have been holding them. It is the long sessions that tire the Convention out. In my judgment we will meet at 9:30 a. m., hold a two of two-and-a-half hour session," adjourn until 2 p. m., hold a three-hour session, adjourn until 7 o'clock p. m. and hold until 9 o'clock p. m. It will not entail any hardship on any one in this Convention and I believe we should pass that resolution. I do not think there ought to be any serious objection to it on the part of the Convention because we all realize we have been in session fully three months, and we have accomplished only a very small part of the work to be accomplished by the Convention.

Only last week we saw an attempt in this Convention to get one question up and give it precedence over other questions. I was opposed to that and I shall oppose everything of that kind that comes up, because I want everything to take its regular order, and I believe that every proposal that is submitted to this Convention should be given due consideration and thought. We can not give the vast number of proposals now on the calendar and that will be on the calendar hereafter and perhaps that will be introduced later this consideration unless we buckle down and get to work.

I also provided in the resolution that the chairman of a committee or the chairman of the minority of a committee might talk not exceeding one hour and all the others not to exceed thirty minutes, unless unanimous consent is given. We have been limiting the time of speakers, but it has been the uniform rule that whenever a member's time expired someone would move to extend the time and the extension has been granted. When a man has prepared a speech no one wants to cut him off, and, through courtesy, the time is extended. But I believe we have reached the point when we ought to object to these extensions. I am satisfied that any man who has anything important to say can say it in fifteen minutes or half an hour at most, and if he can not say it in that time it had better be left unsaid. I know what little I have to say I can say in fifteen or twenty minutes and I believe every other member of the Convention can do the same thing.

If the Convention feels that this part of the resolution relative to holding sessions on Friday is too onerous I would be willing for some one to offer an amendment to cut that out because I realize every man in the Convention has work to do and things to look after at home. I know I have. I have been here every minute of the time and up to this time I have not asked leave of absence. Perhaps there are members of the Convention who are busier than I am and who are compelled to take

the time to see to some of their outside affairs, and if it is necessary for them to have it let them have it. I have been here evenings, and I am satisfied from my observation that a great many people are in the same position that I am. They hardly know what to do with their time in the evenings. I believe we could employ it in discussing some of these questions. If it is necessary for members to be excused the president is always glad to excuse them, and I am satisfied there will not be so many who will want to be excused that we won't have a working number.

Therefore, I am going to insist upon the passage of this resolution with the possible exception of Friday's session. Perhaps I have given the chairmen of the different committees too much time and this may interfere with the resolution offered by Mr. Rorick that this Convention adopted. If it does, this resolution ought to be made to conform to that resolution.

Mr. DOTY: The member from Butler [Mr. PIERCE] has touched on one conflict that there is. If this resolution is amended by striking out the third paragraph, it would leave the Rorick resolution, on the last page of your calendar, the resolution in effect governing. You will find that this resolution doubles the time given to members, and I think the provision of the third paragraph would really defeat the purpose Mr. Pierce seeks insofar as affecting debate. I think the first two paragraphs ought to be adopted and the rule we now have in the Rorick resolution ought to stand. We have been working on it some days; we have become accustomed to it and we have found it to work well. I move, therefore, to strike out the third paragraph.

The delegate from Ashtabula [Mr. LAMPSON] here took the chair.

The amendment offered by the delegate from Cuyahoga [Mr. DOTY] was read as follows:

Amend Resolution No. 99 by striking out the third paragraph.

Mr. ROEHM: I am opposed to that part of this resolution relating to night sessions, unless we are in the midst of something important and the members want to come back. I do not believe it is fair for a great number of important proposals to be placed before the Convention and argued and voted upon when there are only seventy-five or eighty members on the floor of this Convention. A proposal must have sixty votes to be passed and for that reason it is not fair to a proponent of a measure that it be considered before a small attendance. I would be in favor of the resolution provided there is some means by which we can and will compel attendance of members during the sessions. I therefore offer the following amendment.

The amendment was read as follows:

In the first paragraph of the resolution strike out the words "from seven to 10 o'clock p. m." Strike out the word "three" and insert the word "two". Strike out "a. m." following figures "12" and insert "m". Strike out the word "night" in the second paragraph.

The PRESIDENT PRO TEM: The question is on the amendment offered by the delegate from Montgomery [Mr. ROEHM].

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Mr. HARRIS, of Hamilton: I want to say a few words in favor of that amendment. The question is one of physical endurance. We know a dozen members of this Convention have been compelled to go home and remain for a week or two weeks on account of breaking down from the work here, and it is ridiculous to suppose for one minute that members, after three months of arduous work can stand the strain of morning, afternoon and night sessions. Therefore, I trust the amendment of the delegate from Montgomery will prevail.

Mr. HALFHILL: I hope that amendment offered by the delegate from Montgomery [Mr. ROEHM] will prevail and I want to add a further suggestion. While it is true that a number of members have become sick from overwork, I would like to know when these important matters that are to be debated here can be prepared by those responsible for presenting them to the Convention? I have not found any time that has hung heavily on my hands here. I have not found time to properly prepare and present some things that I ought to have presented to the Convention. Of course, the more time you have to prepare, the better you can reduce and boil down your efforts. I am in favor of all reasonable limitations upon debate, but the work of this Convention has been very arduous. I do not believe there is any gentleman here who has taken his share of the work—and most of them have—who would give the number of hours to his private affairs that he has given to the state, and with the hours of time that are given the committee work and these long sessions we ought not to have any night sessions as a matter of rule; but if we get into a place where we have to have a night session in order to clean up some matter before the Convention, that is another thing. I object to night sessions of the Convention, not only because it is beyond the physical endurance of many of the members, but because we need some time to prepare work that is to be presented here.

Mr. HENDERSON: I would like to have the matter read again.

The resolution and the pending amendments were again read.

The PRESIDENT PRO TEM: The question is on the amendment offered by the delegate from Montgomery [Mr. ROEHM].

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is on the amendment by the delegate from Cuyahoga [Mr. Doty].

Mr. McCLELLAND: I have serious objection to the amendment proposed by the delegate from Cuyahoga [Mr. Doty]. The resolution offered by Mr. Rorick and passed by the Convention specifically excepts two questions which will involve the longest and most strenuous debate that we will have and upon those two subjects of taxation and municipal government there is no restriction whatever. I don't think it is safe for us to go into a discussion of those questions without a time limit. It seems to me the time limit offered by Mr. Pierce would apply to these subjects—I don't know how that would be—but the time limit in Mr. Pierce's resolution would certainly apply to them, and it seems to me that we should, before the speeches on those subjects begin, adopt some time limit, for we have found it is

not safe to go into any debate without a time limit on any subject.

Mr. DOTY: Do you contend that the resolution we have under consideration changes the Rorick resolution? My amendment was to avoid conflict.

Mr. McCLELLAND: If your amendment is lost there will be a seeming conflict.

Mr. DOTY: As chairman of one of the committees referred to I am not going to speak an hour and what I am trying to do here is simply to avoid a conflict.

Mr. McCLELLAND: If Mr. Pierce's resolution applied to the same thing as Mr. Rorick's—

Mr. DOTY. I beg you pardon, but it doesn't.

Mr. McCLELLAND: I said, if it did. I know it doesn't, but if your amendment is not carried there will not be any time limit with reference to those two committees; and when we take up those subjects there will be unlimited debate. That is what I am referring to and what I want to guard against. We ought to have some amendments applying the provisions of the Rorick resolution relative to debate to those two subjects.

Mr. DOTY: I have no objection to withdrawing my amendment and letting you offer one.

Mr. McCLELLAND: I would substitute for the figures of the Pierce resolution the same figures we have adopted for all other subjects and apply them to those two committees.

Mr. DOTY: That is what my amendment would do.

Mr. McCLELLAND: No, it won't. Those two subjects are excepted by Mr. Rorick's resolution.

Mr. ELSON: It seems to me those two subjects can be taken care of when they come up. We can make rules on each subject after it arrives. For my part a great many of the proposals that will come before us can be disposed of in a very short time, and I do not think long debate is necessary. I do not anticipate a long debate on anything except taxation. I hope it won't be too long, but it will be long. The importance of the subject demands it. I do not think municipal government will be so long. I think we shall be generally agreed to pass the substance of the proposal when it comes up. On Thursday of last week we disposed of two or three important subjects in a very short time. In the afternoon we disposed of one in half an hour that was very important and it didn't provoke so much debate. My opinion is that many of the proposals that we shall adopt in the next week or two will be adopted quickly and there is no need of any debate.

Mr. KNIGHT: I want to suggest that if the gentleman from Cuyahoga [Mr. Doty] will withdraw his amendment I shall offer one in place of that embodying all the Rorick resolution except the last clause and offering it for this third section of Mr. Pierce's resolution.

I will read it for information:

Strike out the third paragraph and insert the following:

Be it further resolved, That hereafter debate upon all questions shall be limited as follows:

Author of proposal or chairman of the standing committee to which it was referred, thirty minutes upon the second reading of the proposal and five minutes upon any amendment thereto.

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Other members fifteen minutes upon the second reading of the proposal and five minutes upon any amendment thereto.

Upon resolutions upon questions of adoption, five minutes for any member.

Upon all debatable subsidiary motions five minutes for any member.

No member's time shall be extended except on two-thirds vote.

I leave off the last paragraph of the Rorick resolution.

Mr. DOTY: If this Convention desires to repeal the so-called Rorick resolution you can do it, but this won't do it. If you want to do that you have to take off the last clause.

Mr. KNIGHT: I will add then, "Resolution No. 91 is hereby repealed."

Mr. DOTY: That will do it.

The PRESIDENT PRO TEM. Without objection the amendment of the delegate from Cuyahoga [Mr. DOTY] is withdrawn and the delegate from Franklin [Mr. KNIGHT] offers an amendment which the secretary will read.

The amendment was again read.

The question is on the adoption of this amendment.

The amendment was agreed to.

Mr. WOODS: It does seem to me we should be careful what we do in matters of this kind. I have gone through two houses and along toward the end of the session they do just such things as this, and then after they have done them they complain. I don't want to take up unnecessary time, but if we are going to wade into subjects like taxation and some other things like that I may want to say something. I don't believe I want to take more than fifteen minutes, but I don't want what remarks I have to make cut off. I may wish to talk more than fifteen minutes. I am not in favor of tying ourselves up. There is not a man in this Convention who is more eager than I am to get away, but I am willing to stay here and do right all that we do. If we are not going to do right let us not do at all. I say to you in all frankness if you pass this resolution you will be sorry for it when you adjourn and then carefully consider the work of this body. It is a mistake and you will agree it is a mistake after you have done it.

Mr. BROWN, of Highland: I don't think it is practical to secure an attendance of the members of the Convention on Friday afternoon. In my case if I go home on Friday afternoon I have to start in the middle of the afternoon to make it. If I wait until the end of Friday afternoon's session I can not get away until Saturday and then it takes nearly all of Saturday to get home. I believe you can not compel attendance with that rule, and I think on Friday afternoon there wouldn't be a quorum under this resolution. I believe if we pass it at all and make it so the adjournment will come Friday noon we can get better work. If this resolution is passed at all, it should be changed, and I hope in its present terms the resolution will be defeated.

Mr. STEVENS: It seems to me that a resolution to limit debate ought to be carefully considered. I refer particularly to that part which will limit debate to five minutes on any amendment to any measure. The experience of this Convention has taught every man in it that

it is very liable to happen that an amendment to a proposal is more important than the proposal itself. That has happened time and time again, and will happen hereafter, and to limit debate on amendments to five minutes when the amendment may contain more important matter than the proposal itself, is certainly unreasonable and not consistent with the best interests of the Convention. I am in favor of limiting debate. I am only sorry it was not done the first day of the Convention, because I do not believe there is a man in the Convention who can not run dry in one hour. At least, we have seen a number of them do it and then start all over again. I hope the resolution in its present form will not be passed.

Mr. HENDERSON: I agree with the remarks of the gentleman from Highland [Mr. BROWN], that we who are farmers need some time to get home, and to hold an all-day Friday session doesn't give us the proper opportunity. I think the resolution is objectionable in its present form.

Mr. READ: We have had some experience of the fact that regulations do not regulate. I do not believe it is possible to make any regulations at the present time to compel this Convention to do more work or rush through faster than we have been doing. I agree with the gentleman from Allen [Mr. HALFHILL] that we have work to do outside of the Convention as well as in it, and this outside work takes time. I do not find time dragging on my hands. There are quite a number of important proposals to come before the Convention. They should be considered carefully in your own study, and you should come here with the result of that investigation. We have seen from our experience last night that if we attempt to run this Convention all day and night people get tired. The members take little interest in what is going on. They sit around, but often their minds are not on the work and the work is not as well done as it would be if we had less time in the Convention and more opportunity for study. I do not believe we should try to run this Convention through so hurriedly. We hear that the sooner we get through the better the people will be pleased with our work. For my own part I don't pay any attention to such foolish and unfounded remarks. There is nothing in them. The people whose opinions are worth anything care more for the kind of constitution we produce than for the length of time we take in doing it. We have been in session fifty-five days. The second constitutional convention was in session one hundred and thirty-five days and the third one hundred and eighty-eight days. I do not believe it is possible for us to finish this work in less than forty-five days more and I don't believe in these night sessions. I think we can do better work by meeting Monday night and Tuesday, Wednesday and Thursday and then adjourning and having the remainder of the time for study. Then we can come back fresh and start in with the work. I don't believe in rushing the thing through. I am not in favor of any resolution to regulate or limit the time or to attempt to close the work of the Convention in any definite time. I move that Friday be exempted from the rule of all-day sessions and that on Friday the adjournment be at noon.

Mr. KRAMER: This makes the third time we have solemnly resolved to stay here on Friday. The first

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time we did it, I think it was done in good faith. I know now that it is not in good faith. The very crowd that are trying to stay here on Friday will be the first bunch to break for home on Thursday evening. I am willing to stay here on Friday, but I am not willing to stay on Friday when there are only thirty or forty stayers, and you fellows who are talking about staying on Friday know that you won't stay until Friday afternoon, but that you will only stay until Friday noon. What is the use of thirty or forty sitting around here in the hot summer and pretending to do something when we can't? We have tried it before. I think there is one unfortunate clause in that resolution and that is to the effect that we have been here three months and have only done a small fraction of the work. I think a great portion of the work has been done.

Now I am in favor of limiting debate. Every one knows that every man in the Convention can say all he has to say in thirty minutes on any subject. When he has talked that long the Convention is not going to listen to him much longer. You know that. You know that these speeches an hour and a half or two or two and a half or three hours in length get into the debates, but they do absolutely no further good and only encumber the record.

Mr. HALFHILL: Do you mean to say that anybody can deal with the question of taxation in anything like thirty minutes?

Mr. KRAMER: I think thirty minutes is long enough.

Mr. HALFHILL: Well, how about five minutes on amendments?

Mr. KRAMER: I think five minutes possibly is a little short, but any man can, in thirty minutes, lay down his premises and draw his conclusions to the perfect satisfaction of the members of the Convention. I don't know about the five minutes. I am like the member from Tuscarawas [Mr. STEVENS]. I am afraid that is cutting it a little too short. But it is just like every other body, we are always going to extremes. We have done that heretofore in having unlimited debate and now we want to go too much the other way.

Mr. ROEHM: I am opposed to Friday sessions. I have voted against them even when the yeas and nays have been called. I have gone on record every time to adjourn Thursday night, but I have noticed that a great many of those who vote no when the yeas and nays are called vote aye when it is a viva voce vote, and they are the first ones to take their traveling bags and break for home on Thursday. The reason we don't have a quorum on Friday is that those who vote no on adjourning over Friday adjourn Thursday and get out first. I am in favor of having the time just as it has been so far as Friday sessions are concerned. On Thursday when we get ready to adjourn, those of us who vote aye should be privileged to get away, and those who vote for a Friday session should be compelled to stay here.

Mr. BOWDLE: I am against this resolution in its present form and I look on the matter much as does the gentleman from Medina [Mr. WOODS]. I think up to this time each one has made his speech for his constituents and for the record and we are now doing a good deal of work. I have this sad reflection, that under the proposition now before the house I, as a

minority of the Judiciary committee, am going to make a minority report on the subject of divorce. In my judgment divorce is an infinitely more important question than the initiative and referendum, infinitely more important than whether the circuit court sees the witnesses or not, infinitely more important than changing the labels on the court. Divorce is the great question in America. And yet on that subject I am to be limited to five paltry contemptible minutes. I am willing to be limited to thirty minutes. I quite agree with the gentleman from Richland that pretty near all good things can be said in thirty minutes. Possibly taxation is such a magnificent subject that it may require two hours, but if the liquor traffic question were worth two weeks, and the judiciary matter was worth four or five days, then the greatest question before the American people, the question of divorce, is worthy of more than five minutes. However, I shall vote for this resolution now before us if two-thirds of those here will enter into a solemn covenant that they will extend my time from five minutes to thirty minutes on the subject of divorce.

DELEGATES: No.

Mr. BOWDLE: Inasmuch as the agreement is not forthcoming, I am going to vote against this resolution as often as opportunity allows.

Mr. PRICE: I have been here, I don't know how many Monday evenings, listening to resolutions to hold Friday sessions, but I have seen but one Friday session. Time will soon be up tonight, and we haven't done a thing. I move this resolution and all amendments be laid on the table.

The motion was carried.

The VICE PRESIDENT: The next resolution laid over is No. 101.

Mr. DOTY: I call attention to the fact that the member from Scioto is not here. I move that we informally pass that.

Mr. HARRIS, of Ashtabula: The member expressed to me, and I don't know to how many others, that he was willing that the resolution be disposed of.

Mr. DOTY: Do you mean the member from Scioto [Mr. EVANS] said he is willing to let the Convention dispose of it as they saw fit?

Mr. HARRIS, of Ashtabula: Yes.

Mr. CORDES: I move that the resolution be tabled.

The VICE PRESIDENT: It has not been read yet.

Resolution No. 101 was then read as follows:

Resolved, by the Fourth Constitutional Convention of Ohio, That the report of the historian and reference librarian of this body, as to the proposed contract with the Ohio News Bureau Co., of Cleveland, Ohio, is hereby approved, and said historian and reference librarian is directed, on behalf of this Convention, to execute this contract.

The VICE PRESIDENT: What should be done with the resolution?

Mr. CORDES: I move that it be tabled.

The motion was carried.

The VICE PRESIDENT: The next resolution is No. 102.

Mr. DOTY: That is a resolution providing that we do not have a session tonight so we can go to the banquet. As we are having a session, I move that we indefinitely postpone that.

Introduction of Resolution — Reports of Standing Committees.

The motion was carried.

Mr. COLTON: Order No. 3 was passed over and I would like to introduce a resolution.

The VICE PRESIDENT: If there is no objection the resolution will be received.

The resolution was read as follows:

Resolution No. 103:

Resolved, That the committee on Arrangement and Phraseology be authorized to print such of its reports on the various proposals as it may deem necessary before presenting them to the Convention.

The VICE PRESIDENT: The resolution goes over under the rule. Are there any reports from the standing committees?

Mr. STILWELL: Yes.

REPORTS OF STANDING COMMITTEES.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 34 — Mr. Thomas, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all after the resolving clause and insert the following:

"The contracting or sale of prison labor or the product of prison labor, by the state or by any political subdivision of the state is hereby prohibited, and no prison made goods shall be sold in the state unless the same are conspicuously marked, 'Prison made.'"

All persons confined in any penal institution in the state, so far as may be consistent with discipline and the public interest, shall be employed in some beneficial industry for the use of the state or its political subdivisions, and where a prisoner has a dependent family his net earnings may be paid to said dependents for their support."

The report was agreed to.

The VICE PRESIDENT: If there is no objection this report will be engrossed.

Mr. STILWELL: I move that it be printed.

The motion was carried.

Mr. Fackler submitted the following report:

The standing committee on Initiative and Referendum, to which was referred Proposal No. 291 — Mr. Watson, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all after the resolving clause and insert the following:

"SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alteration or amendments made to the constitution by this Convention, the following article, independently of the submission of any revision, alteration or other amendments submitted to them shall be separately submitted to the electors in the words following, to wit:

SECTION 1a. Every elective public officer of the state of Ohio or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

SECTION 1b. Upon the filing of a petition as herein provided, asking for the recall of any such elective official, the question of recalling said official shall be submitted to the electors entitled to vote for a successor of such official, at the next succeeding annual November election, occurring not less than ninety days after the filing of said petition. The number of signatures necessary upon said recall petition shall be as follows:

(a) For the recall of an official for whose successor all of the electors of the state are entitled to vote, twenty (20) per cent. of said electors.

(b) For the recall of an official for whose successor the electors of any district, county, municipality or part of a municipality are entitled to vote, twenty-five (25) per cent. of the electors of such district, county, municipality or part of a municipality.

SECTION 1c. The basis upon which the required number of petitioners in any case shall be determined, shall be the total number of votes cast for the office of governor at the last preceding election therefor, by the electors of the state, district, county, municipality or part of a municipality entitled to vote for a successor of the official sought to be recalled. All petitions asking for the recall of a public official shall be filed at the same time and in the following places, to-wit:

(a) For the recall of an official for whose successor the electors of the entire state are entitled to vote, in the office of the secretary of state.

(b) For the recall of an official for whose successor the electors of a district comprising more than one county and less than the entire state are entitled to vote, with the board of deputy state supervisors of elections of the most populous county in said district.

(c) For the recall of a county or municipal official, with the board of deputy state supervisors of elections of the county whose electors are entitled to vote for a successor to such official or in which the municipality of which the incumbent is an official, is located.

SECTION 1d. The general election laws shall apply to recall elections in so far as applicable. Any recall petition may be presented in separate parts, but each part shall have attached thereto the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of a petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature to such part

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is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed the same to be electors and that they signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name, and no other affidavit thereto shall be required.

Every recall petition shall contain a general statement of not more than two hundred words, giving the reasons for such recall. Each signer of a recall petition must be an elector of the state qualified to vote for a successor to the official sought to be recalled and shall place on such petition, after his name, the date of signing and his place of residence. In the case of a signer residing outside of a municipality he shall state the township and county in which he resides, and in the case of a resident of a municipality, in addition to the name of such municipality he shall state the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink or indelible pencil, each signer for himself.

The signatures upon such petitions so verified shall be presumed to be in all respects sufficient unless not later than forty days before the election, it shall be otherwise proven, and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No recall election shall be held invalid or void on account of the insufficiency of the petitions by which such election was called. After one recall petition and election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless the petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all the expenses of the preceding election.

Separate ballots shall be provided for the expression by the electors of their vote for or against the recall of officials sought to be recalled. There shall be printed on the recall ballot, as to every officer whose recall is to be voted on at said election, the following questions: "Shall (name or person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the left of each, in which the voter shall indicate by making a cross-mark (X), his vote for or against such recall.

In case any official against whom a recall petition has been filed shall die or resign, all further proceedings in the election shall be stayed. If a majority of all the votes cast by the electors entitled to vote for a successor to such official at the election at which the recall of the official is voted upon are in favor of the recall of such official, his office shall be deemed vacant and shall be filled according to law.

SECTION 1e. At the election at which this amendment is submitted to the electors, a sepa-

rate ballot in the following form shall be furnished to each elector desiring to vote:

RECALL OF PUBLIC OFFICIALS.

	For recall of public officials.
	Against recall of public officials.

Separate ballot boxes shall be provided for the reception of such ballots. The elector shall indicate his choice by placing a cross mark (X) within the blank space opposite the words "For the recall of public officials" if he desires to vote in favor of the amendment above mentioned and within the blank space opposite the words "Against recall of public officials" if he desires to vote against the amendment above mentioned. If the votes for the recall of public officials shall exceed the votes against the recall of public officials, then the section above mentioned shall be section—of the schedule of the constitution regardless of whether any revision, alteration or other amendment submitted to the electors shall be adopted or rejected."

Mr. HALFHILL: Before that report receives any action at the hands of the Convention I move that the minority of the Initiative and Referendum committee be given until day after tomorrow to prepare and file with the secretary a minority report. The purpose of that is to not stop the printing of this report of the committee. The meeting of this committee was called for last Wednesday evening and it conflicted with the session of the Convention. At that time several members of the committee did not feel like absenting themselves from the Convention, so as to attend the session of the committee at which the committee finally agreed on this majority report. This contains the report of twelve members; I believe that is all that signed it. Now there are some of the minority that desire to present some sort of a report. It may be very brief; it may be a report which only recommends indefinite postponement, but the minority want to put themselves on record in the report. That is the purpose of the motion.

Mr. DOTY: You ask until day after tomorrow?

Mr. HALFHILL: Yes.

Mr. DOTY: Until four o'clock?

Mr. HALFHILL: The first of the session will be enough.

Mr. DOTY: Then I move that further consideration of the report be postponed until four o'clock Wednesday and that it be made a special order for that time.

Mr. HALFHILL: There is a motion before the Convention. Do you want to make that motion?

Mr. DOTY: No; you can make it.

Mr. HALFHILL: Then I withdraw my motion and you can make your motion.

The VICE PRESIDENT: The motion is to postpone and make it a special order for four o'clock Wednesday.

Reports of Standing Committees — Eligibility of Women to Certain Offices.

Mr. MOORE: Will this report be printed?

The VICE PRESIDENT: In the journal.

The motion was carried.

Mr. Knight submitted the following report:

The standing committee on Education, to which was referred Proposal No. 65 — Mr. Miller, of Fairfield, having had the same under consideration, reports it back, and recommends its indefinite postponement.

The report was agreed to.

Mr. McClelland submitted the following report:

The standing committee on Education, to which was referred Proposal No. 187 — Mr. Watson, having had the same under consideration, reports it back, and recommends its indefinite postponement.

The report was agreed to.

SECOND READING OF PROPOSALS.

The VICE PRESIDENT: The next business is Proposal No. 163 — Mr. Miller, of Crawford, which the secretary will read.

Proposal No. 163 was read the second time.

Mr. MILLER, of Crawford: Mr. President and Gentlemen of the Convention: I shall not attempt to consume much time in the discussion of this proposal as I think I will be able to state clearly the object of it in a very few minutes.

As you know, this proposal was introduced by request of the Ohio federation of women's clubs, and we are assured that there is no selfish purpose in the proposal as originally introduced. The including of notaries public was at the suggestion of a member, through a proposal, and the committee that had these under consideration, inserted that feature here. I have no objection to it at all, as I understand that other states allow women to hold notary commissions, and it is not only an advantage to the women, but often quite a public convenience for stenographers and bookkeepers to have these commissions. The real purpose of this measure is to permit women to be selected on boards and as superintendents of those institutions where women and children are interested and cared for. To show how free from selfish interests the ladies are in this matter, I will only need to say that the original draft of the proposal, as first suggested by the ladies, made eligible, not only the women of Ohio, but any woman who is a citizen of the United States, thereby clearly demonstrating that the object sought was the securing of the very best trained women for the heads of correctional institutions where the interests of women and children are involved, and not merely to afford an opportunity for women to secure employment.

The real purpose of confinement in a penal institution is now recognized everywhere to be the reformation of the offender, whenever possible, as much as the immediate protection of society.

The great majority of cases of juvenile delinquency and violation of law can be traced more or less directly to the home environment, lack of mother love and care, the direct cause often of poverty, and just about as often of over indulgence of well-to-do parents, granting the

child every thing it may desire except the most important of all—real interest, love, confidence and companionship of the parents.

Lack of these will soon force the child to seek amusement outside of the home, and when he goes hence unprepared and without the admonition and watchfulness of the parents, he has embarked upon an exceedingly dangerous voyage. Dr. White said that "The shores of this perilous strait of human life are strewn with wrecked manhood and womanhood," and when these unfortunate wrecks become offenders of the law and find themselves in some correctional institution what do they need? Not the iron hand of a master to wield the rod or commit to solitary confinement. No; with but few exceptions they need a little real kindness that will shine through the clouds of their misguided lives, a little real interest manifested by some one in their behalf, a few words of encouragement, dropped now and then, a little motherly love to touch the dormant spirit of obedience and virtue that will respond in many cases to humane treatment.

We are only asking in this proposal that these womanly and motherly influences be allowed unrestricted opportunities in those public institutions of the state and its subdivisions, where the educational and moral interests of women and children are emphasized.

Ohio is now one of the few states that is not keeping pace with the reasonable demand and good policy of the great majority of the states in permitting women to serve on boards and as superintendents of institutions that are recognized as purely correctional.

I might name a few of the institutions that women are at the head of in the different states, and my information is that in all of them their work is eminently satisfactory:

Reformatory Prison for Women, Massachusetts; Women's Reformatory, Bedford, N. Y.; The Indiana Women's Prison and the Indiana Girls' School, Clermont, Ind.; Chester County Hospital for Insane, Westchester, Pa.; The New York Foundling Asylum; The Michigan Children's Home Society; reformatories for girls in California, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Missouri, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, Wisconsin and also a reformatory for Negro boys at Hanover, Va.

I desire to read a letter from the superintendent of the New York Reformatory for Women, at Bedford, New York, Dr. Katharine Bement Davis, who is conceded to be one of the most capable and successful women reformers:

Mr. GEORGE W. MILLER,
Constitutional Convention,
Columbus, Ohio.

My Dear Sir: I have your letter of March 22 in reference to positions to which women can be appointed in the state of New York. In reply would say that at the present time there are four state institutions of which women are the superintendents. These are the New York State Reformatory for Women at Bedford Hills, the Western House of Refuge for Women at Albion, New

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York State Training School for Girls at Hudson and the Thomas Indian School for Indian children at Iroquois. The last named institution formerly had a man as superintendent. I believe the general consensus of opinion is that it is quite as well managed under the present superintendent as it ever has been. The other three institutions have never had anything but women superintendents and I think their management compares favorably with that of the institutions managed by men. On our boards of managers we have both men and women for all institutions in which women and children are cared for, and in one institution at least, which cares entirely for boys, namely, the State Agricultural School for Boys and Industry. It seems to us unquestionable that not only are the institutions as well managed, but certain scandals which occurred from time to time in states where institutions for women and girls were managed by men have been avoided.

If we can give any further information which will be helpful we shall be glad.

Very sincerely yours,

KATHARINE BEMENT DAVIS,
Superintendent.

I also desire to read a letter from the Superintendent of the Indiana Women's Prison:

George W. Miller,
Columbus, Ohio.

Dear Sir.: The board of trustees of this institution is composed of women appointed by the governor for a term of four years. The Indiana Girls' School, at Clermont, Indiana, also has a board composed of women appointed in the same manner.

I think that women are better able to manage an institution where women are confined—at least we feel that in this city they are—and presume the same can be said of all the others in this state.

I am sending you a copy of our last report, which has just been received from the printer, and you may be able to get some idea of our work here.

Yours truly,

E. K. RHODES,
Superintendent.

I shall read a few facts from the report of Women's Prison of Indiana—first, as to the law governing that institution; and, second, as to the management. Section 6163 of the Indiana law is as follows:

The general supervision and government shall be vested in a board of managers consisting of three persons who shall be women, to be known and designated as the "board of managers of the Indiana Reformatory Institution for Women and Girls." The members of the first board, to be appointed under this act shall be Mrs. Emily A. Roache, Mrs. Rhoda M. Coffin and Mrs. Eliza

Hendricks, whose terms of office shall be respectively two, four and six years, said terms of office to expire in the same order as the names occur in this act. As vacancies subsequently occur in the board their successors shall be appointed by the governor, by and with the advice and consent of all the senate, and shall hold their offices for the term of four years from their appointment, and until their successors are appointed and qualified. The term of each manager shall be designated in her certificate of appointment. At the expiration of the term of service of any members of the board of managers one manager shall be appointed in the same manner, whose term of office shall continue four years from and after the expiration of the term of her predecessor and until her successor is appointed and qualified. All vacancies in said board shall be filled by appointment by the governor, subject to approval by the senate at its next succeeding session. The person appointed to fill a vacancy shall be entitled to hold her office for the unexpired portion of the term of the person whom she may be appointed to succeed. Said managers before entering upon the discharge of their duties, shall take an oath or affirmation faithfully to perform the duties of their office; which oath or affirmation shall be filed and preserved in the office of the secretary of state; provided, however, that the governor, auditor and secretary of state shall constitute a board of audit whose duty it shall be to examine, audit and approve of the accounts and acts of said board of managers appointed under the provisions of this act.

Section 8168 reads:

Said board of managers may, with the approval of the governor, appoint a suitable superintendent of said institution and all necessary subordinates (not exceeding a number to be fixed by the governor) and fix their respective salaries; and shall have power, with the like approval, to make and enforce all such rules, regulations, ordinances and by-laws for the government and discipline of said institution and for the admission of girls into the reformatory thereof, as they may deem just and proper.

The superintendent and all the subordinate officers of said institution shall be females; Provided, however, that if a married woman shall be appointed superintendent or to any subordinate position, the husband of such appointee may, with the consent of the board reside in the institution, and may be assigned such duties or employment as the board of managers may prescribe.

I find in this report, under the head of "Penal Department," that the work of the women consists of washing and ironing, sewing, quilting, cooking, gardening, care of live stock and lawn, and all necessary labor connected with the institution, even to the interior painting, and the manner in which they perform their tasks shows that they are taught "that what is worth doing at all is worth doing well."

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Under the caption "Correctional Department" the report says:

This department is accomplishing a much needed work, and it is to be hoped that its value may be more generally recognized in all the counties of the state. So far as possible, considering the length of the sentence, the women in this department are given the same instructions as the women on the penal side. They are being taught to do housework, to cook and to sew. They are doing excellent work not only for the institution but for outside patrons as well.

Together with the penal women they attend the chapel services, and have Sabbath school and prayer meeting. For many it is the first time in their lives that they have been so surrounded with helpful influences.

In this connection I wish to read from the report of the special legislative committee created by house joint resolution No. 20 and senate resolution No. 24 of the 79th general assembly of Ohio, which report refers to the Indiana Women's Prison and the Indiana Girls' Industrial School, both of which the committee inspected:

Indiana has an institution which the committee visited, and which, while it differs quite materially from the Bedford Reformatory, has the same ultimate purpose in view.

In conclusion they say:

While it would be a matter, perhaps, which the present legislature itself could not consider by reason of the constitutional restriction, we believe that an institution of the character proposed should be partly, if not wholly, under the management and control of women, a policy adopted with the greatest success in other states and one in which we are signally failing to conform to the most enlightened experience of the day.

Governor Harmon, in transmitting the report of the committee to the general assembly in a special message, February 6, 1911, says, "Public sentiment has become acute on the subject which the report of the committee brings to you."

Much time and study have been devoted to it by women of the state generally and by many of the men. Ohio established the first industrial home for delinquent girls, but long ago lost its lead to other states. The report confirms the unanimous judgment of officials and others as to the proper course to pursue at the girls' home and I concur in all its recommendations.

There is no doubt that women should be put in charge of both prison and reformatory.

The Girls' Home at Delaware is now under the management of a woman, Miss Charlotte Dye, who was recommended by the women of Ohio, and who at the time was a resident of Indiana. Miss Dye had five years of experience in correctional institutions of Illinois and four years in Indiana. Reports from every source clearly demonstrates that Miss Dye is eminently qualified for the work and that the condition at the home is now greatly improved.

The girls are taught how to do all kinds of useful work—care of their rooms, cooking, sewing, gardening

poultry raising, fruit raising and many other things—that will fit them for some usefulness in future life.

Corporal punishment has been abandoned, other and better means are employed to discipline; their style of dress has been changed and made, not more expensive but neater and more tasty; their mode of living has been improved; their rooms are kept neater, and many of them have exhibited a credible pride in keeping their persons and rooms in exact order; refining influences have been thrown around them and real interest manifested in their future welfare. There are 380 girls at the home now, and over 600 out on parole. These latter are kept under the constant care and watchfulness of four parole officers who are women; they know all about the girls out on parole; they visit them and write to them and let them know that some one is deeply interested in their welfare. This influence on the lives of those girls cannot be estimated.

The sooner we recognize that the surest way to drive offenders of the law to lower depths of degradation is to cease to show any interest in them and to constantly remind them of their failures and make them feel that they are without friends, the sooner we will be in a position to accomplish greater good in our correctional institutions; and I want to say in passing that there is room for a great reform, in this respect, in our present day social conditions.

This proposal only makes it permissible to appoint women on boards or as superintendents where the interests and care of women and children are involved, and who will attempt to argue that the state should not have the right to secure the service of women where their influence is so urgently needed? We now have them at the head of some of our most prominent schools. We have them all over our state as teachers in every department, and who would desire to presume that their work is not of the higher order?

Now, if we should want their influence in the management of our women's prison, soon to be erected, or in the Boys' Industrial School, the Soldiers' and Sailors' Orphans' School, the School for the Blind, or in any other institution, or as members of any board where the best interests of women and children demand their services, then why should the state be denied this privilege? Gentlemen, as I said in the beginning, the spirit that prompted this proposal has been a purely altruistic one, free from every thought of selfishness, looking only to the bettering of our state institutions, to strengthen good and lessen evil, to give self-help and unfold the possibilities of honest endeavor and a clean life.

I sincerely hope that the proposal may receive favorable consideration by the Convention.

Mr. HARRIS, of Ashtabula: I offer an amendment.

The amendment was read as follows:

In line 5, strike out all of the remaining part of said proposal beginning with the word "provided" and substitute the following: "provided that nothing in this section nor in the constitution shall prevent the appointment of women who are citizens, as notaries public, or as members of boards, or to positions in those departments and institutions established by the state or any po-

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litical subdivision thereof, where the interests or care of women or children or both are involved."

Mr. HARRIS, of Ashtabula: I have offered this substitute amendment at the request of the Legislative and Executive Departments committee, of which I have the honor to be chairman, and I am requested to offer an explanation. Three proposals providing practically the same or similar things were pending in the committee at the same time as the proposal by Mr. Miller, of Crawford, a proposal similar in character offered by the delegate from Montgomery [Mr. STOKES] and one offered by Mr. Harter, of Stark. The committee has given the proposals careful consideration and with a constantly growing interest in the matter involved. This substitute offers concisely the conclusions of the committee in regard to the matter. There were slight differences in the verbal expressions of the different proposals, but they were along the line of enlarging the scope and opportunity for women in connection with the reformatory, benevolent and industrial institutions in Ohio.

I said our interest had continually and constantly increased in the subject. We took it up first in committee. Later, after we had reached the agreement which was substantially unanimous in the committee, we were informed that representatives of the Federation of Women's Clubs of Ohio desired a hearing because they were not exactly satisfied with what the committee had agreed on. We gave the hearing very readily and the ladies appeared before us and explained to us that we were not opening the doors sufficiently, that women were not only capable of doing more than we were offering them the opportunity to do, but they were doing it in other states and doing it well, and so far as the opportunity was offered they were making good in Ohio. They pointed particularly to the matron of the Girls' Industrial Home at Delaware and the good results every day appearing from that change. Later, when we thought we had agreed upon an amendment which would be satisfactory, we were told that we were still a little short of what we ought to offer to the women of Ohio. Subsequently another delegation of ladies addressed the committee and they assured us that we should make no exception, that we ought to make the women of Ohio eligible to appointment on any board or to any position of responsibility in Ohio. They talked exceedingly well and convincingly, but the committee are of that conservative temperament that they were not inclined to yield quite all that was asked, and so in this substitute which accompanied the report—

Mr. WOODS: I want to ask the gentleman whether he is a married man or not?

Mr. HARRIS, of Ashtabula: I think I have already substantially admitted I was under good training. I do not know that it is necessary for me to argue on this matter, but I express the unanimous opinion of the committee when I say that we stand behind the substitute that is offered. This extends to women who are citizens of Ohio an opportunity to become notaries public, to be appointed as members of boards or to positions in those departments and institutions established by the state or any political subdivision thereof where the interests and care of women or children or both are involved. We thought it should stop there, and as to whether or not we were wise, you must be the judges. It certainly is

a very great advance from existing political conditions in Ohio, and I believe that the time and the state of the public mind, and the fact that the women have made good along all of these lines, justify us in taking this advanced position and taking it now.

Mr. STOKES: Mr. President and Gentlemen of the Convention: The constitution of 1851, article XV, section 4, provides that no person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector. The proposal provides for amending this section so that women could be appointed to any position in those institutions of the state where the interests of women and children are involved. The committee amended the proposal so that women who are citizens could be appointed notaries public, members of boards or to any position in those institutions established by the state or by local subdivisions thereof where the care of women or children or both is involved.

The conditions revealed by an investigation of the Girls' Home at Delaware three years ago made necessary a change in the management of that institution. The investigation was the direct result of the agitation of the members of the Ohio Federation of Women's Clubs, an organization having a membership of fourteen thousand of the most learned and best equipped women of the state, giving their money, time and talent, without compensation, unselfishly to the task of creating a public sentiment that would compel better conditions in those institutions of the state where the interests of women and children are involved. These women are not suffragists, they are not asking for any office; they are mothers, conducting their own homes, with the great mother heart and mother instinct, and no one better knows how to make these homes of the state homes in their truest and best sense. The investigation into the Delaware home revealed a condition that at once caused a change in management. From every part of the state there was a demand that a woman be put in charge, but under the wording of the constitution, that no one shall be elected or appointed to office unless possessed of the qualifications of an elector, a woman could not be the appointive head of the home. A woman was, however, made the active head of the home; it is now a model of its kind. The proposal as amended will make it possible that the real head of institutions of this kind may be a woman, and not only can a woman be the head of this institution at Delaware, but of any and all institutions in the state or any subdivision thereof having care of women or children or both.

Mr. ANTRIM: Am I to understand the only difference between your proposal and that of Mr. Miller, of Crawford, is that you admit the word library before "board"? Is that it?

Mr. STOKES: We throw down the bars and throw the door open absolutely, so that women can be appointed to all of these positions where the interests of women and children are involved.

In my county of Montgomery we have a county children's home conducted by a board of three men. In the city of Dayton we have a juvenile court home conducted by the county commissioners, all good men and true, and yet not one will deny that women might perform the duties involved in their management equally as well as men and in many cases much better. Men

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are a busy set and they are unable to give all the necessary time to the many details involved in the proper management of these homes. And who better than a woman can see the little wrongs or find the insanitary conditions or see the dirt and microbes lurking for want of time on the part of men to peek into the dark places and bring to light a condition that should not exist?

I wish to read a letter that I have received from the Russell Sage Foundation, located at 105 East 22nd St., New York city, an institution founded by the Sage millions and devoted in part to child-helping. This letter gives the location of institutions in the various states, of reformatories for women, girls and children. The president of the organization is Mrs. Russell Sage, and on the board of directors, among others, is Miss Helen Gould:

April 9, 1912.

Mr. W. W. STOKES,
Southern Hotel,
Columbus, Ohio.

Dear Sir: Mrs. James R. Hopley has forwarded me your letter of April 3, requesting the names and places of institutions now presided over by women.

A complete list would be a very long one. I can only give you a few, as follows:

Reformatory Prison for Women, Sherbon, Mass.; Women's Reformatory, Bedford, N. Y.; Women's Reformatory Prison, Indianapolis, Ind.; Chester County Hospital for Insane, Winchester, Pa.; reformatories for girls as follows: Morrison, Cal.; Marshalltown, Del.; Washington, D. C.; Geneva, Ill.; Clermont, Ind.; Mitchelville, Ia.; Beloit, Kan.; Hallowell, Me.; Lancaster, Mass.; Adrian, Mich.; Sauk Center, Minn.; Chillicothe, Miss.; Geneva, Neb.; Trenton, N. J.; Hudson, N. Y.; Delaware, O.; Darling, Pa.; Howard, R. I.; Salem, W. Va.; Milwaukee, Wis.; also reformatory for negro boys, Hanover, Va.

There is a multitude of orphan asylums and children's homes under the superintendency of women; for example, the New York Foundling Asylum with 2,000 children, under the superintendency of Sister Teresa Vincent. Women are also found as the executive officers of many important charitable societies, such as the Boston Associated Charities, the San Francisco Associated Charities, the Michigan Children's Home Society, and the Hampshire County Society for the Prevention of Cruelty to Children, in Massachusetts.

There is now general agreement between social workers that institutions which care for girls or women exclusively should be under the superintendency of women.

Yours very truly,

H. H. HART.

I do not wish to take the time of the Convention in further explanation of the proposal or to speak of what different states are doing along these lines, but I do wish to impress upon the members of the Convention the necessity of Ohio's standing in the very fore front in giving the women of the state an opportunity to hold these important positions and to show, not only to the

people of Ohio but to the world, what they can accomplish in responsible positions. It is only placing the matter in the hands of the appointing power having the authority for that officer to exercise a wise discretion, and if a woman will make the better officer, to open the door to her. I hope the proposal may be adopted.

Mr. KING: Gentlemen of the Convention: I have only a few words to say on this proposal. I was surprised at the enumeration of proposals on the part of the chairman of the Legislative and Executive Departments committee, as they had evidently overlooked a proposal which would have saved them the trouble with the Federation of Women's Clubs and other organizations. The ladies came to me and asked me to introduce a proposal similar to the Miller proposal. I told them they were too modest by half, that I could discover no reason why the bars should not be let down and why women should not be eligible to every appointive office within the gift of the appointing power in Ohio. I put in a proposal intended to accomplish that purpose. It is Proposal No. 260:

No person shall be elected to any office in this state unless possessed of the qualifications of an elector, but this provision shall not be construed to prevent the appointment of women to any position filled by appointment.

I would leave it to the judgment of the appointing power to determine as to the fitness of the applicants, whether male or female, for any appointive position in the state. I would do this in perfect confidence, because as long as women are not electors and the men do the appointing, we can well trust the women to take care of our noble and valorous sex and the women would be appointed only when the circumstances were such as to vindicate their competency and fitness for the peculiar position they were called on to fill. I can see no reason on earth or under the constitution why there should be a distinction as to appointive offices, and so when you commence to write a proposal putting in these different things you find trouble with your language.

Mr. PECK: Why don't you offer yours as a substitute?

Mr. KING: My proposal ought to be amended, but it is the basis for what I would like to see done. I move, as a substitute to strike out all after the words "as follows" and substitute Proposal No. 260.

The VICE PRESIDENT: How was the amendment of the delegate from Ashtabula [Mr. HARRIS] offered?

Mr. HARRIS, of Ashtabula: It is offered as a substitute.

The VICE PRESIDENT: Do you offer it as a minority report?

Mr. HARRIS, of Ashtabula: No. The committee offered an amended proposal, which was put upon the calendar, and mine is offered as a substitute for that amendment.

The VICE PRESIDENT: Then we will consider it as an amendment and this amendment will be in order.

Mr. TANNEHILL: I move that we recess until tomorrow morning at ten o'clock. A number of members

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would like to go to the banquet tonight. We have been here for two hours from a sense of duty and not because we wanted to be here, and I think in justice to that number we ought to recess until tomorrow morning at ten o'clock.

Mr. PECK: We can put this thing through in fifteen minutes.

Mr. DOTY: The amendment offered by the delegate from Erie [Mr. KING] is not before us for action. He still has the floor.

The amendment offered by Mr. King was read as follows:

Strike out all after the enacting clause and the pending amendment and insert the following:

"No person shall be elected to any office in this state unless possessed of the qualifications of an elector, but this provision shall not be construed to prevent the appointment of women to any position filled by appointment."

Mr. FACKLER: May I ask the gentleman from Erie [Mr. KING] a question?

Mr. KING: Certainly.

Mr. FACKLER: Do you think your amendment would permit women to act as notaries public?

Mr. KING: I certainly do.

Mr. FACKLER: Is that an appointive position?

Mr. KING: Yes; an act of the legislature was held unconstitutional because it violated this particular subject. They passed it once permitting women to be notaries public.

Mr. TANNEHILL: I now move that we recess —

Mr. DOTY: Just a minute. I move that this matter be postponed until tomorrow. These amendments are complex and the member from Crawford [Mr. MILLER] desires further time to examine them. I also move that this retain its position at the head of the calendar.

The motion was carried. "

Mr. PECK: I move that we adjourn. We want to have a little time for our committee meetings tomorrow morning. We haven't been able to get a committee together to hold a meeting for a week.

The motion was lost.

Mr. TANNEHILL: I move that we adjourn until tomorrow morning at ten o'clock.

The motion was carried and the Convention adjourned until tomorrow morning at ten o'clock.

FIFTY-SEVENTH DAY

MORNING SESSION.

TUESDAY, April 16, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. P. H. Chapple, of Columbus, Ohio.

The journal of yesterday was read and approved.

Indefinite leave of absence was granted to Mr. Harter, of Huron.

Leave of absence was granted Mr. Watson on account of illness.

Consideration of Proposal No. 163 was resumed.

The PRESIDENT: The question is on the adoption of the substitute of the member from Erie [Mr. KING] to Proposal No. 163.

Mr. KING: I have redrafted that amendment and I ask unanimous consent to withdraw the amendment heretofore offered and substitute my redraft for it. It presents the question fully and fairly.

Consent was given, the former amendment was withdrawn and the following amendment was offered:

Strike out all after the enacting clause and the pending amendment and insert the following:

"No person shall be elected to any office in this state or appointed to fill a vacancy in any such office unless possessed of the qualifications of an elector, but this provision shall not be construed to prevent the appointment of female citizens of this state to any office or position of honor, trust or profit, which office or position is by law only to be filled by appointment."

Mr. MILLER, of Crawford: I would like to state briefly my opposition to the amendment offered by Judge King. I feel that I am speaking for the Ohio Federation of Women's Clubs in this matter, and I favor the Harris amendment as reported as a substitute for the report of the committee. The reason the women of the state do not ask for all the appointive positions to be opened to them is that they think if the woman's suffrage proposition goes through they will be eligible not only to appointive but to elective positions. Should the woman's suffrage proposal be defeated, they are afraid that this proposal will fail too. Therefore, they favor this modified form of allowing appointments to positions in institutions where women and children are concerned. They do not care to hazard their chances by demanding too much.

Mr. STEVENS: If it were not already agreed to submit the proposition of woman's suffrage to the people of Ohio I would be in favor of the King amendment. I am in favor of woman's suffrage. We are going to submit that question of equal suffrage, and if that carries it will, of course, carry with it all the privileges that are contained in the King amendment. On the other hand, if the proposition for equal suffrage should meet with the opposition of the voters of Ohio, the King amendment would fall with it and be destroyed by the same vote that destroys equal suffrage. The King

amendment and equal suffrage are governed by the same principle. Consequently I believe the people who are in favor of equal suffrage would have more chance by having all their eggs in one basket. I favor the Harris amendment, because it is entirely possible for the Harris proposition to carry and the equal suffrage proposition to fail. In that event the equal rights for women would make a step forward anyhow. If we adopt the King amendment and lose the equal suffrage we will lose both. We have two chances with the Harris amendment and only one the other way. I hope the King amendment will not prevail, not because I do not think it is a good thing, and not because I would not favor it as an abstract proposition, but I hope the King amendment will fail and the Harris amendment be carried.

Mr. STOKES: The women's clubs of Ohio, representing a membership of 14,000, that agitated this question, were not for opening the way for women to hold office, but for opening a way to put women in charge of these institutions where the interests of women and children are involved. The agitation of this matter was caused by the condition of the Girls' Home at Delaware, and they do not want to enlarge the sphere of women so far as holding office, but only to the extent of bettering the condition of women and children in certain institutions and I hope and trust that this report of the committee will be adopted. It has been before the committee as many as half a dozen times. The women from different parts of the state have been before the committee and have argued the different questions, and not any of them have taken the position that they want the Convention to adopt a measure as broad as the King amendment. While I agree with him in many respects in the amendment, I disagree with him this time because the women of Ohio do not want it, and I hope the King amendment will be defeated and the measure adopted.

Mr. KING: Of course, I shall have no objection at all to that which is sought by the committee's report. I believe when this is incorporated as these gentlemen wish it done, it leaves a good deal to be determined. They leave to be determined the question of what institutions there are where the interests of the women and children are involved. This might include all the penal institutions of the state, the penitentiary and the state reformatory. If, therefore, we leave open to the appointing power the determination of availability and feasibility of appointing women to hold any appointive offices in the state, as I said last night, too many will not be appointed.

Mr. RILEY: Have you taken into consideration the fact that we are liable to adopt the short ballot and that by this amendment you will make women eligible to be appointed to everything, the office of attorney general and everything else?

Mr. KING: I didn't take that into consideration because I didn't know just where the short ballot is. If what I hear about it is true, it never will be adopted.

Mr. RILEY: The proposition has been sweetened and it is liable to be adopted.

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Mr. KING: But what sweetens it for one side spoils it for the other.

Mr. RILEY: Don't you consider this is involved in the short ballot proposition?

Mr. KING: No; I am not thinking about that. I cannot understand how gentlemen who so ardently supported the equal suffrage proposal which gave open door for all appointive offices, and elective offices as well, to women, oppose the opening of the door as far as can be to appointive positions. This is short and it says what it means. It leaves nothing for construction and it ought to be adopted.

Mr. HARRIS, of Ashtabula: The point which Judge King seems to bring out here prominently in the extent and scope of this proposal is a little indeterminate. All of those things were considered in the committee and it is true that it might require a decision of the supreme court to determine just how far women are eligible and where the eligibility ceases. But this is true, that if the substitute offered by the Judge should be approved by the Convention, there would be no discretion left with the governor so far as eligibility of women is concerned, and it might be somewhat embarrassing in some cases to make a choice. The conclusion of the committee was that it would be easier and less embarrassing for the governor to make a choice under the proposal with the amendment offered last evening by myself than if it opened the door completely. There is not any phase of this matter that has not been gone over by the committee. I apologize to Judge King for not enumerating his proposal when I enumerated the others last night. There were four proposals including that of Judge King.

I do not know that I can say anything in addition to what I have said and it would be somewhat of a repetition. The question is one that each delegate should settle for himself. The member from Tuscarawas touched upon a point worthy of consideration. We want to accomplish something, even if we fail in accomplishing all that we desire.

Mr. WINN: I am in favor of the substitute offered by the delegate from Erie [Mr. KING] and I want to tell why.

I can not agree that the adoption of the substitute will weaken the proposal in the eyes of the voters. I am of the opinion that if the substitute is adopted and the proposal as amended by it is submitted to the electors it will be approved. If there is any danger at all of the failure of the electors of the state to approve woman's suffrage, then let us have in lieu of it the very best obtainable. I do not know that there is anything to be alarmed about in the fact that the short ballot may be adopted by us and ratified by the people. Indeed, if I were sure that the short-ballot proposal would receive favorable consideration at our hands and would then be approved by the people, I would be ten times more in favor of the King proposal than I am now.

It is my judgment that all the electors of the state who are opposed to woman's suffrage, and who will vote against it, will vote in favor of the proposition to make them eligible to appointment. It will be understood by every man who comes to vote that it will only secure appointments of women to positions for which they are best qualified. Of course, it may sometimes be embarrassing to the governor to decide between some applicants

for appointment for an important position, the applicants being women, but the same thing applies to men. The governor is often embarrassed because there are different applicants for appointment to the same position, but even with this, there are within the hearing of my voice a goodly number of gentlemen anyone of whom is willing to take upon himself that embarrassment. Let us do the best we can for the women of this state. Of course, it may be that fourteen thousand members of the women's clubs of the state—and they are splendid women—would not prefer in this matter to go to the extent of the amendment offered by the gentleman from Erie [Mr. KING]. But they are comparatively few in number. Fourteen thousand is a very insignificant part of all the women of the state. We haven't heard from many of the women of the state, and I doubt very much if many of them have been called upon to express an opinion directly whether they would prefer the original proposal or the amendment of the delegate from Erie [Mr. KING]. I am in favor of the amendment for the simple reason suggested by its author and also for the reason that it removes from consideration the necessity to call upon some court or tribunal to determine who are eligible to appointment under the original proposal. We can just as well remove that—we can broaden the scope of the proposal and it will stand just as good a chance of being adopted as though it opened to the women of the state only one-half as many offices. Those in favor of woman's suffrage simply seek to accomplish that much more. I am in favor of the King amendment.

Mr. HURSH: I voted for woman's suffrage, but it is very problematical at best whether woman's suffrage is going to carry in the state of Ohio. The Legislative committee considered this proposal very carefully and at length. They finally reported out the proposal, and later some women, representing the Ohio Federation of Women's Clubs, came to us and stated their suggestions and we took them up and tried to comply with them, and the result we have in the Harris amendment. We went as far as the women before us asked us to go. If we load this proposal down with the King amendment the result will be that it will stand in the same category as woman's suffrage and you can not expect it to have any more strength. We want to give the women something along this line. We want to give them the superintendence of those institutions in which women and children are interested, but if we put these amendments in this proposal it will be involved in the fight against woman's suffrage, and if woman's suffrage goes down this proposal necessarily must go down with it and we will have nothing. This is the right step and a long one in the proper direction. If we are to accept the amendment of the delegate from Erie [Mr. KING] the result is, assuming woman's suffrage fails, the women will have a right to fill all the appointive offices in the state without the right of ballot, and if we succeed in getting the short ballot the women will have a right to apply and will apply for every position they can get in the state and counties and other political subdivisions. These arguments will be made against the proposal. I believe the amendment of the delegate from Ashtabula [Mr. HARRIS] should be adopted, and fear if we add to it the amendment of the delegate from Erie [Mr. KING] the whole proposal will go down.

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Mr. STOKES: I move that the amendment of the delegate from Erie [Mr. KING] be laid on the table.

The motion on a division was carried.

The PRESIDENT: The motion to table is carried. The question is now on the amendment of the delegate from Ashtabula [Mr. HARRIS].

Mr. ANDERSON: I want to call the attention of the Convention to the proposition in the Harris amendment. It is a well-known rule of law that where you attempt to enumerate the law only applies to the things enumerated. Do you not in your amendment, Mr. Harris, mention certain positions to which women may be appointed, and then you try to make a general provision at the end? Really, doesn't your amendment fall short of what you are attempting to do?

Mr. HARRIS, of Ashtabula: I think the objection offered by the delegate from Mahoning [Mr. ANDERSON] is a little too farfetched. I think the punctuation will prevent difficulty, if he will read it as it should be read. In the first instance, to illustrate, one suggestion was that women should be eligible to library boards. We promptly cut out the "library" and if it is properly read it will avoid all difficulty. We did not intend to indicate any particular boards or particular departments, but any position in which the interest or care of women and children or both were involved.

Mr. ANDERSON: Why would not this, added to the King proposal, settle the whole matter? I like the King amendment better than I do the Harris amendment, for the reason that it seems to me clear and does not admit of different interpretations. Would there be any objection to this: "No person shall be elected to any office in this state or appointed to fill a vacancy in any such office unless possessed of the qualifications of an elector, but this provision shall not be construed to prevent the appointment of female citizens of this state to any office or position of honor, trust or profit in institutions of the state wherein the interests of women or children are involved."

Does not that give you everything you ask for and in better form?

Mr. HARRIS, of Ashtabula: The matter of form is a matter of opinion.

Mr. ANDERSON: In other words, add to Proposal No. 163 "in those institutions of the state wherein the interest of women and children are involved."

Mr. KING: In enumerating you have left out the notaries public.

Mr. ANDERSON: I didn't enumerate.

Mr. HARRIS, of Ashtabula: I can not admit that the question the gentleman raised is pertinent.

Mr. THOMAS: The amendment of the gentleman from Mahoning does not include "departments." It should include the word "department" where the women are employed. It does not include boards of charity, and the women make a special request that that should be enumerated. I think the amendment of the delegate from Ashtabula covers all of the subject.

Mr. BROWN, of Highland: I think this proposal should be changed to read: "Provided that nothing in this section nor in the constitution shall prevent the appointment of women who are citizens as notaries public and to positions in charge of departments or institutions established by the state or any political subdivision thereof

where the interests or care of women or children or both are involved."

I would suggest that by general consent this change be made. It at least would simplify the language and confine the appointment of women to positions in the institutions as originally desired by the committee.

Mr. STOKES: Would not that eliminate inspectors of workshops?

Mr. BROWN, of Highland: Yes, I think it would; but I do not understand that the proposal is attempting to give any privileges except in institutions where women and children are involved.

Mr. STOKES: Are not women and children involved in workshops?

Mr. BROWN, of Highland: Then the workshops would be included. I don't see anything in the Harris amendment about workshops.

Mr. THOMAS: The word "department" covers that whole subject.

Mr. BROWN, of Highland: Then I was in error in interpreting the purpose of the proposal. I was only trying to simplify it.

Mr. FOX: As a member of this committee I want to say that we have not had a proposal before us that has taken up as much time as this proposal now under consideration. We have had more than half a dozen meetings, and have had various parties before us. I am satisfied we have done the best we could and the more you try to change it the worse it will be. The committee gave all the women of Ohio asked for, and I hope it will be adopted as presented.

Mr. WINN: I wish while you are on your feet you would explain to the Convention why your committee, after so much deliberation, made use of this particular language: "Provided that nothing in this section nor in the constitution."

Mr. FOX: Is that in the substitute of Mr. Harris?

Mr. WINN: Yes.

Mr. FOX: I don't understand about that.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out "women who are citizens," in the amendment offered by Mr. Harris, of Ashtabula, and insert "female citizens of this state".

Mr. HURSH: Does not the committee on Arrangement and Phraseology attend to things like that? We have given quite extended consideration to the proposal and have tried to cover the subject. We have the essence of the proposition in good shape and I hope without further quibbling this proposal will pass.

Mr. KING: If we are going to pass it at all, we ought to pass it in the best form that we can give it. We cannot shoulder everything off on the committee on Arrangement and Phraseology. Our work is to get things in proper shape and this is a proper correction, not changing at all the meaning or sense of the proposal, but simply putting in a better expression.

Mr. THOMAS: The women are opposed to putting the amendment of Judge King in the proposal. I think the matron at Delaware was brought here from Indianapolis or some point outside of the state because she is an expert in that class of work. The amendment of Judge King would prohibit the employment of any women

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other than those who are citizens of Ohio. The language as used in the amendment would make the same provision for the appointment of women as for men and it should be left as it is.

Mr. KING: I do not understand that under the constitution of Ohio any person can hold an office in this state who is not a citizen of the state, whether a man or a woman. The employment of a person is a different thing from holding an office. Please bear that in mind. An office is created by the constitution or a law passed pursuant thereto, and a person to hold any office must be a citizen of Ohio. That is why we are trying to pass this, in order to make them who are not electors eligible to office.

Mr. BROWN, of Highland: I would ask the chairman of the committee if this proposal means that women shall be appointed as members of boards of any department relating to the work of women and children? My interpretation is that it admits of the appointment of women to all boards and departments and that would include the penitentiary and state board of agriculture and all of those different places.

Mr. HARRIS, of Ashtabula: Certainly it would permit their appointment on the penitentiary board. As to the board of agriculture I doubt that.

Mr. BROWN, of Highland: Is not the "all boards" language that will allow them to be appointed to any board where women and children are involved?

Mr. HARRIS, of Ashtabula: Certainly; I think it permits their appointment to every board where women and children are involved.

Mr. BROWN, of Highland: But would it not permit them to be appointed to all boards whether the women and children are involved or not?

Mr. HARRIS, of Ashtabula: That is not the opinion of the committee and not mine. As properly read it does not admit of what you say. For instance, there would not be any question as to the reformatory at Mansfield. There are no women there. It might apply to the state penitentiary, because there are some women down there, unfortunately. I think the distinction is easily seen by a person who wants to see a distinction.

Mr. MILLER, of Crawford: I move that the amendment of the member from Erie [Mr. KING] be laid on the table.

The motion was carried.

Mr. FESS: I now move the previous question.

The previous question was regularly demanded, and, a vote being taken, the main question was ordered.

The PRESIDENT: The question is on the adoption of the amendment of the delegate from Ashtabula [Mr. HARRIS].

The amendment was agreed to.

The PRESIDENT: The question is now on the passage of the proposal as amended and the secretary will call the roll.

The yeas and nays were taken, and resulted — yeas 99, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Bowdle,	Colton,
Antrim,	Brattain,	Cordes,
Baum,	Brown, Highland,	Cunningham,
Beatty, Morrow,	Campbell,	Davio,
Beatty, Wood,	Cassidy,	DeFrees,
Beyer,	Collett,	Donahey,

Doty,	Keller,	Riley,
Dunlap,	Kilpatrick,	Rockel,
Dunn,	King,	Roehm,
Earnhart,	Kramer,	Rorick,
Eby,	Kunkel,	Shaw,
Elson,	Lambert,	Smith, Geauga,
Farnsworth,	Lampson,	Smith, Hamilton,
Farrell,	Leete,	Solether,
Fess,	Leslie,	Stalter,
FitzSimons,	Longstreth,	Stamm,
Fluke,	Ludey,	Stevens,
Fox,	Malin,	Stewart,
Hahn,	Marriott,	Stilwell,
Halenkamp,	Mauck,	Stokes,
Halfhill,	McClelland,	Taggart,
Harbarger,	Miller, Crawford,	Tallman,
Harris, Ashtabula,	Miller, Fairfield,	Tannehill,
Harris, Hamilton,	Miller, Ottawa,	Tetlow,
Harter, Stark,	Moore,	Thomas,
Henderson,	Nye,	Ulmer,
Hoffman,	Partington,	Wagner,
Holtz,	Peters,	Walker,
Hursh,	Pettie,	Watson,
Johnson, Madison,	Pettit,	Winn,
Johnson, Williams,	Read,	Wise,
Jones,	Redington,	Woods,
Kehoe,		Mr. President.

Mr. Brown, of Pike, voted in the negative.

This roll was called by the member from Cuyahoga [Mr. Doty.]

Mr. BEATTY, of Wood: A point of order. I want to call the attention of the Convention to the fact that one of the rules has been violated. There is a rule that says no one shall be at the secretary's desk except the clerks.

Mr. DOTY: You are right. The rule was violated and I will leave.

So the proposal passed as follows:

Proposal No. 163—Mr. Miller, of Crawford. To submit an amendment to article XV, section 4 of the constitution. — Relative to who eligible to office.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; provided that nothing in this section nor in the constitution shall prevent the appointment of women who are citizens, as notaries public, or as members of boards, or to positions in those departments and institutions established by the state or any political subdivision thereof, where the interests or care of women or children or both are involved.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next business is Proposal No. 5 by Mr. Cunningham.

The proposal was read the second time.

Mr. CUNNINGHAM: There are a number of amendments to article V, and I think they are unimportant except one. I therefore move to strike out all the proposal after the word "elections" in line 8.

The amendment was read as follows:

Strike out all of said proposal after the word "elections" in line 8.

Omitting Word "White."

The SECRETARY: That strikes out the last sentence in line 8.

Mr. CUNNINGHAM: That last line is section 6 of article V, of the constitution as now existing. My object is simply to strike out the word "white" in the constitution and leave everything else just as it was. While the proposal contemplated an amendment allowing citizens in the military service of the country and state to vote, I think that has been covered by the supreme court; therefore it is not necessary, and my idea about amending the constitution is to let it alone where it is all right and simply to amend where it is absolutely necessary. In order to get the word "white" out we have to amend only section 1. If this amendment prevails, the only change in that section will be the striking out of the word "white."

A vote being taken, the amendment offered by the delegate from Harrison [Mr. CUNNINGHAM] was agreed to.

Mr. KING: I want to offer an amendment. There is no use having a half dozen amendments to the same section. Proposal No. 242, which has been reported in this Convention favorably and which is on the calendar, should go in as section 2 of this proposal.

The amendment was read as follows:

Insert as section 2 the following:

"All elections shall be either by ballot or mechanical device or both preserving the secrecy of the ballot. The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device."

The amendment was agreed to.

The PRESIDENT: The question is on the adoption of the proposal as amended.

Mr. FACKLER: I move that the vote by which that amendment was adopted be reconsidered.

Mr. DOTY: I move to lay that motion to reconsider on the table.

A vote being taken on the motion to table, the president announced that it seemed to be carried.

A division was called for and the vote being taken, the motion to lay on the table the motion to reconsider was lost.

Mr. FACKLER: There is a reason for that, and I want to call attention to it.

The PRESIDENT: The question now is, Shall the motion adopting this amendment be reconsidered?

Mr. KILPATRICK: What is the amendment?

The PRESIDENT: The amendment adds this section to provide for voting by the use of a machine. That was adopted and then the motion was made to reconsider the vote by which that amendment was adopted. There was a motion to table that, which was lost, and now the question is on the reconsideration.

Mr. FACKLER: My reason for not wanting Proposal No. 242 inserted as an amendment to Proposal No. 5 is that the sole object of Proposal No. 5 as now before us is to strike out the word "white." The form of submission of Proposal No. 5 will have to be different from the form of any other proposal. It will be provided that Proposal No. 5 shall be a part of the organic law unless the proposal providing for woman's suffrage is made a part of the constitution. If we put the pro-

posal of Mr. Roehm in this proposal and woman's suffrage carries, Mr. Roehm's proposal will be lost with this one. Let us not tie the two things together because of the peculiar method in which Proposal No. 5 will have to be submitted, lest we have two conflicting and contradictory amendments carried to the constitution.

Mr. KING: When the provision is made about the submission it can simply be stated that if the proposal is adopted and the proposal providing for equal suffrage carries that section 1 of this proposal shall be null and void. That has not anything to do with section 2. You can well say in your form of submission that if woman suffrage carries, section 1 of this will be null and void. That still leaves section 2 which provides the manner of election. My objection to making it a separate proposal is that we are going to run up into a large number of proposals to which the electorate will give absolutely no consideration.

Mr. KILPATRICK: This Proposal No. 5 is based entirely on a question of sentiment. The idea is to strike out of the present constitution so far as this section or article is concerned the word "white." All of us know that the colored electors of the state vote by virtue of an amendment to the federal constitution. By Proposal No. 91 we have stricken out the words "white male," and if that carries it takes care of the proposition covered in this proposal. I think every one here will agree that if we get into complications over this section and this article it will have a tendency to confuse the electors when this proposition is put up to them and the result will be to beat the whole thing. As I said in the beginning, this is a matter of sentiment purely and there is not a single colored person in the state of Ohio who has the qualification of an elector who has not the right of suffrage. Proposal No. 91 covers the entire proposition and I believe the members of this Convention do not want in any way to injure that proposal. We do not wish to confuse the electors and for that reason I move that this whole Proposal No. 5, with all amendments, be laid on the table.

Mr. FACKLER: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 41, nays 56, as follows:

Those who voted in the affirmative are:

Antrim,	Fox,	Mauck,
Beatty, Wood,	Halenkamp,	Partington,
Brown, Pike,	Henderson,	Peters,
Cassidy,	Hoffman,	Pettit,
Collett,	Hursh,	Shaw,
Cordes,	Johnson, Madison,	Smith, Hamilton,
Crosser,	Johnson, Williams,	Stamm,
DeFrees,	Jones,	Tallman,
Doty,	Kehoe,	Tetlow,
Dunlap,	Kilpatrick,	Thomas,
Dunn,	Leete,	Watson,
Earnhart,	Ludey,	Weybrecht,
Elson,	Malin,	Winn.
FitzSimons,	Marriott.	

Those who voted in the negative are:

Anderson,	Campbell,	Fackler,
Baum,	Colton,	Farnsworth,
Beatty, Morrow,	Cunningham,	Farrell,
Beyer,	Davio,	Fess,
Brattain,	Donahey,	Fluke,
Brown, Highland,	Eby,	Hahn,

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Halfhill,	Leslie,	Smith, Geauga,
Harbarger,	Longstreth,	Solether,
Harris, Ashtabula,	Miller, Fairfield,	Stalter,
Harris, Hamilton,	Miller, Ottawa,	Stevens,
Harter, Stark,	Moore,	Stewart,
Holtz,	Nye,	Stokes,
Keller,	Pierce,	Taggart,
King,	Read,	Tannehill,
Knight,	Redington,	Ulmer,
Kramer,	Riley,	Wagner,
Kunkel,	Rockel,	Walker,
Lambert,	Roehm,	Woods,
Lampson,	Rorick,	

So the motion to table was lost.

The PRESIDENT: The question is on the reconsideration of the vote whereby the amendment of the delegate from Erie [Mr. KING] was adopted.

Mr. ANDERSON: Mr. President.

The PRESIDENT: All those in favor of the proposal—

Mr. ANDERSON: Mr. President.

The PRESIDENT: —will say aye and the contrary no—

Mr. ANDERSON: Mr. President.

Mr. PRESIDENT: The motion seems to be lost.

Mr. ANDERSON: Mr. President.

The PRESIDENT: The gentleman from Mahoning [Mr. ANDERSON].

Mr. ANDERSON: I didn't know but that there was something the matter with your eyes. I don't see any reason why we should go on record against doing that which will assist in getting us an honest election and a fair count. Take the district from which Dr. Fess comes, and what is the situation there now under the old system where they cannot have a machine to register accurately the vote? You know the situation and you know the situation in the large cities. Why should we not have mechanical accuracy in determining elections? Why should any of us vote against it? Why should any of us vote against having the word "white" taken out of the constitution? It is just a matter of sentiment, it is true, but this life is not worth living without some sentiment. Sentiment is dear to every one. I am not trying to make this as a political speech. I mean what I say. Even the Southern states, since the adoption of the amendment to the federal constitution, have taken the word "white" out. Is a constitutional convention in the state of Ohio going to refuse the black man that which has been given him in the South? They say there is no substantial good accomplished, that he can vote. Yes, he can; but in our constitution we still recognize slavery.

Mr. MARRIOTT: Has not this Convention by the adoption of Proposal No. 91 already, so far as the Convention can do it, taken the word "white" out?

Mr. ANDERSON: Now let us see that situation. Every one admits that "white" has no place in the constitution and that it ought to be taken out, but we say, "Before you can have that slavery removed from the organic law of Ohio you have to vote for woman's suffrage." That is what you say in Proposal No. 91, and that is the only reason that some men here say it is a matter of sentiment. It is not sentiment. They want to use that word to help carry woman's suffrage.

Mr. MARRIOTT: Didn't you vote for woman's suffrage?

Mr. ANDERSON: Yes, and I am in favor of it, but I am in favor of this justice also.

Mr. THOMAS: I don't think anybody in the Convention objects to taking the word "white" out.

Mr. ANDERSON: Well, what is the objection to the use of the voting machine?

Mr. THOMAS: I am speaking of the word "white" and its being taken out of the constitution.

The PRESIDENT: Is the member asking a question?

Mr. THOMAS: I am prefacing my question with a remark so as to get an understanding as to what I want answered. Suppose both of these proposals, the woman's suffrage proposal and this proposal, are submitted and both adopted, one with "male" in it and the other with "white male" stricken out.

Mr. ANDERSON: That will be attended to. There are a number of other apparent inconsistencies that will happen before we finish, but they are easily attended to. You say that nobody objects to having the word "white" taken out?

Mr. THOMAS: No.

Mr. ANDERSON: And I have noticed that a number of members voted to table the thing viva voce, but when the yeas and nays were called they didn't vote that way.

Mr. HALFHILL: Is not all that to be taken care of in the schedule?

Mr. ANDERSON: Of course. That is where it will be taken care of.

Mr. ROEHM: Can't the voting machine be taken care of when it comes in its proper place?

Mr. ANDERSON: Why not take care of it here and save that much time? There is no conflict. You don't want to lengthen the sessions unnecessarily.

Mr. HARRIS, of Ashtabula: Do you propose to do that right along?

Mr. ANDERSON: Whenever it will expedite matters.

Mr. HARRIS, of Ashtabula: The member from Montgomery [Mr. ROEHM] has a proposal pending to make constitutional the use of voting machines. Now I object, as I stated the other day, to having proposals advanced and put in here and added to other proposals where the original proposal doesn't say anything about them. Now I want to add a few remarks when you are through, but don't you think there is a little incongruity about that?

Mr. ANDERSON: No, sir; the only thing is that the gentleman loses—and I would like to have a remedy for that if I could—Mr. Roehm will not have his name connected with the proposal, and as a matter of courtesy on a question of that kind I would vote the other way.

The PRESIDENT: The member's time is up.

Mr. HARRIS, of Ashtabula: Just a few words on the proposal itself. The member from Harrison county distinctly stated that what he seeks to accomplish by this proposal is the elimination of the word "white", a matter of sentiment as the member from Trumbull [Mr. KILPATRICK] has said. The member from Mahoning [Mr. ANDERSON] admitted it eloquently. I was called on during the recess by two colored gentlemen, one of whom has represented Cuyahoga county in both branches of the general assembly, and they protested against the elim-

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ination being wrought out in the way it has been attempted. "We don't want it put on as a tail to the woman suffrage proposal, so that it must be gotten out of the constitution only by voting for woman suffrage. If the people of Ohio want to wipe out the last vestige of barbarism and say that we are equal before the law, let them do it in a way that will indicate their purpose." The member from Harrison [Mr. CUNNINGHAM] has distinctly done that. I have already adverted to the fact that the member from Montgomery [Mr. ROEHM] has a proposal which provides for making constitutional the use of voting machines. What connection is there between the two things? When it comes up I will support the voting machine proposition, and I think it is a proper thing, but let this proposal go through on its own merits.

Mr. RILEY: The propriety of inserting this is doubtful. We are on article V of the constitution. We all agree that section 2 of article V is the proper place for this machine matter. Section 2 of article V of the present constitution provides that all elections shall be by ballot and in that comes the machine question. If you wish to take the word "white" out of the constitution and don't wish to vote for the machines, what would you do if they were submitted together?

Mr. KING: I do not think the objection of the member from Ashtabula [Mr. HARRIS] ought to receive very great weight. The committee on Equal Suffrage reported out this Proposal No. 5 with section 2 in it. The proposal had a section in it all the time, which provided the manner of election—how you should vote. It did not go so far as to provide or authorize that voting by mechanical device might be legal, but it did provide that all elections should be by ballot, and that is a proposition that we started in to consider here. Therefore to amend by simply substituting another proposal that has been reported out of the committee for the original section 2 is perfectly proper. It is germane to the original idea of article V.

Now, on the other question, it seems to me that there ought not be a particle of objection to adopting the proposition to strike out the word "white" in section 1 of that article. Unlike the gentleman from Mahoning [Mr. ANDERSON] I did not favor woman's suffrage. I said on the floor at that time that the committee purposely included in the proposal the leaving out of the word "white" to gain, perforce, additional support for their proposal at the polls, but I have since found that these gentlemen of color are not asleep. They understood perfectly and understand perfectly the terms of that proposal as it was adopted in this Convention and many of them are opposed to linking the question of eliminating the word "white" with the question of broadening the constitution to include all persons regardless of sex. So it is only fair to put up an alternative that will strike out the word "white" and will also take care of the voting machine. If both proposals are adopted section 1 will then be null and void and this other section will take its place.

Mr. ROEHM: I have no particular objection to the taking off my name from any amendment or substitute that I have offered, but I do not believe that this is the time for that to come up. It has its place on the calendar and I believe it ought to stand on its own legs. I am, therefore, opposed to that being injected into this proposal at this time.

Mr. WOODS: I agree with the member from Erie [Mr. KING] in this matter. There are only two things to look at. The first is whether we are willing to take that word "white" out of the constitution. I am one of the members who voted to submit the woman's suffrage proposal to the state. Personally I am against woman's suffrage. I do not intend to vote for it on election day, but I am willing for the people of the state to say whether they want it. Now I do not want to vote for that, but I do want to vote to take that word "white" out of the constitution. I think it is ridiculous that a state like Ohio in 1912 should have that word in its constitution.

Mr. HARRIS, of Ashtabula: If you are anxious to take that word "white" out let us do it, and then when we get to this other we will adopt it.

Mr. WOODS: I am willing to take care of "white". I am willing to take care of the other proposition, too, and in fifteen minutes we can get through with both of them. I do not believe there is a member who is not willing to take the word "white" out, and I do not believe that anybody objects to the use of voting machines. Both are in the same article. I do not see why we should not kill two birds with one stone.

Mr. HARRIS, of Ashtabula: Do you think that there is everything in sentiment, is there not?

Mr. WOODS: Certainly.

Mr. HARRIS, of Ashtabula: The member from Mahoning asked if there is anything in sentiment. There is everything in sentiment, is there not?

Mr. WOODS: Yes.

Mr. HARRIS, of Ashtabula: And if forty or fifty thousand voters would like to have it done one way instead of another and we can do it in two minutes, shall we not do it?

Mr. WOODS: Yes, and we can do them both in fifteen minutes.

Mr. CUNNINGHAM: I have no objection to this coupling up, but I don't want to take more honors myself than I have. I have almost too many honors now, and I am willing for the gentleman from Montgomery to have the honor of his proposal. More than that, under the peculiar manner of submission I think it would be better to have a separate proposal, because these two proposals, woman's suffrage and taking the word "white" out of the constitution, should be submitted in the alternative. I think therefore, the colored people of the state would prefer that the latter go in by itself. I will say, furthermore, for them that if that doesn't go in, woman's suffrage will lose just forty thousand votes in Ohio, because every one of them say, "If you shut us out and require us to get our rights through the woman's suffrage proposal and no other way, we are going to vote against it."

Mr. PECK: It seems to me this is simply an endeavor to do a sentimental act. It is nothing but the merest sentimentality, because there is no colored man deprived of any right of suffrage in Ohio and everybody knows that. Nothing is taken from him whatever. It is just mere talk. They have been wading along for fifty years with that in the constitution. Of course, it is an eye-sore, but that is all. It is no more of an objection than a bill you see on the wall. Now you are proposing by this sentiment to endanger the passage of something that involves real merit. I don't know whether these gentle-

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men know what they are doing, but it looks to me as if they are inadvertently setting a trap to catch the voters and destroy woman's suffrage. I am opposed to that for this reason, and every man who was in favor of woman's suffrage ought not to vote for this. If you go to the people with two proposals in this shape you may kill woman's suffrage, and I am not in favor of mixing up things in that way. There is no necessity for this special amendment now.

Mr. HARRIS, of Ashtabula: Do you want the voting machine proposition in the woman's suffrage proposal?

Mr. PECK: No; I am in favor of the voting machine, but I don't want it mixed with anything else like that.

Mr. HARRIS, of Ashtabula: I don't want it mixed up with this either. I am opposed to having two different votes on the same section. I have no sympathy with this foolish talk of the negroes to the effect that they are not willing to vote along with woman's suffrage. If forty thousand negroes cannot join themselves with a million white women of the state in the support of a proposal in the interest of both what are they talking about?

Mr. ANDERSON: Say, for instance, we would submit to the voters later on, when the time comes for ratification, a ballot like this. "New constitution, yes; "New constitution, no," and then take the word "white" out of the constitution, leaving the word "white" out of the so-called new constitution. That would not in any way interfere with the separate ballot for "woman's suffrage" would it?

Mr. PECK: No; you could frame it almost any way if you made it clear.

Mr. ANDERSON: And would it not be true that the fact the word "white" is taken out of the new constitution would make the negroes vote in favor of it whatever else we put in?

Mr. PECK: I don't know whether they would or not. I don't want them to vote in favor of it unless they are in favor of it. I am not fixing up games to catch voters. I want the people of Ohio to vote on this constitution intelligently, and if they are not in favor of it to vote against it.

Mr. ANDERSON: Is not making the negroes vote for equal suffrage a game to catch votes?

Mr. PECK: No, sir; it is all a figment of the imagination. The gentleman from Erie [Mr. KING] was the first man who mentioned it. He put it to me in a question and that was the first time I heard of it. I didn't understand it that way when I first stated it because I hadn't heard of it. The two words stand in juxtaposition and while we were amending the section the easiest thing was to strike out both the word "white" and the word "male" as useless. Both of those words were injurious and we wanted to strike them out. Now the word "male" affected a million women and the word "white" didn't affect anybody, because the negroes vote anyhow.

Mr. ANDERSON: If woman's suffrage fails to carry on separate submission and we fail to adopt this amendment, would not the word "white" remain in the constitution?

Mr. PECK: I don't care whether it does or not.

Mr. CUNNINGHAM: Don't you know if you don't pass this proposal woman's suffrage will lose the vote of the colored people?

Mr. PECK: No; I don't know anything of the kind; I don't know anything about it. I am not figuring on the vote of the colored people or the white people. I want the people to vote intelligently and not to be mixing up two proposals amending the same section, first to strike out one word and then to strike out another. Did you ever hear of such a proposition?

Mr. CUNNINGHAM: Yes; and you hear it now. You are learning something as you grow old.

Mr. PECK: I am not too old to learn, as some people seem to be.

Mr. CUNNINGHAM: You just waked up.

Mr. PECK: I hope that everybody who was seriously in favor of woman's suffrage will vote against this proposal. I have a great respect for sentiment, but I have no respect for sentimentality. The latter is what the gentleman from Mahoning [Mr. ANDERSON] indulged in this morning.

Mr. HALFHILL: I voted in favor of woman's suffrage and I am glad I did. I expect to vote for it at the polls, and I can furnish reasons satisfactory to myself for doing so. I take it that the advice of the gentleman from Hamilton [Mr. PECK] on this proposition is not good advice, even for those who are in favor of woman's suffrage. I take it if the gentleman from Hamilton [Mr. PECK] understood somewhat of the temper of the colored citizens upon this point, he would know and appreciate that this proposal is a very material thing. There is such a thing as living a little too far from some of the citizens of your own state, and I don't consider, so far as I am concerned, that I in any way lower myself by coming in contact with representative men of that particular race. I was called upon by a delegation of them very recently and they were men of standing, men who stood well in their respective social spheres and as citizens in the community where I reside.

Mr. PECK: They think they are politicians.

Mr. HALFHILL: Three of them were preachers of the Gospel and so far as I know have never taken any interest in party politics. One of them I know is personally in favor of woman's suffrage and the other two upon this particular point mentioned in the Cunningham resolution were very earnest in their insistence that we wipe out of the constitution this stigma on them and their people. If it is a question of votes you are after I submit it would be a wise idea to drop out any consideration of other questions than the one before us. Logically it does belong in this particular section of the constitution, for article V. deals with the elective franchise and section 1 now contains the word "white" in describing the qualifications of an election.

It is the duty of government to do, as nearly as it can, equal and exact justice toward all. While I am in favor of woman's suffrage, I would like my vote to show the colored men of Ohio that they are not forced to vote at the polls for some other proposition that I favor in order to secure a right which ought to be accorded them without question. They are electors and have a right to vote under the federal constitution. That is absolutely fixed, so that this word remaining in the

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Ohio constitution is merely a harsh reminder of their days of bondage and should be removed. On the matter of getting votes, I think Mr. Cunningham was exactly right when he said that the woman's suffrage proposal will lose votes at the polls, if the colored men have to vote upon that question in order to relieve themselves from this stigma that is now in the organic law.

Mr. ANDERSON: A word in reference to the question that Judge Peck made about confusing voters. If we submit a separate constitution of which this is part, and we submit equal suffrage on a separate ballot, will that be mixing it up in the minds of the voters?

Mr. HALFHILL: I would not think there would be any one of ordinary mental capacity who could not handle that.

Mr. MARRIOTT: Take the suggestion of the gentleman from Mahoning [Mr. ANDERSON]. I understand that it will be proposed to submit several of our proposals in a new constitution and not submit them separately and at the same time to submit others separately. Suppose that is done and woman's suffrage carries, and the section of the constitution with the word "male" in it remains; what is the position then?

Mr. HALFHILL: I don't see the slightest difficulty in meeting any of these conditions. In the first place, if woman's suffrage does not carry, then by all means the colored people are entitled to have this section amended. If woman's suffrage does carry, there can be a proviso in the schedule whereby this particular section can be nullified.

Mr. MARRIOTT: This delegation which called upon you and of which some were preachers were objecting to the word "white" being left in the constitution, when they have the right to vote and have had ever since the adoption of the amendment to the federal constitution. I understand that they object to having the elimination of "white" coupled up with woman's suffrage. That was in effect a threat.

Mr. HALFHILL: I didn't repeat anything in the nature of a threat, but I did say that those colored men thought it was unjust to leave the qualifying word "white" in the constitution and I will further say that one of those men who called on me is a man who held a commission from the United States government as a captain of infantry in the regular army and led his troops up San Juan Hill. He is a man perfectly competent to understand exactly what we are doing in this Convention.

I want further to answer the question of the gentleman from Delaware [Mr. MARRIOTT] by saying that to my mind there is no trouble whatever about fixing in the schedule a provision whereby if woman's suffrage prevails, as I hope it will, this particular part of the constitution will be of no avail.

Mr. STOKES: There seems to be a unanimous sentiment for both propositions if they are divided. For the purpose of demonstrating the sentiment of the Convention, I move that the amendment of the delegate from Erie be laid on the table.

Mr. KING: The motion is now to reconsider and if the vote by which the amendment was carried is reconsidered I will withdraw this amendment.

The motion to reconsider was carried.

Mr. KING: I withdraw my amendment.

Mr. BROWN, of Highland: I move the previous question.

The motion was carried.

A further vote being taken, the substitute of the member from Harrison was agreed to.

By unanimous consent Mr. Cunningham moved to amend Proposal No. 5 as follows:

In line 3, before "Article V," insert "Section 1."

The amendment was agreed to.

The PRESIDENT: The question is now on the adoption of the proposal.

The yeas and nays were taken, and resulted—yeas 100, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Partington,
Antrim,	Harbarger,	Peters,
Baum,	Harris, Ashtabula,	Pettit,
Beatty, Morrow,	Harris, Hamilton,	Pierce,
Beatty, Wood,	Harter, Stark,	Read,
Beyer,	Henderson,	Redington,
Bowdle,	Hoffman,	Riley,
Brattain,	Holtz,	Rockel,
Brown, Highland,	Hursh,	Roehm,
Brown, Pike,	Johnson, Madison,	Rorick,
Campbell,	Johnson, Williams,	Shaw,
Collett,	Jones,	Smith, Geauga,
Colton,	Kehoe,	Smith, Hamilton,
Cordes,	Keller,	Solether,
Crosser,	Kilpatrick,	Stalter,
Cunningham,	King,	Stamm,
Davio,	Knight,	Stevens,
DeFrees,	Kramer,	Stewart,
Donahay,	Kunkel,	Stilwell,
Doty,	Lambert,	Stokes,
Dunlap,	Lampson,	Taggart,
Dunn,	Leete,	Tallman,
Earnhart,	Leslie,	Tannehill,
Eby,	Longstreth,	Tetlow,
Elson,	Ludey,	Thomas,
Fackler,	Malin,	Ulmer,
Farnsworth,	Marriott,	Wagner,
Farrell,	Mauck,	Walker,
Fess,	McClelland,	Watson,
FitzSimons,	Miller, Fairfield,	Weybrecht,
Fluke,	Miller, Ottawa,	Wise,
Fox,	Moore,	Woods,
Hahn,	Nye,	Mr. President.
Halenkamp,		

Mr. Cassidy and Mr. Peck voted in the negative.

So the proposal passed as follows:

Proposal No. 5—Mr. Cunningham. To submit substitute for section 1 of article V., of the constitution.—Relative to elective franchise.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal shall be submitted to the electors to amend the constitution by substituting for section 1, article V, of the constitution the following:

SECTION 1. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, precinct or ward in which he resides, such time as may be provided by law, shall have the qualification of an elector and be entitled to vote at all elections.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Resolution Relative to Loss of the Titanic Steamship—Conservation of Natural Resources.

Mr. HARRIS, of Hamilton: I ask unanimous consent to offer a resolution.

The consent was given and Resolution No. 104 was read as follows:

Resolution No. 104:

Resolved, That the Fourth Constitutional Convention of the state of Ohio pause from its labors to express its sincere sorrow at the calamity which has overtaken the sister nations of the United States and Great Britain, in the deplorable loss of life in the sinking of the steamship "Titanic," and to offer its deep sympathy to the families of those whose shrouds are the waves of the Atlantic.

Mr. TALLMAN: I move that the rules be suspended and that we consider this resolution at once.

The rules were suspended.

The resolution was unanimously adopted.

Mr. CROSSER: I would like to have my vote recorded on Proposal No. 163.

His name being called, Mr. Crosser voted "aye."

Mr. DOTY: It is perfectly apparent that we can not take up a new proposal within five-minutes of time of adjournment, and I move we recess until half-past one.

The motion was carried.

AFTERNOON SESSION.

The Convention was called to order by the president.

The PRESIDENT: The question before the Convention is substitute Proposal No. 64.

The proposal was read the second time.

Mr. MILLER, of Fairfield: In beginning the discussion I would like to say that I shall be very much pleased if you will consider in connection with this proposal Proposal No. 230, introduced by Mr. Tetlow, and Proposal No. 213 introduced by Mr. Leete. They are also conservation measures, and they, with this proposal of mine, form a conservation scheme for the state of Ohio. The proposal by Mr. Tetlow is with reference to the mineral resources and the one by Mr. Leete is with reference to the conservation of the water power of the state. My proposal is purely a proposition for the conservation of the forests of the state.

I want to speak first about Proposal No. 64, as originally presented. The purposes of the proposal, in this form are:

Protection for the birds as a necessity to combat insect life.

Encouragement of forestry.

Agricultural education.

I wish it understood that I am perfectly agreeable to the change that has been made, for the proposal as amended provides for encouragement of forestry as a means of education. A protection of the home of the birds means more of them, just what we were seeking to accomplish, so, in a way, this is the key to the scheme as presented in the original proposal.

It is interesting in this connection to note the reforestation policies of foreign countries. In Austria over 10,000 acres have been reforested since 1884 and the ex-

penditures have been about \$125,000, to which the state contributed four-fifths. The Chinese reforestation policies embrace only 600 acres. To propagate the reforestation idea a free distribution of plant material to Chinese communities is practiced. Bulgarian forests amount to seven and a half million acres, or 30 per cent. of the entire area. One-third of this is state forests, one-half communal and one-sixth private forests. Bavaria, among the German states, stands next to Prussia in size of state forests, which, in 1905, comprised 2,035,700 acres of timber-producing areas. Results of forest management in the Black Forest, known to every American student, are very satisfactory. Eighteen per cent, or two-thirds of the total forest area, is under direct state supervision. State forests have been slowly but steadily increasing. They contain less than four per cent of nonforested land. It is indeed interesting to note the destruction of the ancient forests of Europe, although there are still fragmentary remains of the great Hercynian Forest, which originally covered the greater part of Continental Europe and was extensively diffused over the districts now known as Germany, Poland and Hungary. In Caesar's time it extended from the borders of Atsalia and Switzerland to Transylvania, and was computed to be sixty days' journey long and nine broad. In Denmark all remains of that ancient forest have disappeared, but in Norway and Sweden, in Finland and Russia, we have remains or representations of the northern skirt of the immense forests which once covered Europe.

Forests in the United States are taxed today under the general property tax in every state and territory. Thirty-two states and territories make no reference to forest lands in their tax laws. The present tendency, however, is toward stricter administration and heavier taxes. Forestry must come some time and its early coming is a thing greatly to be desired—and whenever we are ready to undertake it seriously we will find that our present methods of taxation are a very severe handicap. Strictly enforced—and it is not safe to count on the lenient enforcement forever—the annual tax on the full value of the land and standing timber might take away anywhere from one-third to one-half of the net income, or even more. Forestry should not be subjected to such an unjust burden. Moreover, the tendency of the present system to force premature cutting and prevent reforestation, though probably not very serious as yet, is bound to gain strength as time goes on. For these reasons it is highly desirable to take some action which will not retard and destroy, but will encourage and foster this natural asset of the state and nation. If any tax should be placed on the forests it should be on the yield when cut. It would be equitable and would be an encouragement rather than a hindrance to forestry.

I want to read at this point from the book "State and Local Taxation" of a conference at which Dr. Chamberlain quotes a few things in regard to this point to which I desire to call your attention:

I am inclined to think that our reforestation in Ohio will largely be in the way of shade trees for beauty, and in the way of orchard trees of one kind or another which shall serve climatic purposes. I know that on the site and in the vicinity of the little town in which I lived, Hudson, Ohio, near Cleveland, the timber was originally

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cut and burned, and I can remember the horrible droughts we used to have, and I remember how the showers would fill the river on one side, and Tinker's Creek on the other, and scarcely touch us on the high land every time, because it was so poor and so dry. Later the village planted trees and the college planted trees, and we planted orchards and shade trees, and now the showers do not miss us and go around.

But the question is, Is there any way we can induce foresting by removing the taxation? The southwestern quarter or third of Ohio was never glaciated, the glacial action did not pass over there, the coal seams lie over there, the land is set up on edge almost as much as it is in New Hampshire. I can say now that if somebody big enough, if the owners of the coal mines, for example, would take hold of it scientifically, and be exempt from taxation on land while the timber trees on it were growing, you could reforest that land that is too poor for almost anything else. The question asked by one of the delegates why a man who has a house worth \$5000 should pay taxes and the man who has timber worth \$5000 should not pay taxes may be answered in this way: The house is a personal benefit absolutely and nothing else; it is no public benefit whatsoever; it is for that man himself; it is his property; he owns it and uses it. On the other hand a forest is a public benefit to the state, to the watershed, to the farmers below, and it looks as if there were some justice in exempting it from taxation, and I take it that land actively used in growing forests may be justly exempted from taxation. You can not do that in Ohio now under the constitution, and so the assessors and the trustees have to whip the devil around the stump, as I may say, and they have said, "Well, here are forty acres of timber; it is not bringing a cent to you, and we will value that for taxation at about \$5 an acre." For ten years this valuation stands—a decennial appraisal—and so they virtually exempt it from taxation as long as it is exclusively in timber.

In "Forestry Conditions in Ohio," Bulletin 188, Ohio Experiment Station Director Thorn says:

Forestry problems in Ohio differ from those in many other states in the fact that the state contains no mountain ranges or other large bodies of waste land, but outside of a few tracts of several thousand acres each belonging to coal companies in the southern part of the state, it is everywhere cut up into small farms, the average size of which is less than 100 acres each. The principal work in forestry in Ohio, therefore, is to be done, not in the reforestation of large areas of state-owned lands, but in the improvement of the woodlots of small farms. Statistics collected by township assessors indicate a total area reported as forest amounting to about 2,500,000 acres, but the major portion of this area is in the condition of woodland pasture rather than that of forest, and that is rapidly diminishing in size and decreasing in value. There is much steep hillside land in Ohio which should remain permanently in forest. The suggestion is also offered that the reforesting and future control by the state of the steep hillsides bordering the narrow valleys through

which the streams of Ohio flow would mitigate the disasters of the freshets which have been so destructive in recent years by retarding the inflow and distributing it over a longer period. The state already owns some land of this character. Information, demonstration and leadership, and further beneficial legislation would be of the greatest assistance. The fact that the few remaining trees, which are ripe for the harvest, will soon be gone is not so much to be deplored as that there is almost nothing left to take their places. At least 80 per cent of our mature timber trees are standing where natural forest conditions have been destroyed so that early decay is inevitable. Not more than half a million acres of young-growing forests remain, and many of these are in bad condition, the stand being poor and the trees inferior. These facts point to the inevitable disappearance of our forests at a more rapid rate than at any time before. An effort has been made to learn what estimate of value farmers put upon woodland pasture. The average of these is 60 cents per acre. Since there are more than two million acres of these pastures within the state, it is evident that the annual loss in holding them in their present condition is considerable.

Referring to forest conditions in Ohio, Bulletin 188, Ohio Experiment Station, continues:

It is believed by many that if any plan could be devised by which the tax on land in forests could be remitted or exempted the practice of forestry would become common. A huge obstacle to the preservation of privately owned forest is the system of taxation in vogue, which year after year taxes the full timber value of the trees, whether used or not, as though timber were a series of crops, whereas, under present policies it is only one crop. The taxation applies even before the trees are matured; hence they are often cut when they should be allowed to grow much longer.

I wish to read at this point from Bulletin 204, of the Ohio forest conditions:

The comparatively high price of land in this county has been a discouraging feature for forestry operations, and it can never be expected that this phase of agriculture will be given any prominence. Granting the above, it may be said, however, that the land set aside for operations in the way of forming windbreaks for animals and buildings, and products for direct farm use, will not lack returns proportional to the investment. There are a large number of so-called wood-lots through this section which are being held at a dead loss to the owner in every respect; the growth existent consists of distorted and worthless beech, gum, maple and ironwood, fit only for firewood, and with a poor market for such utilization it is absolutely worthless from the aspect of growth increment and is paying no interest on the investment. It is the general admission of woodlot owners that the average woods pasture yields small profit. In some cases, where beech predominates, there is

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a very meager sod, and many times not one-fourth of the ground produces grass. Here then, from two aspects, is a loss to landowners of this county, and while we have no adequate knowledge of the amount in figures, it is evident that the annual loss in holding the majority of these wooded pastures in their present condition is considerable. Afforestation here must be carried on not by the reclaiming or improving these pasture woodlands, but by entirely removing them and starting anew by artificial means. It is often the case that the soil of these woodlands is of most excellent quality, due of course, to being on virgin ground. It was often the case that the woodlot was the portion considered the poorest piece of ground and left in trees and pasture for that reason. Long-continued cropping of the better portions, however, has made this erstwhile barren soil more productive than the better portions. It is advisable then in many cases to give the woodlot ground over to tillage and select some exhausted and thin piece of ground for growing trees. In this county everything along forestry lines must be obtained by commencing at the bottom, and the sooner the start the quicker the results. Nothing is to be gained by waiting, and nothing need be expected by waiting, and nothing need be expected from natural reproduction.

Now I will read the forestry conditions in Franklin county:

Franklin county contains a smaller percentage of forest lands than any of the counties heretofore mentioned. The comparatively high price of land and its value for trucking and dairying makes it almost impracticable to retain forest lands of any magnitude. There are many wooded pastures in the county which are being held at a loss. Practically all of the standing timber trees are culls or species of inferior timber qualities. The forest capital is virtually inactive and becomes less productive each year.

I wish next to call your attention to the drain upon our forests, Circular 129, United States Department of Agriculture. There is very much interesting information in these bulletins if you would take the trouble to investigate. I can not read it all and shall give only one citation. The one question that interests us is, How long will the timber last?

The estimates of standing timber in the United States are by no means satisfactory. The most detailed ones range roughly from 1,400 to 2,000 billion feet. Assuming a stumpage of 1,400 billion feet, an annual use of 100 billion feet, and neglecting growth in the calculation, the exhaustion of our timber supply is indicated in 14 years. Assuming the same use and stand, with an annual growth of 40 billion feet, we have a supply for 23 years. Assuming an annual use of 150 billion feet, the first supposition becomes 9 years and the second 13 years. Assuming a stand of 2,000 billion feet, a use of 100 billion feet, and neglecting growth, we have 20 years' supply. As-

suming the same conditions, with an annual growth of 40 billion feet, we have 33 years' supply. With an annual use of 150 billion feet, these estimates become, respectively, 13 and 18 years. * * *

The present rate of cutting will exhaust the supply in about 10 years in the first case and 25 years in the second case. * * *

Practical forestry has not yet been introduced on any state forest land, and even New York, which owns about 1,250,000 acres in the Adirondack and the Catskill mountains, has not yet progressed beyond the stage of simple protection. To have reached this, however, is a long stride in advance. The constitution of New York forbids the cutting, destruction, or removal of any tree on the "forest preserve," as the lands definitely assigned to forest uses held by the state are collectively called, a provision which is quite as effectively opposed to practical forestry as it is to forest destruction, and which must be regarded as purely temporary in character. The forests of the state, as well as its salt-water and fresh-water fisheries and its game animals and birds, are under the care of a commission of fisheries, game, and forests appointed by the governor, having under it a superintendent and a corps of subordinates in the woods. The sincere interest of the people of New York in the forest preserve is indicated by the recent appropriation and expenditure of \$1,800,000 to increase the area of the preserve by purchase.

In Pennsylvania the acquisition of wild lands by the state for forest uses has become an established policy, and bids fair to result in the control and management of an area not greatly inferior to the forest preserve of New York; and Pennsylvania has no legal bar to practical forestry. Michigan has recently taken steps in the same direction, and several other states have taken or seem about to take similar action. It may be said of the forested states in general that public sentiment is moving rapidly toward a satisfactory treatment of the question of the state forest lands.

The foregoing quotation is from "Progress of Forestry in the United States," by Pinchot.

The taxes on poor land are, as a general rule, relatively higher than on good land. This is due to the fact that most of the taxes are for local purposes, school, roads and bridges; and the actual expense in a poor-land section is about the same as where the lands are rich. Thus, land which produces only 20 bushels of corn may pay 30 cents per acre tax, while land producing 80 bushels in another section of the state may not be taxed more than 50 cents per acre.

To be sure the state tax might be properly equalized, but the county and local taxes are often more than ten times the state tax.

It will easily be noted that when crop yields sink slightly below the minimum yields, the land becomes practically valueless for business or investment purposes.

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Agriculture is often referred to as the most independent occupation, and in the struggle against poverty in countries with increasing population and failing resources, it is certainly true that, after men in most other lines of occupation have literally starved out, the farmer will continue to eke out an existence; in fact, he may still have bread and potatoes, milk and butter, eggs and poultry, and even vegetables, fruits, syrup and honey for the support of his own family long after he has practically ceased to buy or sell in support of a dependent urban population.

Thus the city is the first to feel the country's poverty and for their own preservation the men of the town or city must contribute their influence toward the development of systems of permanent agriculture. Bankers, merchants, grain dealers, physicians, editors, teachers and ministers, as well as educated land owners, because they have trained minds and are able, with moderate study, to acquire a correct and adequate understanding of the fundamental principles of soil improvement and conserving our natural resources, must exert their influence over those who are less able to secure such positive knowledge, but who may own or control much of the land, lest the lands generally become so impoverished that they will support only the agricultural people who, of course, have the first right to the food they produce. Under such conditions land may have no value as a source of profit and still be invaluable as a means of existence.

Therefore the conservation of the soil becomes a most necessary and beneficial enterprise. Every blade of grass is a study. To produce two where only one grew before is a source of both pleasure and profit. And not grass alone, but soil, seeds and seasons, bridges, horses and cattle, sheep and poultry, reaping, mowing and threshing, draining, droughts and irrigation, plowing, hoeing and harrowing, saving crops, pests of crops, diseases of crops and what will prevent and cure them, trees, shrubs, fruits, plants and flowers—the thousand things of which these are specimens, each is a world of study within itself.

Education is the key that solves the problems, and, more, it gives a relish and facility for successfully pursuing the unsolved ones. The total number of acres owned in Ohio are, in round numbers, 20,000,000. The acres of woodland 2,340,573; the acres lying waste are 771,594; the acres of worn out lands, 141,590 an increase of 93,937 of waste or abandoned land in ten years.

The loss from freshets, soil waste, drouth and extreme climatic conditions, etc., will run into many millions of dollars, and a great deal of this loss could have been saved had there been a careful conservation of our natural resources.

The destruction of our forests has not been startling to us because their disappearance has been gradual—from generation to generation—and no one generation has seen it all. The same thing may also be said of the loss of fertility of our soil, the increase of plant diseases and injurious insects, and the destruction of our insectivorous birds. If our forests had been destroyed by some great tornado or fire all at once we should have been more generally impressed with the calamity of the loss. The loss, however, is none the less real because of our gradual awakening to it. In this loss there has been also a loss in connection with our extremes of climate, for

nature is so intricately organized that she can not suffer in one direction without being affected in her operations in another. Through the removal of our forests the flow of our streams has become spasmodic, falling into trickling rivulets in one season, rising to destructive torrents in another. Upon a proper forest cover depends largely the multiplicity of our feathered friends and songsters, those that fly by day and night.

These facts give vital importance to the conservation movement, and any agency which tends to help this movement along in a practical way is therefore a power for the public welfare. Such, I assure you will be the influence of this conservation and protection of our forests. Our birds should be protected for they are of untold benefit in the consuming of weed seeds and troublesome insects. Some of the insects eaten by the birds not only threaten the destruction alike of village shade trees and country forests, but seriously afflict humanity. Brown-tail moths, potato beetles, grasshoppers, cutworms, caterpillars, and even the disgusting stinkbugs are included in the lists of insects eaten by the birds.

The time has long passed when the practical farmer can afford to ignore the relation of birds to agriculture. Larger and larger areas are being devoted to tillage every year and the amount of capital invested in agricultural pursuits in the United States is constantly increasing.

The whole world is being laid under contribution for trees, new fruits, forage plants and crops for the benefit of the American farmer and consumer, in order that by his superior energy and foresight he may not only feed our own people but create a surplus of American products for consumption in less favored lands.

New pests are introduced and here, under favorable climate and new conditions, they multiply until they inflict great damages. Such pests go unnoticed until the damage they do forces them on the attention of the community, and they become so numerous and widespread that their extermination is impossible. Once introduced into the country they are here to stay. The vast sums already spent in efforts to prevent the ravages of such pests emphasize the importance of utilizing to the utmost all the allies nature places at our disposal. Birds reproduce slowly and often suffer immense loss in their migration by climatic extremes.

It is the part of prudence, therefore, to protect useful birds by protecting their natural home, the forest, at all times, and so augment their number that they may constantly play their respective parts in the police system ordained by nature, and be ready when emergency arises to wage active and aggressive warfare against sudden invasion of insect enemies.

The protection of the climatic and physiographical interests of the country are not to be overlooked. The destruction of the forests is detrimental to the climate, waterflow, and fertility of the soil. The forests are the great recreation grounds of the people. Let us hope, in behalf of the welfare of our state and nation, that as soon as the initial decades of the new century shall make more and more apparent the crying need of improvement in the treatment of this great natural foundation of our life as a people, that there will arise a class of men able to perform the tasks that will be thrust upon them.

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Forests are indeed necessary to our country as great regulators of meteorological processes, mitigating the evil effects of storm and flood, keeping erosion down to a moderate degree and influencing climatic conditions. The absolute necessity for the conservation of our timber supplies and the manifold blessings that come from the woodland should lead us to protect in every way possible the great passing giants of the forests. But this question of forestry can not be solved by sudden bursts of enthusiasm; nor does it appeal to man's emotional nature. It must be solved by the millions of men and women, each of whom has his own particular interests to make him indifferent to what does not concern him individually.

The scenic value of all the national domain yet remaining should be jealously guarded as a distinctly important natural resource and not as an incidental increment. We have for a century stood actually, if not ostensibly, for an uglier America. No one will suggest that the travel to Europe is to see ugly things or wasted scenery. No, these vast sums are spent by our people in travel to view agreeable and attractive scenery, natural and urban.

The lumber king leaves the hills he has denuded into piteous ugliness and takes his family to view the jealously guarded and economically beautiful Black Forest of Germany.

Mr. BROWN, of Highland: I am afraid that what I shall say will be out of order. In view of the fact that there are two other proposals relating to the same matter of conservation and that it would be difficult for the Convention to consider the three separately, and as there seems to be a tendency toward agreement between the three proposers along the line of conservation of natural resources, I move that the matter be submitted to a committee consisting of three or more to report tomorrow morning and that the matter be placed on the calendar in regular order for tomorrow.

Mr. DOTY: I second the motion with a slight change, that when the report is made it shall be placed at the head of the calendar the next day so they would have the right to print it. That keeps the right of way for the proposal.

Mr. STEVENS: What is that motion?

The PRESIDENT: It is the motion to refer.

Mr. STEVENS: I did not observe that the motion was seconded.

Mr. DOTY: I seconded it.

The PRESIDENT: The motion was seconded and the motion before the Convention is to refer this matter to a special committee.

Mr. STEVENS: On that motion I intended to say that if this matter were submitted to a special committee it would appear in proper form, but it seems to me the amendments could be offered and the matter kept in regular order and debated now. I don't see any necessity for putting it into the hands of anybody else. I have an amendment to offer myself and I think the debate should proceed.

Mr. DOTY: I think the motion was made by agreement of the three proposers. If they could put the three proposals into one and submit it as a substitute for this one, the whole matter would be taken care of.

Mr. BROWN, of Highland: I feel that the three proposers should have respectful consideration in the matter of presenting their proposals. I doubt if any one could offer an amendment which would satisfy all three of these gentlemen. I believe it would be better if we submit this matter to the three proposers and let them bring in a substitute in the form that they can all agree on.

Mr. HARRIS, of Ashtabula: I don't exactly understand what three proposals are involved.

Mr. BROWN, of Highland: Proposals No. 230, 313 and this one. It seems that one of the proposals provides for the conservation of the mineral resources of the earth, another for the water, and another for the forests. They are all along substantially the same line.

Mr. HARRIS, of Ashtabula: In plain terms it means the proposals of Mr. Miller, of Fairfield, Mr. Tetlow and Mr. Leete. I believe those gentlemen should have an opportunity to put these proposals together in a form to suit them.

Mr. MILLER, of Fairfield: I would like to say that the authors of these three proposals had a meeting and it was thought best to let them go in separately because they might wish them to be amended differently. I have an amendment to my own which I think changes it for the better. For instance, on account of the adoption of the initiative and referendum proposal I want to change the words "the general assembly" to "laws may be passed." It was agreed between the three that we were willing to have the first three groups under one head and there is no real objection to bringing them in together.

Mr. STEVENS: If these three gentlemen desire to come in with the proposal I don't see any good reason why the matter shouldn't be referred to them, but I want to have my amendment offered now. I think this motion ought to be lost, thereby giving all of us a chance to offer our amendments.

Mr. TETLOW: As one of the delegates who is intensely interested in the question of conservation I want to say I introduced a proposal covering the question of conservation of our natural resources and it was submitted to the committee on Judiciary. The proposal was acted upon and reported favorably to the Convention and it was amended in that committee to cover all of the natural resources of the state. Something can be gained by the merging of these three proposals. Mr. Miller's proposal will permit the exemption of woodland from taxation. Mr. Leete's proposal will grant further power to the general assembly or the people to enact laws for the conservation of the water power. I am perfectly satisfied that this entire subject matter should be referred to the committee to redraft. The thing I am interested in is to get some proper method which will adequately conserve our natural resources. Consequently I am in favor of any proposition that will bring about that. I am satisfied to amend Mr. Miller's proposal upon the floor and settle the question now. I realize there may be some objection to the different ideas that are contained in these proposals, and if there is any difficulty about handling Mr. Miller's proposal as amended I want my proposal to be insured the same position on the calendar that it has now. I want it so it will not affect my report if the matter doesn't go through and if

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this report should not be adopted I would wish to have the opportunity to come before the Convention on my proposal. With that understanding I am willing to go ahead.

Mr. MOORE: Since the state is asked to assume care over the waterways, which is one of the great natural resources, and since it has been asked to assume control over the minerals, I can not see why the great natural water power should not be conserved and these three matters could come along together with probably some others added, and I think this should be provided for in some broad, comprehensive proposal built out of these three which will be a benefit to the people of Ohio. I am in favor of appointing this special committee and having it put the proposals in shape to protect the people in their great natural resources which we have and which are rapidly being exhausted.

Mr. Miller's proposal does not aim to save the timber only, but it aims to conserve the soil too. I believe if the timber were not exhausted we would not have a good many troubles we have now. It is the waste in the fields and forests that causes the great droughts.

To avoid any confusion, I move to amend by naming a special committee composed of the three authors.

The amendment was agreed to.

The motion to refer was carried.

The PRESIDENT: The next business is Proposal No. 249—Mr. Tannehill.

The proposal was read the second time.

Mr. TANNERHILL: Gentlemen of the Convention: I have not, as you all know used very much of this Convention's time and I do not intend to in the future. I consider this matter important and I hope that I can present my idea in the time allotted. If I should have to exceed the time a few minutes I feel sure the Convention will grant me the extension.

It is a real pleasure to stand before this Convention advocating a proposal that grants to the people of Ohio a reform more necessary than any other not at present enjoyed by the citizens of this state.

No member of this body can exceed me in enthusiastic and loyal support of the initiative and referendum, and it will be to me one of the cherished memories of this Fourth Constitutional Convention that I was one of the sub-committee of ten who drafted the substitute initiative and referendum proposal that was adopted almost unanimously by this Convention.

But we must remember that the initiative and referendum are instruments of defense rather than of aggression. Ours is a representative government and must so continue if we hope for sane administration and stable institutions. But I would as soon have our people menaced with the cholera or black death as to run the gauntlet of another legislature such as the last, if we are not to be protected by a workable initiative and referendum. I cannot understand how a friend of representative government can oppose a safeguarded initiative and referendum proposal such as we have adopted, for I say to you here and now that with a few more such dictagraph-pursued and corruption-enmeshed sessions of the legislature as we witnessed a year ago an outraged public will arise in its might and wipe representative government from the state, and we will revert to the rule of the mob.

But this will not occur, for we are going to adopt and have the protection of the initiative and referendum, and while in the past the problem has been how to escape the evils of representative government, the task of the future will be how to prevent the abuse of direct legislation, for I say to you without fear of successful contradiction that it is neither the most efficient nor the most desirable method of passing laws. But the people have been trifled with and betrayed by corrupt legislators until they will endure the perfidy and infamy no longer. They are going to demand their rights. They are going to see to it that they get the legislation they desire and require, and if they can not obtain it through representative government they will enforce their demands through direct legislation.

Therefore, since we face the dangers of a too frequent use of the initiative and referendum it is wisdom to ascertain what can be done toward restoring to representative government the position of confidence which it held in the days of its greatest advocate, Thomas Jefferson.

It certainly needs no argument to prove that representative government can never be satisfactory where the representatives of the people in any branch of the government—legislative, executive or judicial—are inefficient, corrupt or controlled by selfish interests. So long as the manner of their selection is such that party bosses or self-seeking corporations can name both the democrat and republican candidates for each office, there can be no hope of improvement in representative government.

But, it is asked, do not the people select their officials to make, construe and enforce the laws? Often they do not. Frequently at the election they find that they simply have a choice between two undeserving candidates, neither of whom is competent or worthy of the position. If mistakes are made in the nominating conventions of both parties, which frequently occur, the voter is powerless to prevent misgovernment. The chief cause of the frequent failure of representative government lies in the corrupt, boss-controlled, drunken, debauched and often hysterical nominating convention. The convention must go.

No man in America has made a more systematic and thorough study of the relative merits of the convention and primary systems of nominations than Professor Merriam, of the University of Chicago. Hear his opinion on the subject:

Whatever the advantages, theoretical or practical, of the convention system, its doom is clearly written. The limitation of the voter to the choice of one leading candidate, the manipulation of representatives chosen, the opportunities for trading and jobbery, the undeliberative character of the convention, all have combined to make the system, as now known and practiced, intensely unpopular and incapable of long duration. Originally the weapon of the many against the few, it has become, in only too many cases, the defense of the few against the many. Once the foe of aristocracy, it now stands in the way of democracy and must move aside. No defense that can be made for it at this late hour is likely to prove effective against the assaults of its foes. In fact,

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the stubborn and mistaken advocacy of the system in various states by a certain type of party leader has alone cost the system much opposition.

The direct primary is no innovation. It is the established policy of a large number of the states of the Union. Today in this great nation over forty million of America's best citizens select their governors by direct primary vote, but, sad to relate, the great state of Ohio still clings to the corrupt, boss-controlled convention plan.

The state-wide direct primary is not peculiar to the Pacific Coast, for while Nevada, Idaho, Oregon, Washington and California nominate every state official, the legislature and all other elective officers by direct vote, yet it is the great Middle West, the region from the Alleghenies to the Rockies, where the reform is most firmly established. Consider this group of states and ask yourself if you want Ohio longer to be lined up with Delaware and Rhode Island. The direct primary for the nomination of governor and every other elective state official is now in operation in Michigan, Wisconsin, Illinois, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Missouri and Iowa. This is the cream of American resources and American intelligence and progress. These ten great commonwealths have a total population of over twenty-two millions.

But Ohio is more reactionary even than the South, which is proverbially conservative, for the state-wide direct primary is now in force in Louisiana, Mississippi, Tennessee, Oklahoma and the great territorial empire of Texas. Light is breaking in politically benighted New England, for New Hampshire progressives have secured the adoption of the unlimited direct primary in that state, and Massachusetts is now wheeling into line. When will Ohio free herself from the domination of boss-controlled conventions?

Some may object that the direct primary is not a constitutional matter. One whole article of our present constitution is devoted to the subject of elections, and primary elections are just as fundamental as the general elections in November. Under our present constitutional provision on elections we lock the door after the horse is stolen. Why not save the horse as well as the stable by incorporating provisions for the direct primary in our constitution?

Is it a constitutional matter? Many states have so decided, for a number of states have constitutional provisions as to direct primaries and a number of others would have saved a world of trouble in securing the adoption of the direct primary had they possessed provisions in their constitutions requiring direct primaries. Particularly is this true of Illinois and California, where numerous primary laws passed by the legislature were declared unconstitutional.

Let me briefly comment on some benefits to be derived from the direct primary. First, the larger vote it brings out, clearly demonstrated in the county primaries. It clearly shows that more people will vote. When you are selecting delegates for some convention they never tell you who they are going to vote for. So the people don't take any interest, but with your direct primary, where you are voting not for a delegate but for your own officials, much greater interest is taken. Another thing, there are fewer unworthy candidates.

There is a good reason why this is true. When you put it up to the direct vote of the people no unworthy candidates will present themselves, because they are afraid of the popular vote. They can't go into a convention then and by swapping and trading around get nominated. They have to go before the electors and get so many votes.

It makes the caucus and the slate futile, because if they get in a caucus and form a slate the voter at the primary will destroy it. It doesn't cost the candidates as much. I assert it does not cost anything like as much. They don't have to buy a delegation in a county convention. They don't have to do a lot of other things that they have to do under the convention system. It does not destroy party organization either. In those states which I have mentioned, the great Central West, party organizations are just as strong today as they were before they got the primary, but their politics is a good deal clearer. It does not prevent party platforms. Let me just for a moment speak on that matter. You may think when you don't have a state convention that you could not have a party platform. Let me tell you what they are doing in some of these states where they have direct primaries. I think every one of you will admit that it is a better system than we have at present. As it is now a bunch of us meet in a state convention and resolve that we are in favor of this, that or the other thing, and not one of us will be in a position to carry the matter out. Now the plan they are following in the states where they have the direct primary is to hold a primary and nominate their state officials and nominate their members of the legislature, and then the candidates for state officers and for members of the legislature meet and declare their opinions on various questions. They are the men who are going to carry out the policies. Are they not the men who ought to write the platforms? They make their declarations and then you have the privilege of reading them and deciding whether you want to vote for one set of men to carry out a certain set of principles or for another.

Now, some suggestions as to the application of the system and the time of holding primaries. Our May primaries are a mistake. Primaries should not be held more than two months before the election. The first of September for a November election is perfectly proper. Then as to the matter of plurality or majority, I think a plurality should rule. As to the matter of percentages it has been clearly shown in those states using the direct primary that low percentages should be required for petitions.

Then there should be a time limit on petitions. The petitions ought to start out at a certain time and ought to be filed by a certain time. Starting them out at a certain time gives every candidate a chance. Nobody starts out ahead of anybody else and gets all the petitioners before anybody else can come out, and then you can have as stringent rules as to the primaries as you please. Let me give you an ideal system. The ideal system is to make your primaries, not as to judges and school officers, but as to state officers and members of the legislature, as strictly partisan as you can. Don't permit a democrat to vote in the republican primaries, and don't permit a republican to vote in the democratic

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primaries. Put the parties on their honor and make them select the best men they can and then at the November election make your ballot nonpartisan. Put all the men in one list and let the voters select them, not as party men, but as men. You will notice this substitute that been passed around. The original proposal is a little faulty and I am going to make a motion to substitute this in place of the other. You notice that I have made a change permitting nominations by petition. The object of that is to permit nominations for school boards and judges, if you want to, by petitions to keep them out of politics. Now, if you will excuse me for a few moments I want to make some personal allusions. Personal experiences in conventions—it is not a pleasant theme. I suppose I have been in more state conventions, probably, than any one here, and yet I do not consider that that is particularly a credit. It is simply a matter of experience. It has been so long since I was not a delegate to a state convention that I cannot remember the time. I have scarcely missed a state convention of either party in the last quarter of a century. I have observed things as a delegate, and I have observed things as a newspaper man.

Now, you say you favor representative government. Is a state convention representative? Who are the delegates? A lot of two-by-four editors like myself, a lot of one-horse lawyers and a bunch of county officials. There is your state convention. It is the same old bunch year after year. I know whom I am going to meet at the state convention before I go. Having had twenty-five years' experience at state conventions I can write you out a list of the delegates that will comprise a majority of the next democratic and the next republican state convention and there has not been a delegate elected yet. Is that representative government? You don't find any farmers worth mentioning, you don't find any business men in a state convention of either party. You don't find any representatives of the great body of laborers of the state there. It is just the three classes I have mentioned. If you would take the editors and the lawyers and the county officials out of every state convention it would look like the Constitutional Convention on Friday. That was absolutely true of all the conventions that we had before we wiped out the county conventions with the one-horse primary we are having now.

I will tell you something that will illustrate what I have said. A few years ago I had noticed what I have been telling you as to the county conventions, that the same bunch came up each year. I sat down and looked over the files of the papers and I made a list and published it in my paper and I said, before any delegates had been selected, that at the next county convention of the opposition party the following will be the list of delegates. It created consternation. They could not select that list; they had to take others and when they came up to McConnelsville they had a strange bunch that didn't know how to run a convention. They had never been in one before. Another thing, the state conventions and other conventions don't represent principles, but they represent a great desire for office and nothing else. I have seen the same men in the democratic convention solemnly resolve against all sumptuary laws and then turn around and nominate Pattison and try to put all the saloons out of business. I have seen the repub-

lican party in state conventions complete a circle on temperance and now they are on the back track on the second lap. One party is just as bad as the other in a state convention. I remember a big fight we had at Springfield in 1895 on the silver question. We had one of the greatest fights down there you ever saw. There was a little bunch of original silver men; we were probably wrong, but we thought we were right. The convention was presided over by Cal. Brice and the cities were represented by goldbugs. The convention was about two-thirds goldbugs and one-third silver, and they ran over us and trampled us to the earth. That was in 1895 and the very next year practically the same body of men met in convention and they were all the greatest free-silver men you ever saw, and those fellows who had fought us and licked us a year before got into the democratic free-silver bandwagon and rode off to expected victory and glory while we original silver men trailed in their dust. I don't think I ever felt so badly as in the election of 1896 when Bryan was defeated. But there was one consolation—those fellows who had come over for office because they thought it was going to be popular didn't get in. Just think of it! I don't like to be personal, but just think of Louie Bernard, Joe Dowling, Jimmy Ross, John O'Dwyer, John Bolen and Charley Salen having a Saul of Tarsus conversion on the silver question as they had that year!

But, gentlemen, lack of principle is not the worst thing in the state conventions, or in other conventions. They are dishonest. I know of one convention in Ohio where a man was nominated for governor and the secretaries counted him out. I was in a convention where a man was not nominated for governor and the secretaries counted him in. They have been boss-controlled invariably. Most of these references are toward democrats. I feel freer to criticize them than my adversaries, but I remember one convention, only two years ago in Memorial Hall, when I sat within ten feet of a great boss of a city and that man, with eighty men in his delegation, without consulting a single man got up and changed the vote of that county and nominated Harding for governor. He had not consulted a single man in that delegation. That is representative government! I was within ten feet of him and I watched his every movement. There was no consultation whatever. I believe that I can say truthfully that in twenty-five years I have only seen one convention of either party where the bosses were not satisfied with the nominee for governor. He died soon after. When it comes to insignificant offices like attorney general, the bosses parcel them out. I know a case where a man went to the supreme bench and all he had to do was to send a man to a certain other man and tell him "My friend wants to go on the supreme bench," and the man went on the supreme bench. The go-between told me he did it.

The state convention is no worse than the lesser convention. In our district a certain man was elected by the democrats as senator. He promised in my presence what he would do on certain matters and he came up here and did just the opposite. You naturally would expect me to do all I could to prevent his renomination. My county was almost unanimously against him, and in the making up of the list of delegates to be voted on I was permitted to select the delegation from my county

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and I handpicked every delegate that went to that senatorial convention. I selected men that I felt absolutely sure would not favor the renomination of the senator and they went to the convention and what happened? They went to Lancaster and he got over half of them.

Now, in conclusion, who ought to support this proposal? All Roosevelt republicans. That is the chief thing they have been howling about in this campaign, that if there had been a primary there would have been no trouble. The La Follette men ought to be for it. The Bryan democrats ought to be for it, because that is one of the great principles of Bryan. The Wilson and Clark supporters ought to be for it. Every progressive initiative and referendum supporter ought to be for it. If you are going to trust the people, play fair. Those who favor the short ballot ought to be for it, for you are only going to nominate three men for state executive officers.

Ought we trust a boss-controlled convention? You who are against the short ballot ought to have had the experience that I have had. I have seen some of the most shameful proceedings in state conventions in connection with minor officers that could be witnessed. Talk about the great importance of these minor officers! I was in one convention where a gentleman cast five counties for attorney general and the gentleman didn't live in any one of the five. I have cast more than one myself. If Judge Okey were here he would tell you that his delegation left the convention two years ago and I was given Noble to cast in addition to Morgan.

Above all others the friends of representative government ought to be for this measure. If you don't want the initiative and referendum used every day in the week you had better clean up politics in the state of Ohio and get rid of the boss-controlled, corrupt convention. That is the danger to representative government.

Now, I want to consider for a moment the exception that you notice at the conclusion of the substitute as to township officers and the officers of little towns. We have been reversing the rule. We have been nominating justices of the peace by the direct primary and nominating governors and "little" officers like that at corrupt conventions. Now let us make a change. The direct primary is useful where there is an office worth while. Nobody wants a township office. I was on an election board two years ago and when we printed the ballots half of the township places were blank. Nobody wanted them. Why go to that expense when nobody wants the office? They can be nominated by a petition. I hope no one will offer an amendment on that. The country people are demanding it. This feature will save every county every other year \$1000. It will save the state of Ohio next year \$100,000 that is absolutely thrown away. I trust that no one will offer an amendment taking this provision out because it means two hundred thousand farmer votes for this proposal. I have had more demands from the farmers wanting this cut out than anything else since I have been here or before I came. I hope you will give this matter careful consideration and adopt it. I now offer the substitute.

The substitute was read as follows:

Amend Proposal No. 249 as follows: Strike out all after line 3 and insert the following:

"All nominations for elective state, district municipal and county offices shall be made at direct primary elections or by petition as provided by law, but direct primaries shall not be held for the nomination of township officers nor for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the voters of such township or municipality."

Mr. FACKLER: I offer an amendment.
The amendment was read as follows:

Amend the amendment of Mr. Tannehill to Proposal No. 249 as follows: Add the following:

"All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors; each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority."

Mr. THOMAS: I offer an amendment:
The amendment was read as follows:

Insert after the word "offices" in line 4 the words "including candidates for United States senator."

Mr. ULMER: I am an out-and out independent, and so far as the present primary election is concerned I don't attend and can't attend because I have to say that I want a republican a democrat or a socialist ticket. We have all observed the present tendency in political life. There are no more people coming out and saying "My grandfather was a republican and I am a republican," or "My grandfather voted the democratic ticket and I am going to vote the democratic ticket." Our citizenship has begun to think for themselves and they are not sheep to be led by certain political leaders. Why not make some provision that a man can go to a primary without being asked whether he belongs to a certain party? I say you are just giving democrats and republicans and socialists a chance to vote for somebody that will be elected. The independent voter doesn't get a chance to vote. I say every name should be printed on one ballot, and I say each man who goes to the primary should have that ballot and should be allowed to vote for any name on it. I have an amendment to that effect, but there are three already in. As soon as one of them is disposed of I want to offer mine.

Mr. MAUCK: This proposal does not involve any good that the legislature itself cannot accomplish. It certainly is true that a convention called for the purpose of determining fundamental rights ought not to bother itself with questions which the general assembly may pass upon and determine. It is certainly true that there is no constitutional question involved in this proposal or in any of the amendments suggested. As long as that is true, those of us who are called here to determine the fundamental rights of the people and to incorporate them into a constitution ought not be required to waste our time on such matters as here presented and

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I move that the proposal and all amendments be laid on the table.

The motion was seconded.

The PRESIDENT: The question before the Convention is, Shall the proposal and amendments be tabled?

The yeas and nays were regularly demanded, taken, and resulted—yeas 14, nays 79, as follows:

Those who voted in the affirmative are:

Brattain,	Kehoe,	Shaw,
Cassidy,	Ludey,	Smith, Hamilton,
Halfhill,	Mauck,	Tallman,
Harris, Hamilton,	Norris,	Mr. President.
Henderson,	Rockel,	

Those who voted in the negative are:

Anderson,	Hahn,	Nye,
Antrim,	Halenkamp,	Partington,
Baum,	Harbarger,	Pierce,
Beatty, Morrow,	Harris, Ashtabula,	Read,
Beatty, Wood,	Harter, Stark,	Riley,
Beyer,	Hoffman,	Roehm,
Bowdle,	Holtz,	Rorick,
Brown, Highland,	Hursh,	Smith, Geauga,
Campbell,	Johnson, Madison,	Solether,
Collett,	Johnson, Williams,	Stamm,
Colton,	Jones,	Stevens,
Cordes,	Keller,	Stewart,
Crosser,	Kilpatrick,	Stilwell,
Davio,	Kramer,	Stokes,
Donahey,	Kunkel,	Taggart,
Doty,	Lambert,	Tannehill,
Dunlap,	Lampson,	Thomas,
Dunn,	Leete,	Ulmer,
Earnhart,	Leslie,	Wagner,
Eby,	Longstreth,	Walker,
Fackler,	Malin,	Watson,
Farnsworth,	Marriott,	Weybrecht,
Farrell,	McClelland,	Winn,
Fess,	Miller, Crawford,	Wise,
FitzSimons,	Miller, Fairfield,	Woods.
Fluke,	Miller, Ottawa,	
Fox,	Moore,	

So the motion to table was lost.

The PRESIDENT: The question is on the adoption of the amendment offered by the gentleman from Cuyahoga [Mr. THOMAS].

Mr. THOMAS: I don't want to take up the time of the Convention, but it seems to me that the last two or three elections for United States senators should be sufficiently convincing to make the delegates vote for such primary election in this state as they have in a great many western states and provide for the nomination of United States senators also. I demand the yeas and nays on the passage of this amendment.

Mr. MARRIOTT: Before the vote is taken let us consider carefully what we are about to do. Some of us do not understand this. It purports to amend article V, section 1, of the constitution. If it has any relevancy to that article or section I am unable to discover it. If it is an amendment to that article I would like to know where it begins in the article and where it ends, or whether, if we adopt it as it is, we are amending any part of the constitution. If it pertains to article V, section 1, if it is a proper amendment to that section, it might as well have been added to the proposal adopted this forenoon.

Mr. BEATTY, of Wood: While this is a legislative matter there are two or three men here who were in

the legislature when the Bronson primary bill was up. I would have voted to indefinitely postpone this matter if it had not been for one or two instances that occurred there. I introduced an amendment to the Bronson primary bill providing that state senators as well as all of the other officials below the governor, be nominated by primaries, and I introduced it four different ways and it was defeated every time. We simply couldn't get it. When the primary bill came up for congressmen, we tried it again and the senate defeated it again. You can't get the primaries under the legislature, and for that reason I am voting here today that there may be something done on this question and that a state senator shall not have any more rights than any other officer of the state of Ohio. If you don't elect a different class of members to the legislature than that which has been serving for the last eight years, you cannot pass any primary bill to put the senators under it, and I know it. You cannot get any matter in the senate that effects their own standing. We have been standing for a good many things that were purely legislative and this is one of them, but if you cannot reach a thing through the legislature you will have to reach it here. For that reason I am supporting this heartily.

We also tried to amend the primary bill so that we would not have to elect township officers under the primaries and that was defeated. There are many townships that don't have five votes at the primary election. At one time in Bowling Green there were wards that couldn't get a man to go on the ticket on account of the primary. That was on the democratic side, but it was the same thing on the republican side, and for that reason I opposed the indefinite postponement of this matter and will vote for it.

Mr. KRAMER: This whole matter is legislative. One objection to the amendment offered by the delegate from Cuyahoga [Mr. THOMAS] is that it is a direct contradiction to the constitution of the United States. It looks as if we were assuming a little too much authority. The United States constitution specifies the manner in which senators are to be elected and here we are providing another way.

There is not a state in the Union that has a constitutional provision with reference to senatorial primaries except Arizona. I would hate to see Ohio governed by Arizona and adopt the provision contrary to the constitution of the United States.

I move that the amendment offered by Mr. Thomas be laid on the table.

The motion was lost.

Mr. ANDERSON: I don't care very much if the legislature can do all the things we are attempting to do in this proposal. We know what Senator Beatty has said is true, that the legislature will not do it. Furthermore, we know it ought to be done, and consequently, if it is going to be done, this body of men must do it. The gentleman who has had so much newspaper and political experience, the author of the proposal, has told you the facts that have come within his personal knowledge, and you who have had any experience along these lines know it is true. Personally, so far as any political aspirations are affected, I wish this were the law. I would have a much better taste in my mouth after defeat at the primary than at a political convention, because at a

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primary all of the people have had an opportunity to speak. In a political convention you don't know whether the people want you or not. A few bosses behind closed doors make the nomination and that is the end. In years gone by when we started from Mahoning county to come down to a so-called convention, we knew the only service we could perform here would be to buy peanuts and feed the squirrels. Everything was arranged before we came. I can only remember one instance in which we succeeded in breaking a slate and that was when we chose Emerson and Price. I cannot see how any one can oppose this proposal. For instance, the legislature gave us the nonpartisan judiciary bill, but it was not nonpartisan. The legislature stopped short of giving us all we ought to have had. They said a judge could have his name put on the ticket by petition, or his name could go on through a convention.

Mr. BROWN, of Highland: I would like to know what your opinion is as to the constitutionality of the amendment offered by the gentleman from Cuyahoga [Mr. THOMAS]. If the federal constitution says that United States senators shall be elected by the legislature, how can we make effective this amendment to the proposal providing we pass it?

Mr. ANDERSON: In answer to the gentleman, we cannot change the constitution of the United States nor can any act we do finally determine how United States senators shall be elected in Ohio, except that it puts us on record in favor of it and to that extent it may help.

Mr. WOODS: Do you think it advisable for the Constitutional Convention to pass something here that openly and aboveboard violates the strict wording of the federal constitution? Do you think we ought to do such a thing as break an oath?

Mr. ANDERSON: Are you afraid of that? Is that a technicality on which you want to escape voting for this measure? Is that what your suggestion means?

Mr. WOODS: Do you think we ought to do something that clearly is in violation of the federal constitution, no matter what you and I personally think about it? Do you think we should do something here that clearly violates a provision in the federal constitution in the election of United States senators?

Mr. ANDERSON: I do not believe that we do that which is in clear violation of the federal constitution by any means. This simply provides that we have senatorial primaries for nomination, and then when the people express their choice the legislature will obey the will of the people and elect the senator thus designated. The Thomas amendment is not a violation of the United States constitution.

Mr. DOTY: Do you think the amendment offered by my colleague is any more out of whack with the federal constitution than the present law of the state of Ohio — the Stockwell bill — which provides the same thing?

Mr. ANDERSON: I see no difference, and in every state where similar legislation has been had they have violated the constitution, if we are violating it here. If Mr. Kramer is correct, they have the same provision in the constitution of Arizona, and an equally oath-breaking clause.

Mr. McCLELLAND: Is not there a difference between "nominating" a man for United States senator

and "electing" a man for United States senator? They are not the same, are they?

Mr. ANDERSON: No.

Mr. THOMAS: Is it not a fact that the senators from Oregon are nominated through preferential primaries and elected by the legislature?

Mr. ANDERSON: Certainly. I think all the delegates are acquainted with that fact.

Mr. JONES: To my mind there are two things, and only two, legitimately within the sphere of action of this Convention with reference to constitutional provisions which may be the subject of its consideration:

1. To confer powers.
2. To regulate the manner of the exercise of such powers.

As has been suggested by gentlemen here, there is no doubt now about the power of the legislature to do the very thing that is proposed by this amendment; but with regard to many of the subjects, power to act upon which is conferred upon the legislature, the people have thought it wise to regulate the manner of the exercise of the power. Take, for instance, the matter of taxation. You confer upon the legislature the power to levy taxes, but you do not want to trust the legislature with the manner of exercising that power, and so you provide that taxes must be levied by a uniform rule upon all property according to its true value. The same reasons apply here. The people don't want to trust, for reasons suggested, the legislature to determine the manner in which this power with reference to the selection of candidates for office shall be exercised, and so, to my mind, it is perfectly proper and legitimate, although in a sense legislative matter, to provide in this constitution how these nominations shall be made, and I am heartily in favor of this proposal and the amendments to it provided they can be brought into proper form. There are objections that are immaterial and can be corrected, but in substance this proposal and the amendments are right and they are in the line of doing what I think ought to be done with reference to our present system of government, to perfect it in the respects in which it has been deficient. Practically the only trouble with representative government today is the character of the representatives, and whatever can be done to improve the character of representatives who are to administer this government is in the interest of the people and is in the interest of good government; and this measure to my mind is one of the greatest steps that can be taken in the matter of improving the character of the representatives that are to be chosen to make the laws and to administer them. It is too true that in the selection of candidates for state and other officers, as in the selection of United States senators, the people have had very little to say about it, but it is manifest to us all that if this government which has served us for more than a hundred years is to continue to be even as effective as it has been, although it is not what it should be, but clearly, if it is to be improved, something must be done to place more directly in the hands of the people the selection and determination of their representatives. To the extent that we can use preferential primaries to indicate the wishes of the people as to who shall be United States senator and who shall be their candidates for president of the United States I am in favor of doing it,

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and I am in favor of their indicating by direct primaries their preferences for governor and other state officers. We should all be unqualifiedly in favor of this, and I hope this proposal in proper form will meet with the approval of an overwhelming majority of this Convention.

Mr. HURSH: Mr. President and Gentlemen; It is gratifying indeed to know that the motion to lay the amendment of the gentleman from Cuyahoga [Mr. THOMAS] on the table was not sustained. The objections the gentlemen are raising that we can not insert in the constitution something prohibited in the national constitution is not at all well taken, in view of the tendency of the times. Let us insert a provision in this proposed constitution that will provide for the nomination of United States senators by primary and so far as possible for their election, for we shall soon be there. It will only be a few years until the United States senators in this country will be elected by a direct vote. This amendment commends itself to me as much as the main proposition, and as much or more so than the amendment by Mr. Tannehill to the original proposal providing for the elimination of primaries in townships, and that is surely a good thing. I know, as do the rest of you, that this is purely a legislative matter, but we all know by experience with the legislature for the past twenty years that we can't get this done in the legislature. We have tried to do this same thing through the legislature for years and the legislators have steadily and repeatedly refused to do it. In doing these things we know we shall receive the approval of the people. I want to say to you that the present law providing for primaries in townships is worse than a farce. I believe I am safe in saying today that we have the poorest set of township officials in the state of Ohio that we have ever had. I have had some experience in this, and I know that formerly we used to go into a caucus and put good men on the ticket. We wouldn't let them get off. As it is today nobody will allow his name to go on the ticket and in my part of the state, in several of the townships, we have the poorest class of township officers that we have had in years. I say to you I am heartily in favor of the proposition presented by the gentleman from Morgan.

Mr. MOORE: I would feel derelict in my duty to forty thousand patrons of husbandry in the state of Ohio if I did not support this amendment of Mr. Thomas of Cuyahoga, looking toward the election of United States senators by the direct vote of the people. It has been objected that this is in contravention of the constitution of the United States in that the constitution provides the manner in which United States senators shall be elected. But it is left to us to provide for the nomination, and we can do it. For a great many years there has been a continuous scandal in the congress of the United States over the manner in which some senators have been elected. I believe it was simply because they were elected by the bosses and by cliques within the parties and not because the people had any voice in it at all. I think the nomination of candidates for United States senators would take away much of this scandal which we have heard so much about in the last few years.

There is another thing that this amendment will do. It will gain for this Convention the applause and the respect and the support of the farmers of Ohio and of

the United States. Wherever in the United States there is an organization of farmers our work will be commended, for they are in favor not only of nomination of senators by direct vote of the people but of the election of senators by the direct vote of the people. I am only sorry that we cannot have elections by direct vote of the people now, but as we can have nominations, and that is all we can have now, I am in favor of passing this amendment offered by Mr. Thomas.

Mr. WINN: Mr. President and Gentlemen of the Convention: There still exists another reason why we should write into our constitution the subject matter of this proposal and that is that it may be a permanent thing, beyond the power of the general assembly to repeal. It has been said, and generally speaking it is true, that the things which the general assembly can do should be left to that branch of the government. But standing where I now stand I said a few days ago that I am not afraid to write into the constitution some things that some people think are purely legislative. As the member from Fayette [Mr. JONES] has said, we can well say in the constitution as to taxation that the general assembly shall provide by law for the levying and collection of the necessary taxes. That would be nothing but a warrant to leave it to the general assembly to provide one system of taxation one year and another year a different one; but to the end that the system may be permanently fixed and not be changed except by the whole people of the state, acting directly or through a constitutional convention or voting on an amendment to the constitution, we provide a method by which the taxes shall be levied and we place it beyond the reach of the legislature. Now you know of one or two instances where a candidate will be nominated to succeed himself as a senator in the general assembly of Ohio because we do not make the nominations at the primaries, and I presume in the instance I have in my mind the candidate will be successful. I have in mind one case where a senator fought with all the power he could command against the adoption of a measure pending then in the general assembly making it necessary to nominate his successor by primary, and by causing the defeat of every proposition of that sort the gentleman whom I have in mind will be a candidate and in a few days will be nominated. He will be nominated simply because the people cannot express their will upon the subject. Some people say "Why not defeat him at the polls?" Well, it is not as easy as said to do that, because we know until we succeed in breaking down party lines a little more it is not easy to beat a man when he is nominated by a party largely in the ascendancy. However, the time is fast approaching when every man will go to the polls and will vote only for those men whom he conscientiously believes are best fitted to fill the offices for which they are candidates. Many men have reached that position now and many are approaching it. We all know it was only just a few years ago when we were on the stump telling our dear hearers to take their ballots in the booth, make a mark in the circle, close their eyes, harden their consciences and "let her go, Gallagher," good, bad or indifferent. I have quit those habits now and I shall never be heard on the stump again. If I find it necessary to so vote for a picture at the head of a column without regard to what is under that pic-

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ture I will simply refrain from voting. I certainly favor this amendment. I hope we shall pass it and that it will be approved at the ballot box.

Mr. LAMPSON: There is nothing in this amendment about the election of United States senators. It is only the nomination we are considering. I am in favor of the amendment of Mr. Thomas and the amendment of Mr. Fackler too.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: I had intended to sit here quietly and listen to gentlemen discussing these subjects, for in my day I have pretty nearly talked myself out, but when it comes to this proposition it brings up recollections that I dare not ignore in silence. If I did I would not be true to the oath I took when I became a member of this Convention. I have not seen a man elected senator from the state of Ohio in the last thirty years that represented the choice of a majority of the people of this state. I have seen men come in here to the city of Columbus with their friends, and with their boodle in gripsacks buy legislators of the state of Ohio as you would buy cattle in the stock yards. I have known of a sack of \$75,000 that was kicked around in a room in the Neil House because of the indifference of the gentlemen who brought the money here after they had accomplished their purpose. I saw another senator elected who, after his election, had to be a fugitive from the state of Ohio for twelve months. I have seen another elected when the constitutional rights of the citizens of Ohio were trampled on at the election so that he might have an opportunity to get a sufficient number of legislators to put him in Washington, and then you hear delegates, representatives of the people, who are to frame the organic law of the state of Ohio hesitate about putting barriers in that road. Now is the time to say that the people of Ohio shall have a choice in the selection of their senators. Put it up to the people to do it, and if you don't you are not entitled to proper representation on the part of your senators in Washington.

Mr. WATSON: I think we want a vote on this matter and I demand the previous question.

Many DELEGATES: No.

Mr. WATSON: Then I withdraw the demand.

Mr. CROSSER: Suppose this amendment becomes effective; won't their be a conflict—

Mr. TANNEHILL: Any conflict will be taken care of in the schedule. That is the last word in every constitutional convention.

Mr. THOMAS: A number of the delegates have suggested that I change the wording of my amendment to make it better. It reads like this: "Provision may be made by law for a preferential vote for United States senators." That means the same thing, so with the permission of the Convention I withdraw the other amendment and offer this amendment.

The amendment was read as follows:

Insert after the word "law" in line 3 "and provision may be made by law for a preferential vote for United States senator."

Mr. FESS: Mr. President and Members of the Convention: I believe we will not go before the people with a more popular proposal than this, because there has been so much criticism and just criticism arising out of

the method of electing United States senators. This is not an attack upon the senators, but is rather an effort to save them from a situation into which they sometimes get, usually on their own invitation. Even if it were an attack, it seems to me we should vote on and adopt it. As there is no desire to further discuss it—

Mr. DOTY: Just a moment. The amendment just proposed is to the Tannehill amendment, but the Fackler amendment, if adopted, would necessitate a change of wording in the Tannehill amendment, because they are both amendments to the proposal and not one to the other.

Mr. HURSH: Before the gentleman from Greene moves the previous question I would like to make a request for a change. Instead of using the word "may" I prefer to use the word "shall".

Mr. THOMAS: I accept that.

Mr. SMITH, of Hamilton: I want some information before I vote. Does any one here know whether or not members of the school boards are nominated by petition only, whether they are under the nomination of the party?

Mr. TANNEHILL: We have a ridiculous provision right now that the nomination shall be by parties, but that they go on an independent ballot. As soon as your party convention or primary is over anybody can go out with a petition and put his name right on with the others, so that the nomination is of no value whatever.

Mr. SMITH, of Hamilton: I thought in Cincinnati that the nomination was only by petition. Another question I wanted to ask Mr. Tannehill was whether he means that nominations may be made both by direct primary elections and petitions. Is that right?

Mr. TANNEHILL: My object in putting the petition in there was just to make it possible to nominate the members for the school board and the judiciary that way if it is desirable.

Mr. SMITH, of Hamilton: Then won't you be willing to insert the words "in such manner as may be provided by law"?

Mr. TANNEHILL: I have no objection to that.

Mr. SMITH, of Hamilton: That will clear it up.

Mr. THOMAS: I want, with the consent of the Convention, to change the word "may" to "shall".

Consent was given and the change made.

Mr. WOODS: I simply want to say the last general assembly provided a law of this kind, and I don't know but that this means we shall do all over again what they have done. I am in favor of electing United States senators by a direct vote and I would overrule the constitution of the United States to do it if I could, but we cannot do it. If I remember right the last general assembly passed a law providing for a preferential vote on United States senators. If they have done it I don't think we should say that they shall do it again.

Mr. THOMAS: I don't think this will require a reenactment.

Mr. MOORE: I feel that this preferential vote for United States senators is a phantom. I believe it is a grasping at the shadow instead of at the substance. I feel that when the people of Ohio go out and vote to nominate a man that he should be elected, but if we have no authority to enforce the wishes of the people on the legislature we are lost. I would like to have that so

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fixed that if a man is nominated he would be elected; that they must vote for him.

Mr. FESS: Now I move the previous question.

The previous question being regularly demanded and a vote being taken the main question was ordered.

Mr. ULMER: I want to say —

The PRESIDENT: The member is out of order.

Mr. ULMER: —that I don't think it was ever intended —

The PRESIDENT: The member is out of order.

Mr. PECK: I would like to inquire whether this proposal covers judicial officers?

Mr. THOMAS: Yes.

Mr. PECK: There are some of us who would like to put in a proposal requiring all judicial officers to be nominated by petitions.

Mr. SMITH, of Hamilton: I think provision has been made as to that.

The PRESIDENT: The question is on the amendment offered by the delegate from Cuyahoga [Mr. THOMAS].

The amendment was agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Cuyahoga [Mr. FACKLER].

The amendment was agreed to.

The PRESIDENT: The question is on the adoption of the amendment of the delegate from Morgan [Mr. TANNEHILL].

The amendment was agreed to.

The PRESIDENT: The question now is on the adoption of the proposal as amended, and the secretary will call the roll.

The yeas and nays were taken, and resulted — yeas 99, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Partington,
Antrim,	Halfhill,	Peck,
Baum,	Harbarger,	Peters,
Beatty, Morrow,	Harris, Ashtabula,	Pettit,
Beatty, Wood,	Harris, Hamilton,	Pierce,
Beyer,	Harter, Stark,	Read,
Bowdle,	Henderson,	Riley,
Brown, Highland,	Hoffman,	Rockel,
Brown, Pike,	Holtz,	Roehm,
Campbell,	Hursh,	Rorick,
Cassidy,	Johnson, Madison,	Shaw,
Collett,	Johnson, Williams,	Smith, Geauga,
Colton,	Jones,	Smith, Hamilton,
Cordes,	Kehoe,	Solether,
Crites,	Keller,	Stalter,
Crosser,	Kilpatrick,	Stamm,
Cunningham,	King,	Stevens,
Davio,	Kramer,	Stewart,
DeFrees,	Kunkel,	Stilwell,
Donahey,	Lambert,	Stokes,
Doty,	Lampson,	Taggart,
Dunlap,	Leete,	Tannehill,
Dunn,	Longstreth,	Tetlow,
Earnhart,	Ludey,	Thomas,
Fackler,	Malin,	Ulmer,
Eby,	Marriott,	Wagner,
Farnsworth,	Mauck,	Walker,
Farrell,	McClelland,	Watson,
Fess,	Miller, Crawford,	Weybrecht,
FitzSimons,	Miller, Fairfield,	Winn,
Fluke,	Miller, Ottawa,	Wise,
Fox,	Moore,	Woods,
Hahn,	Nye,	Mr. President.

Messrs. Brattain and Tallman voted in the negative.

So the proposal passed as follows:

Proposal No. 249 — Mr. Tannehill. To submit an amendment to article V, section 1 of the constitution.—Relative to primary elections.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

All nominations for elective state, district, municipal and county offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator, but direct primaries shall not be held for the nomination of township officers nor for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the voters of such township or municipality.

All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors; each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next business before the Convention is Proposal No. 62 — Mr. Pierce, relative to the abolition of capital punishment.

The proposal was read the second time.

Mr. Pierce was recognized.

Mr. TETLOW: Will the gentleman yield so that I can move to postpone the consideration one minute? I wish to offer the report from the committee of three on conservation.

Consent was given and Mr. Tetlow offered the report of the special committee of three which was read as follows:

The select committee to which were referred Proposal No. 64 — Mr. Miller, of Fairfield, Proposal No. 230 — Mr. Tetlow, and Proposal No. 313 — Mr. Leete, having had the same under consideration, report them back with the following amendment, and recommends the passage of Proposal No. 64 when so amended:

Strike out all after the resolving clause and insert the following:

"Laws may be passed to encourage the propagation, planting and cultivation of forestry and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry or to the growing of forest trees; and also provide for reforestation and holding as forest reserves such lands or parts of lands as has been or may be forfeited to the state, and may authorize the acquiring of other lands for that purpose; also to provide for the conservation of all natural resources of the state, including all streams, lakes, submerged and swamp lands or other collections of water within the boundaries

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of the state, and for the formation of conservation districts; and shall provide for the regulation of all force, energy and power developed or to be developed from said water; and shall provide for the regulation of mining, weighing, measuring and marketing of all minerals."

The report was agreed to.

Mr. TETLOW: I now move that the report be printed and made a special order for ten o'clock tomorrow.

Mr. DOTY: The original motion was that it be placed at the top of the calendar. That is better than what you are moving.

Mr. TETLOW: Then I will withdraw the motion to make it a special order.

Mr. DOTY: That report should refer to but one proposal.

Mr. BROWN, of Highland: Well, there are three proposals, one each from the delegate from Columbiana, the delegate from Fairfield and the delegate from Lawrence. These, under the motion of the member from Highland, were submitted to this special committee for report.

The PRESIDENT: The president would say that in order to keep the books straight it is necessary to strike out the reference to the other reports. When they are met with they can be indefinitely postponed if this matter takes care of them. Just let it read, "The committee, having under consideration Proposal No. 64, offers the following substitute."

The change was made as directed.

The PRESIDENT: The question now is on the printing of the report and the placing it at the head of the calendar for tomorrow.

The motion was carried.

The consideration of Proposal No. 62 was resumed.

Mr. PIERCE: There is a disposition on the part of the delegates to this Convention to expedite business. I do not want to interfere with that desire because I feel it is a laudable one, and I am perfectly willing, so far as I am concerned, for this Convention to pass on this proposal without debate. I have canvassed the Convention and the sentiment of the members is overwhelmingly in favor of the adoption of my proposal. If the Convention is willing to forego the debate, that will be entirely satisfactory to me. I believe it will be a good thing for the Convention to pass the proposal.

Mr. WOODS: I want to protest for a few minutes. I am opposed to this proposal, and my first point of opposition is this: If there is any matter that is clearly legislative and that can be taken care of in the general assembly it is this one. There is not any reason why we should put this into the constitution. There was a reason why we should put what we have just done in it, but I would like to have some one tell me why this should go into the constitution.

In the second place I am opposed to abolishing capital punishment. Here in the state of Ohio nobody can be electrocuted except upon a verdict of a jury, and that jury has a right to recommend mercy. If it recommends mercy the defendant gets a life sentence. I say to you that no jury in the state of Ohio will fail to recommend mercy unless it is an aggravated murder. I never shall vote in a body like this or in any body to

abolish capital punishment. This is not the age to be making laws for criminals. We are making laws to take care of criminals. I think you are making an awful mistake. There is a lot of things that could be gone into on this matter, but if you don't want to debate it there is no use taking up time. There is no reason why this Constitutional Convention should put a proposition of this kind in the constitution. This matter has been in the general assembly and has been thoroughly debated. I have sat on the judiciary committee where every member was against the proposition and we reported it nevertheless. After thorough debate it was killed. If we electrocute every man who commits murder there might be some reason for it, but we don't. Do you think that men who would go down into a court house, as they did in Virginia, and shoot and kill the prosecutor and the judge on the bench and some of the jurors and some of the witnesses, should be allowed to live? If you do I don't agree with you. I think this is a mistake. I think it is a mistake for us to attempt anything of that kind here, and I hope you will think about the matter before you do anything of the kind.

Mr. WATSON: I want to raise my voice in protest against the abolition of capital punishment. The tendency of all is to protect the weak against the strong, and when a man coolly and calmly and deliberately enters your house with the purpose to commit robbery, armed to the teeth to commit murder if necessary, to carry out the other offense, you give him life imprisonment. I think the old Mosaic law should apply to this. I think it comes into play here.

Now, just a word further. There seems to be a spirit of sentimentalism that is asking us to take this penalty from the back of the criminal. I have as much compassion for my fellow man who goes astray as any other man, and I believe that we should reach out and lift him up rather than kick him down, but there are cases that are aggravated and as the tendency of the day is to give the criminal merely a nominal fine, I don't think anybody will be electrocuted who ought not to be. Take that case, in the adjoining county recently. A helpless school girl in passing her home was outraged and murdered and yet that criminal was only given twelve years' sentence. A few years ago near Bellefontaine, in Logan county, a far distant relative of mine was criminally assaulted and trampled into the mud by a brutish man and murdered in cold blood. Should that man escape with a mere penitentiary sentence for life? I tell you, gentlemen, this is not the time to trifle with such matters.

Mr. ANDERSON: What is your idea as to the purpose of the law for capital punishment? Is it for revenge?

Mr. WATSON: Protection.

Mr. ANDERSON: Would not life imprisonment without pardon be a protection?

Mr. WATSON: No.

Mr. ANDERSON: Then you are in favor of the old Mosaic law, "an eye for an eye, a tooth for a tooth—"

Mr. WATSON: "And whosoever sheddeth a man's blood, by man shall his blood be shed."

Mr. PIERCE: I made a little speech a while ago in the hope that this matter would be adopted without

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any trouble, but that seems to be impossible. I believe it will be better to proceed in the regular way and I therefore wish to proceed with my remarks.

Mr. President and Gentlemen of the Convention: Unlike some others who have spoken, I shall not be egotistical enough to claim that this is the most important proposal that has come before the Convention, but I want to assure you that it is of vital importance to the people of the state. A question may assume importance from the angle at which it is viewed. If a person were awaiting electrocution for some crime he did not commit the probabilities are he would regard capital punishment as the paramount issue. Each individual is judged by what he does and by what he fails to do. Society is composed of individual units and its acts, either good or bad, are reflected in its customs and laws. If a majority of the people of a community are ignorant, depraved, superstitious and sanguinary, it is reasonable to suppose its laws will be crude and barbarous. It is a principle of mechanics that water will not rise above its source; neither will the customs, habits and laws of a people rise above the average intelligence of the community. If its people are intelligent and progressive, this fact will be reflected in its acts; if savage, its laws will be savage; if humane, its laws will partake of the same character. The people of antiquity are judged by their penal codes, as our civilization will be judged in time. We view with horror the penal laws of the sixteenth century, and I am sure two hundred years hence the people will regard electrocution as barbarous as the whipping post. No nation has a right to boast of its civilization until its laws are humane. When it is constantly putting men to death for crime, no matter what its claim may be, future generations will decree it is either savage or semi-savage. This state, one of the most enlightened in the Union, in the past twenty-seven years has put sixty-eight men to death within the walls of its penitentiary and has one now awaiting electrocution. It has become criminal because a few of its citizens are criminals. It murders because its citizens murder. In the evolution and progress of humanity the time will come and at no distant day, when the people will look upon us as we look upon our ancestors—with shame and humiliation. It is time to retrace our steps, to undo the wrongs we are inflicting upon society, and to guard the future against the cruel and heartless past.

The present constitution of the state provides:

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel or unusual punishment inflicted.

And it is now proposed to amend the above section to read as follows:

All persons shall be bailable by sufficient sureties, except in cases of homicide, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime.

I apprehend some of the opponents of the abolition of capital punishment will ask, Why recommend its abolishment constitutionally; why not leave it to the legislature?

It is true the legislature of the state has the power to abolish it, but the fact remains that it has never done so. The legislature is a partisan body, and not so well adapted to the work as this Convention; besides it has been in session every year since the adoption of the present constitution from 1851 to 1891, and each two years from 1892 to the present time. During all these years, it has not abolished it, which is the best evidence that it is not the proper body to deal with the question.

If the legislature during the past sixty years had passed a bill to abolish it, and the governor of the state had signed it, it would have been the law whether the people approved it or not. But not so if this Convention should recommend its abolishment. It has to go to the people for their approval or rejection, which is right. If the majority of the people do not want it abolished it cannot be done; if they want it abolished they may say so at the polls. All this Convention can do is to submit the question to the people of this state by referendum vote, Shall Ohio abolish capital punishment?

It seems strange that any man who believes in rule by the people will seriously object to this method of procedure. It is democratic to let the majority rule, and I believe if the people want a thing they should have it, whether it is best for them or not, provided it is not malum in se.

It is not material to the issue whether the legislature has the authority to abolish capital punishment or not. I am willing to concede it has full power and authority to do so, and if it had exercised it, as it had a right to do, it would be unnecessary for this Convention to deal with the subject matter. We are here discussing the advisability of its abolishment because the legislature of the state has failed to act, and I submit, after waiting for sixty years, it would be unreasonable to wait longer. This Convention has plenary power to recommend its abolishment to the people, and it will be derelict in its duty if it fails to act so the people may vote upon the question.

The greatest compliment this Convention could pay itself would be to pass by unanimous vote the proposal to abolish capital punishment. It would indicate to the people its progressiveness as well as its humanity, and expunge from the law of the state a crime that should never have disgraced it.

It shall be my aim, in the discussion of this question, to go to its merits without a multiplicity of words.

Capital punishment is justified, if at all, only on one ground, protection to society. Society has the inherent right to protect itself against the criminal acts of the lawless, because the great mass of mankind prefer to live an honest, industrious, virtuous, upright life, and those who interfere in any way with this right are enemies to society, and society has the right to self-protection.

To preserve inviolate this right it is not necessary for society to take the life of an individual. There is a more humane way than to kill. Life imprisonment is just as effective in most instances. It is true there is a remote possibility the prisoner will escape, but when hedged about by proper safeguards the likelihood is reduced to a minimum. Imprisonment for life is an effective mode of punishment, far less barbarous than hanging

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or electrocuting, and more in accordance with the spirit of the age.

Every advocate of capital punishment goes back to Noah's time for authority to kill. He justifies it on the scriptural quotation, "Whoso sheddeth man's blood by man his blood shall be shed." Dr. Cheever, who was one of the principal advocates of capital punishment, says, "It is the citadel of our argument, commanding and sweeping the whole subject."

If there is any delegate to this Convention who is influenced by the above quotation from the Bible in favor of capital punishment, I want to remind him that Hebrew scholars translate it in at least twelve different ways from the original, many of the translations materially changing its meaning. But for the sake of argument I will admit it means just what it says. How then can we reconcile the fact that a person who sheds another's blood in self-defense is exempt from murder? Shall we judicially kill the insane because they commit murder? If every person who takes life should be subject to the decree "Whoso sheddeth man's blood by man his blood shall be shed", no one would escape the death penalty, no matter what the provocation or the circumstances. It either means what it says or it means nothing at all, and if it is to be literally accepted it includes all who shed blood, be they sane or insane, justified or not justified.

If it is the will of God that every person who commits murder, either accidental or premeditated, shall be executed, how do we account for the leniency with which God himself dealt with murderers both before and after the above injunction was issued?

The first man to commit murder, so far as there is any recorded evidence, was Cain. It was cold-blooded, premeditated, wholly unjustifiable. How did God, who was his sole judge, deal with him? Did he hang him, as a barbarian would have done, by the neck until dead? Did he electrocute him? He did not even imprison him—

And now art thou cursed from earth, which has opened her mouth to receive thy brother's blood from thy hand.

When thou tillest the ground, it shall not henceforth yield unto thee her strength; a fugitive and vagabond shalt thou be in the earth.

And the Lord said unto him, Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold. And the Lord set a mark upon Cain, lest any finding him should kill him.

This was the decree of the court, the highest court in the land, but this was before "whoso sheddeth man's blood by man his blood shall be shed" was written to give the human Dracos, hyenas and jackals pretended authority to strangle men to death.

Did God kill Moses because he slew the Egyptian and hid his remains in the sand? Not a bit of it. He let him go scot free. What was done with Lamech? Were not his hands stained by the blood of another? What was done with David, who, the Bible informs us, "was a man after God's own heart?"—

And he walked one evening to enjoy the cool air on the roof of his house when his watchful eye saw a beautiful woman washing herself, and

he coveted her. Upon inquiry he found she was the wife of Uriah, one of his faithful soldiers. He sent for him, treated him kindly, and told him he might go home to Bathsheba. But Uriah being a faithful soldier slept in the guard-room, refusing to desert his soldiers who were faring hard on the field of battle. So David got him drunk and commanded Joab "Set ye Uriah in the fore-front of the hottest battle, and retire ye from him, that he may be smitten and die.

This was an infamous crime, one of the worst recorded in the annals of literature, yet David escaped both the gallows and the electric chair.

What about Simeon and Levi? They too are murderers, and yet they were not strangled to death by divine command.

But all this occurred under the old doctrine of "an eye for an eye, and a tooth for a tooth," and it is a notorious fact that God did not cause one of them to be put to death. The people are now living in a different age. The laws suitable to the early inhabitants of a country may be wholly unsuited to a later period of time. What may have been suitable law to the early Hebrews may not be suitable to the people of the present day.

But the people are now living under a new dispensation. They are living under the benign influence of Christianity. It would be a sad commentary on them if there had been no progress in the last six thousand years. Notwithstanding the wonderful progress made toward higher ideals and life, there are a few half-civilized people who in their vanity and egotism imagine they are civilized, that would forever chain the human race to the dark and bloody ages of the past. They would go back to the time of Moses and re-enact the thirty-three capital offenses of his blood code. They would punish by death the crime of witchcraft; eating leavened bread during the passover; suffering an unruly ox to be at liberty; putting holy ointment on a stranger; going after familiar spirits and wizards; coming nigh the priest's office, and opposition to the decree of the highest judicial authority. Under the law of Moses these were all capital offenses punishable by death.

Is there any man in this Convention who wants them placed in our statutes? Does any man want a fellow-being put to death because he suffers "an unruly ox to be at liberty?" If he believes in capital punishment at all he should demand it because it is based upon as high authority as "Whoso sheddeth man's blood by man his blood shall be shed." It was the law of Moses, and notwithstanding our higher and better civilization, it is still binding, if it ever was, upon the people. Does any man clothed in his right mind subscribe to any such nonsense? Does he not know it is wrong and unjust? Will he ask that it be restored?

If the people of this state have the authority to abolish all the capital crimes laid down in the law of Moses except one, why have they not the right to abolish it also? When, where and how did they get the right to prohibit the other thirty-two? If it is divine law that "whoso sheddeth man's blood by man shall his blood be shed," it is equally true that "putting holy ointment on any stranger" is divine law also, because both are of equal authority. If it is right to abolish the one, why is it not right to abolish the other?

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' Capital punishment can not be defended on the ground of divine law. People may honestly differ as to the wisdom of its abolishment, but let its retention be placed on the true ground—its inexpediency. Do not try to place it on God, but rather to the ignorance and superstition of the people.

Will any person contend that the criminal law of Moses was sanctioned by Christ, and that society is still bound by it?

I found the teachings of Christ to the law of Moses. I regard them more humane, better suited to the times. I prefer to reject the Mosaic law which says, "He that smiteth father or mother shall surely be put to death," and in its place accept the saying of Christ, "I am not come to destroy, but to fulfill." The religion of Christ is one of love, not of hate, violence or murder. It teaches us to love our neighbors as ourselves, and if we accept His teachings, capital punishment will be abolished for all crimes.

The old law was, "Let her be stoned to death"; the new is, "Neither do I condemn thee; go, and sin no more."

The question, "Is the death penalty expedient?" has agitated the people for ages. It should be answered negatively, because it does not restrain the commission of crime. Society has been hanging criminals and others for centuries yet crime has not diminished. It has not had a deterrent effect; therefore it is a failure.

The most efficacious method of punishment is to confine in the penitentiary. If a criminal is executed he is beyond human aid. If he is imprisoned, he may be pardoned if subsequent events prove him innocent. It is more humane to imprison than to electrocute or hang. Punishment for crime ought to be certain, speedy, and tempered with mercy. The severity of punishment frequently prevents conviction.

Capital punishment is a relic of the dark ages. No tenet of the Christian faith can enjoin it. Six states of the Union have abolished it, and there is no disposition on the part of the people to return to it. Crime is less frequent where it has been abolished; there is less mob violence, and it is in accordance with the enlightened and progressive spirit of the age. It should be remembered that only one criminal out of each fifty-seven who commit capital offenses is judicially hanged or electrocuted. If fifty-six out of each fifty-seven escape, it will not endanger society much more if the other one should escape death.

Michigan, Rhode Island, Wisconsin, Kansas, Maine and Minnesota have abolished capital punishment, and after years of trial in each of them there is no disposition on the part of any of them to return to the sanguinary and barbarous custom. The sentiment of the people of all those states is now so strongly against it that it may be safely assumed that it will never again be enacted in any of them.

Mr. JONES: Will you permit a question?

Mr. PIERCE: Yes.

Mr. JONES: Do you know how long any of the states have had laws in effect that abolish capital punishment?

Mr. PIERCE: Yes, Michigan and Wisconsin previous to 1853, and Kansas about the same year. In Kansas the law provided that a person convicted of a

capital offense could not be executed until one year and one day had elapsed and then only upon the order of the governor. The fact remains that no governor in the state of Kansas ever issued an order for the execution of a criminal, and a few years ago the legislature of the state wiped it from the statute books completely.

Mr. STALTER: Do you think that life imprisonment is too severe a punishment for burglarizing a dwelling house?

Mr. PIERCE: I think that depends altogether upon circumstances. It might be in some instances and might not be in others. I do not think you can lay down any iron-clad rule.

Mr. STALTER: Were life imprisonment the penalty for burglarizing a dwelling house would there be any disinclination on the part of a burglar if a person should see him there to take that individual's life and destroy all evidence of his crime if there were no higher penalty for murder than life imprisonment?

Mr. PIERCE: I presume not. If he knew he would go to the penitentiary for life and that would end it, he might not hesitate to take the life of any one who would discover him in the commission of the crime.

Mr. STALTER: Then would not taking away the penalty of death for murder have a tendency to increase murder?

Mr. PIERCE: Not at all. It would have a tendency to decrease it and I will tell you why. The law of this country will show it. In Massachusetts and Connecticut they used to have a provision that the person who stole forty shillings should be executed capitally. They tried a great many of those cases under that law and there were a great many convictions, and even where the proof was clear that a man had stolen far to exceed forty shillings the jury would always return a verdict of guilty, but fixed the amount stolen at less than forty shillings.

Mr. STALTER: If the penalty for stealing a shilling were life imprisonment and there was no death penalty for murder, wouldn't the man who stole the shilling be inclined to take life to wipe out the evidence of the stealing?

Mr. PIERCE: No. You are an attorney at law, are you not?

Mr. STALTER: No; I am a farmer.

Mr. PIERCE: If you will go back and read the early law of England you will find pocketpicking was a capital offense and there were instances, hundreds of them, where people were executed for picking pockets, and in the very crowds that assembled to see those people executed there were any number of pockets picked right in the face of death. It did not deter them at all.

Mr. ANTRIM: Have not more murders been committed where capital punishment existed than after the capital punishment was abolished?

Mr. PIERCE: Yes.

Mr. WOODS: Suppose some one went to the penitentiary for life for some crime. Under the proposal as you want it that is just as great a punishment as a man can get.

Mr. PIERCE: Yes.

Mr. WOODS: Well, suppose he kills a guard at the penitentiary in order to escape? What would you do?

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Mr. PIERCE: Put him in solitary confinement where he would not have a chance to do anything like it again.

Mr. ANDERSON: Would not there be the same incentive to kill a guard where the man was in for murder in the first degree and waiting the chair as there would be if he were in for life?

Mr. PIERCE: Yes.

Mr. ANDERSON: And does not history show that men who are in the penitentiary without any chance of getting out and waiting for execution do not kill or attempt to kill attendants?

Mr. PIERCE: Yes.

Mr. STOKES: Do you think it would have been beneficial to society if the murderers of Garfield and McKinley had been imprisoned for life rather than executed?

Mr. PIERCE: Yes; I think that is what ought to have been done with them. Now I shall be glad to answer questions, but I am trespassing on my time and I want to get through. If I have any time when I get through I will be glad to answer any questions that are propounded to me.

To give you an idea of the sentiment of the people of the state of Wisconsin relative to capital punishment I submit the following letter:

MADISON, January 27, 1912.

Hon. DAVID PIERCE,
Columbus, Ohio.

Dear Sir: Your letter of January 24 to Governor McGovern has been referred to this department for reply. We note that you have introduced in the Ohio Constitutional Convention a proposal to abolish capital punishment in your state and that you desire certain information concerning the effect that the abolishment of capital punishment in Wisconsin has had upon the number of capital offenses committed.

Capital punishment was only in operation in this state from 1849 to 1854.

During the time that it was in operation only three executions took place. It would be useless to attempt to make any comparison between the number of capital offenses committed when capital punishment was in operation and since it has been abolished, or to give an opinion as to whether the number of offenses have increased or diminished. All of the conditions that existed at the time capital punishment was in operation in this state have so materially changed that any comparison of statistics would prove nothing. We do not believe that capital offenses are more frequent in this state in proportion to the population than in others where capital punishment is in operation, but, of course, there are no statistics by which comparisons can be made.

There is not now, and never has been since the abolishment of capital punishment, any disposition on the part of the people to have it restored. During the last ten years there has not been a single lynching in Wisconsin for crimes that have been committed by persons. The last lynching occurred in this state about eighteen years ago. At the present time we have in the state prison

about ninety life prisoners, all of whom have committed capital offenses. The people of this state do not believe in capital punishment. They do not believe in it because they do not think that it prevents the commission of capital offenses. They do not believe in it because they do not believe that the taking of a human life should be legalized. Whenever an execution takes place the newspapers give it so much notice that it has a demoralizing effect upon the people of the state in which it occurs, and especially upon the community in which it takes place. We do not believe that the legalizing of the taking of a human life relieves the person that is obliged to do the executing from the moral responsibility of taking human life. We would be glad to see capital punishment abolished in every state in the Union, and we believe the time will come when this will be done.

We are sending you by mail, under separate cover, a copy of our last biennial report. You may get information from this report which will be of benefit to you.

Very respectfully,

STATE BOARD OF CONTROL,
M. J. Tappins, Secretary.

What is true of the state of Wisconsin is true of the states which have abolished capital punishment. Capital crimes have not increased in them, and mob violence is seldom resorted to where the people have been wise enough to abolish it.

If the right of capital punishment is conceded the question of its expediency is debatable.

Judge Walker says:

The great argument in favor of death as a punishment is the terrific example it holds out to others. Not only does death render it certain that the same offender will never repeat the offense, but it has the strongest possible tendency to deter others from committing it. On the other hand, however, it is urged that the same result may be attained without inflicting death. Solitary imprisonment for life renders it almost equally certain that the offender will not repeat the offense; and as a terror to others it is scarcely less effectual than death itself. At the same time our sentiments of humanity are much less shocked at seeing the prison doors closed forever upon a fellow-creature than at seeing him suspended from the gallows. We feel that he has a space for repentance and reformation, instead of being sent suddenly away, reeking with guilt, to the presence of his final judge. We also feel that he may, after all, be innocent, so uncertain is human testimony. We know that innocent men have often been condemned and executed, and in such cases an infinite wrong has been done without the possibility of undoing it. The vital spark has been rashly put out, and all earth can not rekindle it; whereas the prisoner, when his innocence is discovered, can be set free and thus be indemnified, in some degree, for the wrong he has sustained. These considerations, and others

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of a similar nature, are strongly turning public sentiment toward the abolition of capital punishment."

I am opposed to capital punishment for the following reasons among others:

1. It prevents the enforcement of law by reason of its severity. I agree with Henry Ward Beecher that "while the fear of hanging does not deter men from crime, the fear of inflicting death deters many a jury from finding a just verdict, and favors the escape of criminals."

Mr. WOODS: I would ask you to explain how the finding of the verdict of guilty interferences with the jury bringing it in when the law provides for them to recommend a sentence of mercy and then a man can only be imprisoned for life.

Mr. PIERCE: It does, but it would take me a long time to explain it to you. As I said, when the punishment for stealing forty shillings was death the jury would find them guilty, but would always bring in a finding that the amount stolen was less than forty shillings, no matter what the amount actually was.

Mr. WOODS: You don't understand me. The statute provides that a jury can recommend for mercy in any case where they find a man guilty of murder in the first degree, and if the jury does that the sentence only can be for life imprisonment. If capital punishment were abolished the sentence would still be for life imprisonment, would it not?

Mr. PIERCE: Suppose the jury was composed of men like you; you would never bring in a sentence of mercy.

Mr. WOODS: I would not.

Mr. PIERCE: No; you would take them out behind the barn and shoot them.

Mr. WOODS: That would if they were guilty.

Mr. PIERCE: That is just the reason I want this, because we would find juries occasionally composed of individuals like you who would not recommend mercy.

2. It does not deter, restrain or prevent murder.
3. It occasionally takes the life of innocent people.
4. It is a relic of barbarism and belongs to the dark ages.
5. It has a bad effect upon the people of a community in which it occurs.
6. Life imprisonment is more humane and severe and just as effective.
7. It is against the progressive spirit of the age.
8. It violates the commandment of God, "Thou shalt not kill."

The select committee to investigate capital punishment appointed by the Ohio house of representatives, of which Gen. Durbin Ward was chairman, reported as follows:

The punishment, originating in the ages of darkness and barbarism, has been continued like so many other evils, because society has been too feeble and too prejudiced, too much attached to ancient usages, and too fearful of radical changes to be thrown off. The proud and cruel conqueror claimed the right to dispose of the life and liberty of the conquered, and having the power to enforce the claim transmitted capital punishment

and slavery — the twin children of conquest — to succeeding ages. And they, like the other destroyers of mankind, veil the meanness of their birth under a pretended divine origin. The capital punishment theory now enslaves mankind in the same way the divine right of kings held its place till so lately in the popular mind, and like the slavish falsehood, was in earlier ages unfortunately incorporated into the people's religious faith.

It is pleasing to reflect that we have made so many advances in all that constitutes true civilization, but the cheek has still cause to mantle with shame that some of the relics of barbarism remain. Criminal reforms are always behind the spirit of the age. This is natural enough, for punishments connect themselves so closely with the passions of men that the more humane dictates of reason do not soon exercise their reforming influence on the criminal code. Men learn only after a long and painful experience that their reason more certainly than their passions illuminates the path of duty and conducts them to happiness.

But there is an evident progress. Step by step civilization advances, and the humane judgment, attaining greater maturity, assumes the control of the passions. This advance ultimately reflects itself in penal legislation, and the barbarous enactments of a ruder age fade one by one from the statute book. The wager of battle, the burning of witches, the branding of the forehead, are all gone to return no more. The death penalty must go too. It is too unphilosophical and too unjust to maintain its ground much longer in any country where reason is not the slave of prejudice. Already has the common sentiment of society forbidden the public exhibition of the accursed punishment, and ere long the gallows will be condemned to the same grave which now covers the stocks and the thumbscrew, the hurdle and the fagot.

Much has been said here about being progressive. I want to remind this Convention that we shall be judged by what we do, not by what we say. To abolish capital punishment will be a step forward. The grand old commonwealth of Ohio can not afford to belong to the age of dug-outs and stone hatchets. She should demand a higher and better civilization. She cannot afford to be less progressive than Holland, Finland, Switzerland, Belgium, Prussia, Portugal, Roumania, Tuscany and Russia; all of which have abolished capital punishment, except Russia for political offenses.

If this state shall abolish capital punishment it will be a forward step, and one that the people of the whole country will applaud. We shall be glad that we voted for it, and our children's children will honor and respect us for it.

All reform is slow. It took years to abolish slavery. Eminent lawyers, ministers, and college professors defended it as a divine institution, as they now defend capital punishment, but it had to give way to a higher, broader, better civilization. Its abolishment is progress, evolution, destiny. It is time to turn from the bloody

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past with all its horrors and to obey God's command, "Thou shalt not kill."

Mr. PARTINGTON: Members of the Convention: It is rather strange to me to listen to an argument favoring the abolition of capital punishment upon the ground of humanity, upon the ground of progress and the spirit of humanity and then to cap that argument by saying we should impose life imprisonment, and for misconduct while so confined in that prison the criminal should be put in solitary confinement. I can not see that spirit of humanity. A great student of penology has said if you confine one hundred men in the penitentiary, and take from them the last hope of escape, not one will be alive in fifteen years. I want to read you an indictment by President Andrew D. White in an address at Cornell University, wherein he declared that as a result of extensive studies, carried on through a long period of years and in all parts of the Union, he had become convinced that the United States leads the civilized world, with the exception perhaps of Southern Italy and Sicily in the crime of murder, especially unpunished murderers. The proponent of this measure told us that only one out of fifty-six murderers was convicted, and after making that statement he tried to follow it with the argument that capital punishment does not prevent crime. You give a criminal that kind of a chance, fifty-five to one, and he will take his chance every time. But I do not believe those figures are correct. I believe the figures would be nearer right at one hundred to one.

No man can argue rightly that capital punishment is not a deterrent from the commission of murder when only one man out of one hundred who commits murder is executed.

In England, where they have capital punishment, one out of three is executed, and this shows an appalling difference in the number of murders between England and the United States. In the United States from seven thousand to nine thousand and even ten thousand murders are committed in every year and in England there are only three hundred.

Now I wish to argue for a little while, not upon the justification, but upon the necessity of capital punishment.

Colorado just a few years ago abolished capital punishment and then a beast in man's clothes committed a heinous crime—robbed and murdered a girl of twelve. The sheriff led that criminal to the place of execution instead of the law; that man was executed by a mob. So I wish to argue to you for a little while only on the necessity for capital punishment, not its justification.

That capital punishment can not be justified on moral grounds may be admitted, i. e., on the grounds of Christian morality. It is true that the law of Moses exacted "an eye for an eye, and a tooth for a tooth," and commanded that "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses" (Numb. 35:30); but it was only until faith came that we were kept under the law (Galatians 3:23), the law being likened unto a schoolmaster to teach faith in Christ, and after faith is come the schoolmaster is no longer needed (Gal. 3:25). In other words, when faith fully possesses the heart the individual will keep Christ's commandments, and among other things which He commanded was an observance of that part of the law and

the prophets which runs thus: "Thou shalt love thy neighbor as thyself." If all men observed that injunction the law against capital punishment would be practically repealed; there would be no occasion to inflict it, for, while some men commit suicide, yet they are insane, and the law does not punish the insane.

But all men do not observe that injunction—in fact, few do—and until they do attain to that perfection they are under the law. As long as there are men who, like the unjust judge, neither fear God nor regard man, there will be murderers, and as long as there are murderers it is manifest they are not controlled by faith. Hence, as they must be controlled, it will have to be by the law. And the law, as I have shown, sanctioned capital punishment. So it appears that that repository of the oracles of God, the Bible, prescribes two sanctions, either that of faith or that of the law, and capital punishment is the sanction of the latter for the crime of murder.

But it was the sanction, too, for many other crimes which are not now punishable capitally. For instance (Deuteronomy 21:18), a stubborn and rebellious son was to be put to death, as were also men stealers, rapists and numerous other offenders. And it might plausibly be urged that just as we have come to regard the imposition of the death penalty for these and other lesser crimes as inhuman and indefensible, so we shall some day similarly regard capital punishment for murder; that, indeed, that day is now here. But is it inhuman and indefensible?

There are some things that to the conscience, whether Christian, pagan or savage, have always seemed justifiable. One of these is the doctrine of self-defense. Even the most devoted casuist does not seriously controvert that doctrine. Defending one's self, even to the taking of the life of one's assailant, is so natural and instinctive that it needs no justification in reason. And if society is really but the larger individual—that is, a collection of individuals who had their rights circumscribed by a necessary deference to the rights of others—why may not the doctrine of self-defense be justified in society's behalf?

It may be urged that the execution of a convict, occurring as it necessarily does, after the fact of the crime, can in no sense be said to be done in self-defense; that just as the law of self-defense for the individual requires him to go no further than is reasonably necessary to protect himself, so that if he uses more force than he believed, and had reasonable ground to believe, was necessary to his self-protection, he himself is guilty of a breach of the law; so, society, after a murder is committed, can not prevent the murder by afterwards killing the murderer.

Admitting that an execution does not prevent the murder that preceded it; and admitting that it has all the characteristics of an act of vengeance—as it is regarded in the minds of a great many people—yet it appears to me really to be an act properly denominated "self-defense," and to be justifiable as such.

In the first place, it must be remembered that it is organized society that is acting, and not any mere individuals; and in the second place, that while society consists of an aggregation of individuals, yet it is something more and different from a single individual. It is an organism which, while it often acts as an individual

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would act, yet also acts entirely and radically different from an individual, because it has more attributes peculiar to itself than an individual has, as its wants and necessities are radically different. While its life resides in the number of individuals composing it, yet it recognizes that the individual life is an essential part of its own life, and that a blow struck at an individual life — whereby it is extinguished — is a blow, and a deadly blow, struck at the life of society itself. No one would deny the right of the aggregation of individuals composing society to collectively defend themselves against a deadly attack on their own numbers, and to kill their assailants if it appeared necessary in order to prevent themselves being killed. They would be exercising collectively the right of self-defense. And, if the aggregation outnumbered the assailants, so that some of the former, in killing some of the latter in their attack, were really in no danger themselves and killed the assailants of others as part of the general defense, could it be said they were not justified in so doing? So society, in providing for and sanctioning the execution of the murderer, instinctively recognizes, first, that he has made an attack on society and killed one of its members; second, that having killed one of them, there is no guaranty, except by execution, that he will not kill another; third, that as a very general rule the fear of death is the greatest deterrent known, for "all that a man hath will he give for his life." While society executes after the fact, yet it could not proceed any other way, for society is different from the individual; yet it acts in self-defense nevertheless.

Society is organized, among other things, to secure the peace and good order of society. It has been found by long experience in civilization that peace and good order are essential to the exercise by the individual of all his constitutional and legal and, indeed, natural rights. So there is a duty resting on society — a duty to its members and to civilization — to do something more, upon the happening of a murder, than what is commonly understood by the punishment of the criminal. It is society's duty to take such steps as will not only make it impossible for the criminal to repeat his offense, but also, as far as possible, prevent others from doing likewise. That execution is an effectual preventive no one can deny, and that anything short of it is not effectual is abundantly proved by the numerous murders by life-convicts of their keepers of fellow-prisoners, or after their release from prison, which usually follows within a comparatively few years. That the possibility of capital punishment does not deter every potential murderer is true, but that it does deter very many I think is abundantly shown by the increase in homicides in those states and countries where capital punishment was abolished. In many of these it was subsequently restored.

In many of these it is not often resorted to, though still on the statute books. And it is a credit to humanity that it is not. But if this supreme penalty is to be abolished so that the man contemplating a murder — and it is only murders that are contemplated that are punishable by that penalty — shall feel assured that his own life will not pay the forfeit, will not the remaining restraint — the fear of his imprisonment, which is surely inadequate when the fear of death does not prevent — be lightly regarded by intending murderers? In no case is it true, I believe, that a condemned murderer,

when it came to the moment of execution, would prefer death to imprisonment. While there's life, there's hope of escape or pardon.

The reluctance of society to impose the death penalty, as is shown by the few executions compared to the number of homicides, is one reason, and a very cogent one, why capital punishment is not more effectual as a preventive of homicide. The criminal, seeing this reluctance, takes his chances on escaping. How many more times would he do so if there were no capital punishment to fear and the worst that might happen would be his incarceration in prison, whence he would hope to escape or from which be pardoned?

The law is a practical science, intended to meet practical conditions in a practical way to secure results. It embodies the instincts of the race as affected by its experience over hundreds of years, and it responds to its needs and then to its ideals. It is well to have ideals. If we had none, there would be no advance. But you can not have an ideal state of law unless you have a corresponding ideal condition of facts. Capital punishment does not make murderers — murderers make capital punishment. The tortures and the brutality that used to characterize executions have passed away; in fact, they are seldom any longer public even. There is a great disproportion between the number of homicides and executions for homicide. More and more our common humanity constrains us to evade imposing the death penalty. Frequently, where the evidence points conclusively to guilt required by law to be punished with death, juries return verdicts of that degree of crime punishable only by imprisonment, shutting their eyes to the probability of a pardon in a few years, and doing the very thing the convict hoped and expected they would do if he were caught. Ultimately, in some happier time, the occasion for capital punishment may pass away. When it does, of course capital punishment will be abolished. And while the imposition of the death penalty is more honored in the breach than in the observance, it would hardly be wise to do away with what is generally believed (regardless of any notions as to its morality) to be the real restraint upon a great many potential murderers — namely, the possibility of suffering death if the murder is committed.

The time of the delegate here expired.

Mr. WALKER: Mr. President and Gentlemen: I think this an opportune time to break a silence which has been golden for several weeks, though I am naturally reluctant to take part in a discussion of this character. I feel that I am in danger of being misunderstood, as I always like to be en rapport with truly progressive issues, therefore I say I have been somewhat reluctant to express myself. The question that has been precipitated upon us here is no new one. It is as old as the first murder.

I was delighted with the familiarity with the Bible shown by the able proponent of the measure, but I was disappointed at the exhibition he gave in the manipulation of those Biblical passages and the application he made of them. If that is to be taken as a criterion of the proficiency of the average legal mind in the interpretation of language, I must yield some of my hitherto generally recognized and accepted appreciation of legal skill in this regard.

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This matter is not new. The first man born upon earth became a murderer and for the sake of the preservation of the race the death penalty was passed by and the command was given that he should go forth at liberty. He was sent from home, and went out and founded a city. The result of the passing by of that murder was that society became so violent that we are told the God of Heaven looked down and said it must all be blotted out, so violent had it become. After looking over all the people there were found only eight souls that were worthy to be saved, and after having saved them the new world began to be peopled. Even with the world yet to be peopled, the law was given (and this was not the Mosaic law, nor was it the law passed by the "human hyenas" who were demanding vengeance as some one else has said), a law that God himself gave when He was providing for the peopling of the earth the second time: "Whoso sheddeth man's blood by man shall his blood be shed." That was a thousand years before the enactment of the law of Moses. And that law of God himself remains in force until he chooses to repeal it and there is no record that that law has yet been repealed, and you should respect it if you have respect for the law of God. Bear in mind that not even did Jesus Christ himself while on earth announce the repeal of that law. True, he did preach the religion of love and kindness, and with His teachings we all stand in hearty accord, but not one of us thinks when He taught kindness and love for our fellow-men that He was talking about the treatment of confirmed criminals. I think if we write this law upon our books we shall be going back six thousand years instead of making progress as suggested here. The death penalty as we inflict it is not barbarism. Barbarism inflicts penalties for revenge. The law of our land takes human life in self-defense, as has been ably argued by the gentleman who has just taken his seat. The experience of the world in general has demonstrated the fact that a law like this is salutary.

I deprecate the fact that this matter has been injected here. Of all the measures that have been presented to this Convention, I do not know of a single one that is more legislative in character than this one. The matter is wholly within the control of the legislature now. The fact that this law still remains on our books is evidence that the people have not been demanding the change here sought to be made.

Under the initiative and referendum, which unquestionably we shall soon have, whenever the people demand it we can get it, and then, after a trial if our experience should be that it does not work well, the opportunity will be with us to repeal the law. We can handle it much better when it is a mere matter of legislation than if it is constitutional in character. I think the wise thing for us to do would be to leave the whole matter to the people themselves—to the legislature.

I have very little patience with much of the maudlin sentimentality of those who talk about criminals. Now the absurd part of the punishment of criminals ought to be noticed. We punish every man who commits a crime, either by fine or imprisonment, and then boast of our humanity. I submit to you we are still tyros in criminology. No matter how much we may boast of our superior intelligence in other lines we have dragged

away behind on this matter of penology. We only have the death penalty for first degree murder, and do you not think the death penalty should be inflicted in such a case as occurred in the outskirts of this city when two hoboos shot to death a man who was arresting them when they had no incentive whatever to do it except to escape from a thirty days' imprisonment in jail? Men like that are entitled only to the consideration that is due criminals. What guarantee can you give for the security of life if such characters as these take life under circumstances such as they did and are not themselves executed?

Just take some of the cases of cold-blooded murders that come to your attention. When I was a boy playing in a brass band we were walking down the streets of the town and we heard the crack of a gun. Rushing to the scene of confusion, we learned that a man had deliberately shot to death a neighbor for whom he had been lying in wait behind a bush for three hours, and it was just a little personal grievance between the two. That man was put in the penitentiary for life and pardoned out at the end of seven years, as is the custom. We can count on the court and the jury to exercise all needed leniency in this matter of punishment.

Now, another idea I want to impress: If a majority of you have decided you are not favorable to capital punishment, as the proponent of this measure has said, before you pass the matter, before you fix it where it can't be changed, let us try it. We never yet have tried capital punishment in this state to see whether it will prevent crime. If it is true that but two or three per cent of the people who commit homicides are convicted, we have really never tried capital punishment for the prevention of murder. Before we throw away the remedy, let us try it. We ought not to be thus hasty, especially when we see that the result of applying the penalty is that homicides decrease amazingly. I have always had it in my own mind that the death penalty is a decided deterrent of crime.

It is said it is not the severity of the penalty, but the certainty, that prevents crime. I grant that, but why can't we visit with certainty the death penalty in such cases as I have cited? Why can't we make it just as positive and just as certain as we make life imprisonment?

Now, I want to answer a few suggestions and hints that have been thrown out in the remarks by the author of the proposal. It was hinted that criminals are born and not made, and that therefore they are largely irresponsible. That is a theory that has been made to work overtime. But even if it is true, there are some monsters that should be removed. No society should be jeopardized by their presence. After all that has been said about prenatal influence, the fact remains that no man is compelled to become a criminal unless insane and nobody advocates the death penalty for that man. Does any one think that that law given by God, "Whoso sheddeth a man's blood by man shall his blood be shed," was intended to be applied to an insane man? If that is a lawyer's conception of the law, no wonder the people liberally discount legal interpretations. A casual glance at the enactment of that law of Jehovah

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will show it was aimed directly at violent murderers and no one else.

It is said you can not reform a man by killing him. I deny that statement. You can not reform him after he is killed, but it is true that the fear of death will deter many men from committing crime. That is all the state has to do with reformation. Reformation of conduct is all of which the state can take cognizance. Reformation of life within belongs to the realm of religion, but the state directs its reformatory efforts toward a man's conduct. The certainty of the death penalty will deter men from murder, so that is the sense in which you can reform a man by killing him.

Again, there was considerable said about giving a man opportunity to reform. I am willing to give him an opportunity to reform, and I think the ordinary stay of execution is ample time to bring a man to penitence. It does not take a man twenty years to repent when he is brought face to face with his crime and knows the enormity of it and knows that he is to be executed for it. If there is a speck of manhood in him that can be regenerated, it will disclose itself in a short time.

Now someone asked what punishment would there be for a man under life imprisonment who killed a fellowman in the penitentiary, and the answer was that he might be put into solitary confinement. What is the effect of solitary confinement? Thirty-three per cent of the murderers confined in the Michigan penitentiary are insane. You talk about being humane! I insist it would be far more humane to take a man's life than to condemn him to a long and hopeless insanity. If you do not care to doom him to solitary confinement, what is the next course? Put him in the idle house with other men? That is to encourage riot, insurrection, and the opportunity to escape. But suppose you say cooperative work with other criminals, and this is the third possible thing before you. Solitary confinement is the first, the idle house is the second and the third is cooperative work with other criminals. But there is no guaranty that he will not take the life of some of those criminals of a lesser degree. I submit it is unjust to the average criminal to confine him and make him work alongside of a man who is a constant menace to him. Many instances might be cited where men have been guilty of taking lives of their fellow prisoners.

The reason for the abandonment of capital punishment on the part of some European nations has not been because of humanitarianism, but has been because of the manner in which they have been inflicting the death penalty. For instance, Russia used the knout. It was a loaded strap and a man was beaten with it until his life was gone. The people rebelled against that barbarous manner and wiped out capital punishment instead of changing the manner of execution to a more humane one. It was not that they rebelled against capital punishment, but against the manner of its infliction.

Mr. KRAMER: If the severity of the punishment is what you are after why not put the man to death by the knout? Why not use that method if all you are after is the severity of the punishment?

Mr. WALKER: I have been speaking with a stammering tongue if I have left such an impression. What I am after is not severity. I was trying to show that the death penalty was a deterrent because a man will

give up everything to keep his life. Life imprisonment does not make the penalty any the less severe. As for myself, I would rather be executed than have a long period of confinement in the penitentiary. I might answer further, from an ethical standpoint, that first of all it is a safeguard forever from any possible crime on the part of that man again.

Mr. BOWDLE: The psychology of preachers is very interesting to me. There is among preachers a certain ferocity of view that is very curious. Of course, that does not refer to all preachers. I know a number of preachers who are almost human. It is interesting to me to see that the humanity in this Convention is, at least temporarily, observed to be on the side of the miserable lawyers. Of course, one does not often connect lawyers with christianity, but it is a significant fact in the life of Jesus pretty nearly all the decent things done were done by members of the legal profession. When our Lord needed somebody to say a word for Him in the presence of a lot of deriding preachers, Nicodemus, a lawyer, came to the front, and said "Does our law judge any man, before it hear him and know what he doeth?"

At the crucifixion, when all of the preachers had fled and there was nobody around to arrange our Lord's sepulchre "Joseph, of Arimathea, a rich man and a lawyer" went to Pilate and begged the body of Jesus.

And when the time came to carry the Gospel to all the world, the divine mind did not select a preacher, but saw a sign in Tarsus "Saul, Attorney at Law and Notary Public," and He selected him for the mission. The legal profession has shown brilliantly in all the mutations of history. Not so much the preachers. Preachers, of course, naturally tend toward ferocity because they think they have received a kind of divine commission to go out and by force clean up the earth; and they have been appealing to that force ever since they got the commission and without success. They have forgotten utterly that the genius of His command is love. I feel I can speak thus frankly because I was denounced by the preachers of this Convention. We are charged with knowing not how to use Scripture. Maybe the charge is true, but let me quote a little from the Scriptures:

Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth:

But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.

And if any man will use thee at the law, and take away thy coat, let him have thy cloak also.

Just ask a minister for his coat or cloak!

And whosoever shall compel thee to go a mile, go with him twain.

Give to him that asketh thee, and from him that would borrow of thee turn not thou away.

Ye have heard that it hath been said, Thou shalt love thy neighbor, and hate thine enemy.

But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you;

That ye may be the children of your Father which is in Heaven: for he maketh His sun to

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rise on the evil and on the good, and sendeth rain on the just and on the unjust.

This is the law of love that humanity has been trying in a staggering way through these ages to infuse into our economic and legal life and into the criminal law of our life, and it is this law of love that the preachers denounce because it impinges against their imagined commission to go out and borrow Caesar's club and clean up things.

It is curious to observe the misuse that is made of Scripture. I agree with the gentleman from Holmes [Mr. WALKER] that far. The misuse of Scripture has led to a great deal of anarchy in this world. The Bible condemns the taking of interest, yet most Christian people are glad to collect eight per cent. It appears that David once danced acceptably before the Lord, and based on that we have the Holy Rollers coming in and they say the reason the Christian faith has failed is that we have not cultivated dancing. The Bible says "Ye shall not suffer a witch to live" and relying on that our forefathers burned the witches. You can find in the commands to the apostles ample authority for socialism. It states distinctly that the apostles had all things in common. But of course, socialism won't do.

By searching the Scriptures you will always be able to find some letter that will sanctify any ridiculous movement. Much of it comes from the fact, as Swedenborg has pointed out, that we have fallen into the custom of regarding the Epistles in the new Testament as inspired. All of the vagaries of the human understanding will find authority in the Epistles. But Swedenborg has ably shown us that the inspired word of God is in the Old Testament and in Matthew, Mark, Luke and John; and we should not regard the Epistles, although containing many excellent things, as the inspired word of God.

I am in favor of this proposal as suggested to us by this humane lawyer from Butler [Mr. PIERCE]. I am in favor of it on a ground not yet stated. I do not think it is a good thing to visit a form of penalty upon man which entails thereafter a stigma upon innocent relatives. I know of one or two cases in my own experience where families—mother, father and children—have lived lives of blight because of what has happened to a son in the penitentiary. I read with infinite sorrow a few years ago of an old woman, Mrs. Stimmel, who had had her life abbreviated by heartbreak owing to the fact that her son had been electrocuted. I have read with unspeakable sorrow of the father and mother of Richeson going and falling at the feet of the governor of Massachusetts and begging him to spare the life of their son. I read lately that the family of a certain noted criminal who had been electrocuted, left the community, trying to hide themselves from the awful stigma. No, I can not believe the state is justified in visiting a form of punishment on a man that haunts relentlessly so many innocent relatives, nor do I believe the visitation of the death penalty has any kind of deterring effect upon crime or criminals. All who have studied crime know that men who commit crime are afflicted with a curious egoism; that they feel their particular crime will never be discovered; that their crime is a conspicuous exception to all rules. I can not believe the severity of the penalty has anything to do with such cases. There-

fore I am in favor of abolishing the death penalty, as so many other highly civilized countries have done.

Mr. WALKER: Will the gentleman yield for a question?

The PRESIDENT: The gentleman—from Highland [Mr. BROWN] is recognized.

Mr. WALKER: I want to ask the gentleman from Hamilton [Mr. BOWDLE] a question.

The PRESIDENT: The gentleman from Highland is recognized.

Mr. BROWN, of Highland: I have been considering this question somewhat and was on a committee that had it under advisement. At that time I was disposed to favor it, but at the present I have changed. I have listened to these debaters, with their biblical references and I have heard them splash around in each other's literary suds, apparently not coming to the real question of anything that has been put before us. We have been putting in a great deal of time exploiting ourselves. I think we should get right down to these things and consider the real point and pass or reject all of the proposals that we have before us and get through.

It is a fact many writers on the question of criminal responsibility find that capital punishment or severe punishment of any kind does not deter the commission of crime. Sir Henry Maudsley, a famous writer on responsibility in mental diseases, says that during the Spanish inquisition all of the people, of Europe at least, followed a sort of sympathetic application of law to criminal—sympathetic with the inquisition—and that the death penalty applied in England for the stealing of sheep increased the number of sheep stolen. It was as the gentleman from Hamilton county [Mr. BOWDLE] has justly said. All criminals are dominated by the ego. A criminal can not escape the tyranny of his organization. The forefathers who made him are responsible for his condition mentally, morally and spiritually, and if he is a criminal he is impelled by an irresistible impulse to do things which seem to be proscribed by law, and no matter what the severity of the punishment for crime may be in any country the person who has a tendency by inheritance of that kind of mentality can not restrain himself from submitting to impulse, but does that argue against the punishment? Is it an argument in favor of punishment? If the condition is hereditary it should be stopped by emasculation if need be. That is the situation.

I would like to know what the gentleman from Butler would do with a case like this:

A man named John Billman, who had been sent to the Eastern Penitentiary of Pennsylvania for horse-stealing, murdered his keeper under circumstances of great brutality and yet with so much ingenuity as to elude suspicions of his intentions and almost conceal his flight. He hung a noose on the outside of the small window which is placed in the door of the cells to enable persons outside to look in. He then induced the keeper in order to look at something on the floor directly at the foot of his door to put his head entirely through. The noose was then drawn, and but for an accident the man would have strangled. Notwithstanding this attempt, the same keeper was inveigled into the cell alone a few days afterwards on the pretense

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of Billman's being sick and was there killed by a blow on the head with a piece of washboard. Billman undressed him changed clothes with him placed him on the bed in such a position as to induce the general appearance of his being there himself, traversed in his assumed garb the corridor with an unconcerned air, addressed an apparently careless question to the gate-keeper and sauntered listlessly down the street to which the gate opened.

Mr. STAMM: Would it not be more humanitarian and afford sufficient protection to amputate Billman near the hip joint and give the preachers a chance to reform the criminal instinct?

Mr. BROWN, of Highland: That is apparently not a serious question. If a person is affected with pyromania, an irresistible impulse to burn houses, something must be done, and if that individual has inherited the tendency and it is an uncontrollable impulse which he cannot resist, what can society do if the man can not be reformed? In the interest of humanity and the social compact he at least ought to be prevented from propagating his kind.

Mr. ANDERSON: Do you know any of the writers upon that question, alienists, who have laid down the doctrine that they ought to be disposed of as you suggest?

Mr. BROWN, of Highland: No. That is the trouble with the lawyers. They are always looking for precedent. They must follow precedent regardless of where it leads.

Mr. ANDERSON: Lawyers didn't write that—

Mr. BROWN, of Highland: No, but you think we should teach the things the alienists teach because they teach them.

Mr. ANDERSON: Is it not true in murder cases that alienists are put upon the witness stand and then testify according—

Mr. BROWN, of Highland: To whichever side hired them, the way that side wants them, and in accordance with the size of the fee?

Mr. ANDERSON: Therefore, if the relatives of one charged with crime have not enough money to employ the alienist all efforts looking toward innocence ought to be stopped and the man allowed to be executed?

Mr. BROWN, of Highland: The alienist pettifogs the case, just the same as the lawyers themselves, for the fee he gets.

Mr. ANDERSON: Can you tell me one alienist who claims there is no border-line in insanity, that a man may be sane one minute and insane the next—that there is no border-line between sanity and insanity?

Mr. BROWN, of Highland: I will inform the gentleman privately all I know on that subject, if he wants, and publicly I will say that there is no discriminating differentiating border-line between sanity and insanity. I believe that all people of extremely high genius are insane; I believe that all persons who are uncontrollable criminals are insane, and I believe you are insane, because I think all men of genius are insane.

DELEGATES: Agreed.

Mr. ANDERSON: Is it because I recognize your great ability that you think I am insane?

Mr. BROWN, of Highland: I can only judge your insanity by my own. I believe all men of large ability

are insane. But I think this is too serious a matter to be considered in light vein. It must be a question of expediency and not a question of broad humanitarianism applied to a single individual. I think it should be based upon the broad question of expediency in the interest of coming generations to exclude, if possible, the tendency of perpetuating criminality in the race. I think it would be better to emasculate every person of grave criminal tendencies if his crime was not of sufficient gravity to apply capital punishment. I believe after a while that would solve the situation and that we would be able to raise healthy, normal and natural children. I feel that it is a physical degeneration that makes us so criminal, and I think we are suffering by the survival of the criminal nature more than we are gaining on the humanitarian side. If we had a measure by which the criminal does not survive we would cease to propagate criminals, and as a matter of general policy, in the interest of the state, those people should be included and their disability should be secured in the direction of the prevention of the propagation of their kind, so that the thing would finally be impossible.

Mr. ANDERSON: I don't know of any lawyer pettifogging a criminal case where a life was at stake. I have known prosecuting attorneys to go a great distance to convict where I did not think it was the duty of the prosecuting attorney to do that. I have personal knowledge where a certain man committed a crime. He loved a girl and saw her in company with another young fellow and shot at the other man and killed the girl. A pettifogging alienist was paid his expenses and \$50 to come down to Youngstown to make an examination of the case, and he stated to the attorney that he would willingly take the witness stand and testify that the man who did the shooting was insane, but he wanted \$500 before he would so testify. The \$500 could not be raised by the widowed mother of the criminal. She couldn't get any money to employ an alienist. The result was that that same expert, high in the profession—he is now dead and I do not care to mention his name—took the witness stand for the state and was given \$1000 to testify that the criminal was sane and the man was executed. That is an example of the honorable alienist.

Mr. WATSON: Don't you think that capital punishment ought to be applied to just such fiends as that alienist?

Mr. ANDERSON: Yes; I would like to have it done. I have sat, not as an attorney taking the principal part, but I have sat in a number of murder cases, and I made up my mind then if I ever had an opportunity to cast my vote to do away with capital punishment I would do it. Let me appeal to the gentleman who has all the earmarks of a prosecuting attorney, the gentleman from Medina [Mr. Woods]. Let me appeal to him and let him tell the Convention how difficult it is to get a jury because, when you ask the juror the question, "Are you in favor of capital punishment?" the average juror will say no. I admit they say that sometimes to escape the duty, but the number is increasing every day, and unfortunately for the accused and unfortunately for the right determination the best men in the community are against capital punishment. When they are put in the jury box and asked

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the question they say, "I don't believe in capital punishment." Is not that true, Mr. Woods?

Mr. WOODS: And if you go further you will find that very fellow just doesn't want to spend the time to be on the jury.

Mr. ANDERSON: That is true to a certain extent.

Mr. WOODS: Don't the best men in the county come and say under oath in the jury box that they are not in favor of capital punishment?

Mr. ANDERSON: Thank God we haven't many of the kind of citizens you describe in Mahoning county. You may have perjurers in Medina. You are in favor of capital punishment, but do you arrest, for perjury, the men who perjured themselves because they don't want to sit on the jury—do you punish them or let them go free?

Mr. WOODS: There is a difference between a witness and a juror. When you ask those jurors if they can render justice are they under oath?

Mr. ANDERSON: Certainly. Didn't you know that?

Mr. WOODS: The juror is not sworn to try the case?

Mr. ANDERSON: He is sworn to answer questions.

Mr. KING: Is not every juror examined under oath touching his qualifications to serve?

Mr. ANDERSON: Yes. It may be that they make an exception in Medina, but that practice prevails all over the rest of the state. Consequently when he is asked the question whether he is in favor of capital punishment he is under oath, and if he wants to perjure himself for the purpose of escaping the unpleasant duty of sitting on the jury he can do so, but I am not referring to that class of citizens. And right there, I would like to suggest that I am in favor of the humane doctrine of Dr. Brown, that all men who have a tendency toward degeneration should be executed, because the first men who would be executed under that would be the alienists.

Mr. BROWN, of Highland: Did you understand me to say that I believed in executing all persons who had a tendency to commit crime?

Mr. ANDERSON: No. You said you believed in executing all those who inherited a tendency to commit crime.

Mr. BROWN, of Highland: No. I said I believed in executing those who have committed capital crimes; and even though it could be proved that it was from hereditary alienation of mind, it would be better in the interest of coming generations of society to stop the propagation of that kind of mental condition.

Mr. ANDERSON: Didn't you say those who inherited an irresistible impulse to commit crime ought to be executed so that that inherited tendency would not go on through coming generations?

Mr. BROWN, of Highland: No. I said if they inherited criminal tendencies and were impelled by irresistible impulses to commit capital crimes, then in the interest of society, even though they might have other humanitarian impulses, it would be better for them to be executed or emasculated.

Mr. ANDERSON: Don't you stop that which you suggest if you imprison them for life?

Mr. BROWN, of Highland: If we had any good, well-founded reason for believing that the authorities

would allow them to be imprisoned for life it would be all right, but through the processes of law and by the aid of lawyers they have been able to get out of their punishment in very much shorter time than life.

Mr. ANDERSON: Is it not true that the man who inherits an irresistible impulse to commit crime is insane?

Mr. BROWN, of Highland: Certainly.

Mr. ANDERSON: Do you believe he should be executed?

Mr. BROWN, of Highland: I believe he should be executed if he is sufficiently insane not to have a responsible condition of mind permitting him to know right from wrong and if his tendency is to commit capital crime. If he is impelled to homicide, it is a dangerous condition of alienation of mind which should be stopped.

Mr. ANDERSON: Does not the same authority you quote upon responsibility for crime, in one part of his work, say that executing for crime breeds the commission of the same crime in the same community?

Mr. BROWN, of Highland: The principle he advances is that it attracts the attention of those criminally inclined and that the insane ego impels others to do the thing that is prevalent in the current expression of the day.

Mr. ANDERSON: Then the insane ego would have been dormant if it had not been for the exciting causes—

Mr. BROWN, of Highland: The suggested cause.

Mr. ANDERSON: Then does not your argument lead to this, that they should not be executed because you had better let that "insane ego" lie dormant in the community?

Mr. BROWN, of Highland: But there is a difference in the gradation of the criminal responsibility in mental diseases. Some of them are impelled to commit minor crimes and others are impelled to commit nothing but capital crimes, and they have been consistently divided in that way. The individual who is inclined to commit homicide ought to be dealt with.

Mr. ANDERSON: Is it not true that an alienist, when he goes in to examine the accused,—

Mr. FACKLER: I rise to a point of order. The discussion is degenerating into a debate between two members of the Convention.

The PRESIDENT: The member yielded to the gentleman from Highland and longer time was taken up than was anticipated.

Mr. ANDERSON: I have a lot of letters here from a number of governors. May I have unanimous consent to have them read?

The consent was given.

Mr. FACKLER: I move the previous question.

There were several seconds.

Mr. PECK: The gentleman from Mahoning [Mr. ANDERSON] has not yielded the floor. The secretary is to read part of his speech.

The PRESIDENT: I understood that he had yielded the floor, but unanimous consent having been given, we will allow the letters to be read before putting the question.

The letters were read as follows:

From Francis E. McGovern, governor of Wisconsin:

More than fifty years ago capital punishment was abolished in Wisconsin.

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There is no movement here to restore capital punishment, the people being well satisfied with the present law. I am opposed to the death penalty in all cases.

My opposition to the death penalty is based on the fact that as a matter of morals it is degrading and unjustifiable, and as a matter of experience it is ineffectual and unnecessary. My personal belief is that society has no moral right to take the life of a human being as punishment for crime. In actual practice it has been found that capital punishment does not tend to prevent crime. An instructive object lesson is furnished by Wisconsin and its neighboring state. During the last half century Illinois has regularly inflicted the death penalty for certain crimes of violence; Wisconsin has not. The record of Wisconsin, however, even in respect to these specific crimes, has always been better than that of Illinois.

From Governor Stubbs, of Kansas:

Kansas does not inflict capital punishment. Three years ago capital punishment was abolished in this state, not because there was a demand for the abolition of it, but because there was such a positive objection to it that it never had been enforced during the previous forty years. We had a capital punishment law, which provided that sentences under it became effective when the governor signed the death warrant, but for nearly forty-five years no Kansas governor ever signed a warrant to execute a criminal. This refusal of the governors to do this was sustained by an overwhelming majority of the people. Practically 99 out of every 100 opposed capital punishment.

Under no circumstances would I want the death penalty restored in Kansas. It is offensive to the intellectual and moral development of the state.

My main opposition to the death penalty is this: It is a brutality that does not accomplish the purpose of its invention.

From Governor Aran J. Pothier, of Rhode Island:

Capital punishment was abolished in Rhode Island in 1852, and there is no pronounced movement at all in favor of its restoration. Personally I do not favor the infliction of the death penalty by state law.

The last Minnesota legislature, in response to the recommendation of Governor Eberhart, passed a law abolishing capital punishment in that state. This law has met with popular approval, and there is no likelihood of any movement to restore the former status. Says Governor Eberhart:

The experiences of this and other states, as well as the verdict of most criminologists, agree on the question of abolishing capital punishment, and I am firmly convinced that there would be more convictions for murder in the first degree if either capital punishment were abolished or imposed only in extreme cases, and then only upon the order of the court or the unanimous recom-

mendation of the jury. The old argument against its abolition on the ground that the board of pardons would frequently reduce the life sentence is amply refuted by the records of the state board of pardons.

I believe the interests of justice and humanity demand the repeal of the law and I am convinced that the state would secure more convictions in capital cases and that consequently crime in general would be reduced by the abolition of this antiquated practice in criminal procedure.

From Governor Lee Cruce, of Oklahoma:

Personally I am opposed to capital punishment. It would be very gratifying to me to see a law enacted in this state that would do away with this relic of more barbarous times.

I don't believe that capital punishment serves the purpose intended. It is certainly demoralizing to any community when a legal execution takes place, and it is contrary to and at war with every advanced principle of Christian government. The time will come, in my opinion, when every state in the Union will abolish this method of dealing with its convicted criminals.

Mr. WOODS: Whose time is being consumed?

Mr. DOTY: The time of the Convention.

Mr. ANDERSON: I asked unanimous consent and it was granted.

Mr. WOODS: I didn't hear it.

Mr. ANDERSON: You are thinking about those criminals.

The reading was continued.

From Governor Thos. R. Marshall, of Indiana:

Personally I am opposed to the infliction of capital punishment. My reason is that modern Christianity and statecraft each agree that the purpose of punishment is not revenge but the reformation of the lawbreaker. To take the life of a lawbreaker does not tend, in my judgment, to his reformation.

Life comes in a strange and mysterious way, we know not how. My blind belief is that He alone who gave has the right to take, and that the violation of this law by the individual does not justify the state in likewise violating it.

From Governor Oswald West, of Oregon:

Oregon has capital punishment, but a bill is being framed for submission to the people in November next to abolish capital punishment.

I do not believe in capital punishment, for the reason that it is wrong, and two wrongs can never make a right. Capital punishment is homicide, and homicide is murder, and it is just as wrong for a state to commit murder as it is for an individual. Capital punishment is not a deterrent of crime, but it is a deterrent of conviction. Besides, the theory of our law is not based on vengeance and vindictiveness, but upon the theory of reformation and the betterment of society. Capital punishment

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is a relic of barbarism handed down from the dark ages and it debases instead of uplifts society.

These are a few of the reasons why I am opposed to capital punishment.

Governor Wm. C. McDonald of New Mexico, is entirely opposed to such a law, "for the reason that it is a barbaric and glaringly inconsistent method of meeting out justice. In the execution of the death sentence the state commits it seeks to wipe out or prevent."

Mr. WOODS: I rise to a point of order. The gentleman's time expired, and it takes the suspension of the rule to give him more time and that takes two-thirds. It looks to me like we are spending a lot of time listening to extracts from some governors' letters.

Mr. ANDERSON: There are only a few more sentences.

Mr. HARTER, of Stark: If there is any question about it I move that Mr. Anderson's time be extended.

The reading was then concluded.

From Governor Eugene N. Foss, of Massachusetts:

I do not believe a law requiring the death penalty has any deterrent effects. This is a relic of barbarism; the state has no power to take away what it can not restore; we have no right to do collectively what we are forbidden to do individually.

The PRESIDENT: The question is on the adoption of the motion for the previous question. Shall the main question be ordered?

The yeas and nays were regularly demanded, taken, and resulted—yeas 60, nays 29, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Nye,
Antrim,	Harris, Hamilton,	Peck,
Baum,	Henderson,	Peters,
Beatty, Morrow,	Hursh,	Roehm,
Beatty, Wood,	Johnson, Madison,	Rorick,
Bowdle,	Kehoe,	Shaw,
Brattain,	Keller,	Smith, Geauga,
Brown, Highland,	Kilpatrick,	Solether,
Cassidy,	King,	Stalter,
Collett,	Kramer,	Stamm,
Colton,	Leete,	Stevens,
Crites,	Leslie,	Stilwell,
Cunningham,	Ludey,	Stokes,
Doty,	Malin,	Tallman,
Dunn,	Marriott,	Tannehill,
Fackler,	Mauck,	Thomas,
Farnsworth,	Miller, Crawford,	Ulmer,
Farrell,	Miller, Ottawa,	Weybrecht,
FitzSimons,	Moore,	Wise,
Fluke,	Norris,	Mr. President.

Those who voted in the negative are:

Cordes,	Holtz,	Read,
Crosser,	Johnson, Williams,	Riley,
DeFrees,	Jones,	Stewart,
Donahey,	Kunkel,	Taggart,
Earnhart,	Lambert,	Tetlow,
Hahn,	Longstreth,	Wagner,
Halfhill,	McClelland,	Walker,
Harbarger,	Miller, Fairfield,	Watson,
Harter, Stark,	Partington,	Woods.
Hoffman,	Pettit,	

So the main question was ordered.

The PRESIDENT: The question is on the adoption of the proposal and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 57, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Miller, Crawford,
Antrim,	Halfhill,	Miller, Ottawa,
Baum,	Harris, Hamilton,	Moore,
Beatty, Morrow,	Harter, Stark,	Nye,
Beatty, Wood,	Henderson,	Peck,
Bowdle,	Hoffman,	Pettit,
Cassidy,	Holtz,	Read,
Cordes,	Hursh,	Smith, Geauga,
Crosser,	Johnson, Madison,	Solether,
Davio,	Keller,	Stamm,
Doty,	Kilpatrick,	Stilwell,
Dunn,	Kramer,	Taggart,
Earnhart,	Kunkel,	Tannehill,
Fackler,	Lambert,	Tetlow,
Farnsworth,	Leete,	Thomas,
Farrell,	Leslie,	Ulmer,
FitzSimons,	Ludey,	Weybrecht,
Fluke,	Malin,	Wise,
Fox,	Marriott,	Mr. President.

Those who voted in the negative are:

Brattain,	Kehoe,	Roehm,
Brown, Highland,	King,	Rorick,
Brown, Pike,	Longstreth,	Shaw,
Collett,	Mauck,	Stalter,
Colton,	McClelland,	Stevens,
Crites,	Miller, Fairfield,	Stewart,
Cunningham,	Norris,	Stokes,
DeFrees,	Partington,	Tallman,
Donahey,	Peters,	Wagner,
Elson,	Pierce,	Walker,
Harbarger,	Riley,	Watson,
Johnson, Williams,	Rockel,	Woods.
Jones,		

So the proposal, not having received the required majority, was lost.

Mr. Leslie arose to a question of privilege, and asked that his vote be recorded on Proposal No. 249 by Mr. Tannehill. His name was called and Mr. Leslie voted in the affirmative.

On motion of Mr. King the Convention adjourned until tomorrow morning at 10:00 o'clock.

FIFTY-EIGHTH DAY

MORNING SESSION.

WEDNESDAY, April 17, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. H. H. D. Sterrett, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. ANDERSON: I rise to a question of personal privilege and I would like to have the indulgence of the Convention for a few moments.

Mr. President and Gentlemen of the Convention: All have seen in the newspapers that I had received a great deal of criticism from a gentleman from Dayton by the name of McMahon. I understand he is one of the very best citizens of Dayton, a lawyer of wide experience and an excellent man, and I do not wish in anyway to be understood as saying an abusive or critical thing of the gentleman personally. It seems he appeared in the supreme court in the trial of the case of the Oakwood Street Railway Company vs. Charles E. Marker, and in the trial of that case he saw fit to make an attack upon me. I say personal, because I have the typewritten copy of just what he said. It may seem strange, almost startling, for me to make the statement that I have a stenographic report of what the gentleman said. He has stated in this that he had an idle day in Columbus—and the idle day was the day before he argued the case in the supreme court and the day was used to make some examination of the Ohio State Reports. He not only took part of that idle day in examining some of the Supreme Court Reports, but he consumed a considerable part of it in having all the newspapers notified to have their representatives present at the trial of the case in the supreme court on the following day. I would not dare make the statement if I had not verified it and did not know it to be true. I am making it in the presence of the newspaper reporters. The managers of the papers were notified to have their newspaper reporters present in the supreme court. Now there is a rule in the supreme court and I will read it. When you go in there to argue a case and stand behind the little desk provided for that purpose you will find the rules of the supreme court open this way and it is a rule staring you in the face. I will read it to you. It is Rule III:

When a cause on the general docket is argued orally, the time allowed for each side shall not exceed one hour, unless, for special reasons to be adduced before the argument commences, the court shall extend the time, but this does not imply that counsel are expected to take an entire hour in presenting their side of every case. Many cases can be adequately presented in much less time, and the crowded condition of the docket makes it highly important that argument be confined to the shortest practical limit.

The part of the rule beginning "but that does not imply" down to the end of the rule is italicized. Consequently, you see the place where this performance was

held was a place where the rules of the supreme court italicized and emphasized that those who had business there must consume as short a time as possible because of the fact that the supreme court is behind months and months in their hearings and determination of cases.

That did not seem to influence the gentleman to any great extent, and I want to say that had this personal attack been made anywhere else I would have paid no attention to it. I am an officer of the courts of Ohio because I have been admitted to practice law. Really, it is my bread and butter, and had he properly quoted me of course I could not have made any reply and would not have attempted it.

I will read you the first one of his statements:

A member of the Constitutional Convention has recently stated in that body, as an argument for robbing this court of the bulk of its jurisdiction, that he had examined thirty-four cases reported by the supreme court, in which thirty-three were reversed in favor of corporations. He supplemented the remark with the statement that it was "no poor man's court."

In other words, Mr. McMahon told the supreme court that this Convention was robbing it, the supreme court, by reason of the passing of the Peck proposal. "Robbing" is the word. Then he stated to them, using my name later on, that I said I had examined thirty-three or thirty-four supreme court cases and in those supreme court cases thirty-three had been decided in favor of corporations and only one in favor of the individual. That was an asinine remark for any one to make. There are more cases of that kind decided for corporations in any one volume of the reports, and yet the gentleman stated to the supreme court, and based his whole argument on the fact, that I had said for a period of fifteen years thirty-four cases had been decided where the rights of the individual was on one side and the corporation on the other.

This is what I stated, and you will remember it if you paid any attention to it at the time, that I was desirous of finding out to what extent, if the Peck proposal had been the law in the last ten or fifteen years, it would have made a change in a certain class of cases where the individual was on one side and a corporation on the other side and where the circuit court had been reversed by the supreme court, where in the circuit court the individual had won and the corporation lost and the case had been reported. Now in that class of cases I stated that thirty-three cases where the individual had won in the circuit court and where the individual would have received his money if the Peck proposal had been law, had gone to the supreme court, had been reversed by the supreme court and had been reported. That is absolutely correct. I further stated—and I did not know it until a week ago, when I made the examination of the reports—that in the same period and within the same volumes of the reports the supreme court had reversed the circuit court once, and only once, when

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the corporation won below and an individual lost and the case was reported. And that is absolutely correct. In other words, that was the proportion of the reported cases, where the law is made and where that law can be used in future cases, where it can be used by the attorney in his office to determine whether or not an inquiring litigant has a case. Thirty-three cases were reported by the supreme court where they reversed the circuit court—where the individual had won below and lost above—and during that same time the supreme court made the law in one case for the individual. In other words, the ratio was thirty-two to one.

Now, so that the importance of reported cases may be understood, I want to take a little time and I am sorry to have to take this much time of the Convention, which is valuable, but I am deeply interested. It means considerable to me long after this Convention adjourns if I permit an attack of that kind to go unchallenged. I want to say I have more confidence in the supreme court than the gentleman who saw fit to make the attack, because I believe the supreme court, so long as the truth is told and so long as muckraking is not resorted to, would not in any way hold that against me in the future in trying cases before them. I have that much confidence in the six men who sit over there and constitute the highest court in Ohio. But it seems that this gentleman, having a very desperate case, and I will get to that in a minute, saw fit to try to curry favor with them to influence them by fulsome praise and by coming out unsolicited as a defender of the supreme court when it needed no defense. He hoped that this case, in which he was interested, might be decided in his favor. But to go back to the importance of reporting cases.

Assume for the sake of argument that my friend Donahey's boy runs down to one of the turn tables in the railroad's yard near Donahey's house. The boy is with other boys; he is of a playful nature and he gets upon the turntable; the other boys turn him and it swings and catches the boy's leg and crushes it and the boy loses his leg. The railroad company has known for a long time before that the children would congregate there and use that turntable. They had not expended a dime for the purpose of locking it. They took no precaution and exercised no care in protecting the children. Suppose Donahey was to come to me and tell me the facts. I would say "I will look up the law" and I would pick up "Thompson on Negligence—

Mr. TAGGART: I rise to a point of order.

The PRESIDENT: The gentleman will state his point.

Mr. TAGGART: The point is that one member of the Convention can not arrogate to himself all the time of the Convention in an endeavor to vindicate himself.

The PRESIDENT: The president will rule that the member is in order, but is speaking under the rule which limits addresses of this kind to fifteen minutes unless the Convention extends the time.

Mr. TAGGART: I would respectfully appeal from that decision.

Mr. ANDERSON: If that is the desire of one member of this body, I do not wish to be heard. If the gentleman will permit me, however, it means a great deal to me as a lawyer.

Mr. HENDERSON: I move that the gentleman's time be extended.

There were several seconds.

Mr. ANDERSON: Here is page after page of abuse, not only of myself, but of the Convention. But I am not trying to defend the Convention.

Mr. RILEY: Has that been published?

Mr. ANDERSON: All over the country there have been extracts made from it.

Mr. RILEY: But has that been published?

Mr. ANDERSON: No.

Mr. TAGGART: Was my appeal put?

The PRESIDENT: Was there a second to it?

Mr. MARRIOTT: I seconded it.

The PRESIDENT: The point of order is made. The president rules the member from Mahoning [Mr. ANDERSON] was in order and an appeal was taken. The question is, Shall the decision of the president be sustained? As many of you as are in favor of sustaining the decision of the president will say aye and the contrary no.

The decision of the president was sustained.

Mr. ANDERSON: I will read only from the part the newspapers have sent broadcast.

Mr. DWYER: I would like to ask the gentleman from Mahoning if that turntable case is not a very old case, decided years ago?

Mr. ANDERSON: No; it is in 77 Ohio State.

Mr. DWYER: You are going back into past history?

Mr. ANDERSON: I will not use that. All I wanted to say is that these United States reports before me are reports going back to 1874.

Mr. DWYER: Was not the torpedo case decided since then?

Mr. ANDERSON: Yes; I am familiar with that. The point I was making was the importance of reporting decisions. All of these cases laid down under the circumstances stated, where the little boy was injured by lack of care, that the boy's father or next friend or guardian could recover damages, yet in 77 O. S., page 243, it was held, although the policy, just as Judge Dwyer suggests, had been up to that time held in the torpedo case that the boy could not recover, that the railroad company owed him no duty. The point I make is that settles the law in Ohio in all the other cases where children are injured, and thus the importance of a case being reported.

Mr. DWYER: Now, will you pardon me? I would like to suggest that under the Ferguson law that made the legislature in this state a nuisance for years in passing special legislation and holding it general, that if the supreme court had not reversed itself and held those laws unconstitutional—

The PRESIDENT: The gentleman's time is up.

Mr. LAMPSON: I move that we extend his time.

On motion the time of the gentleman was extended.

Mr. ANDERSON: Judge Dwyer, my time is limited.

Mr. DWYER: I just wanted to ask if the supreme court had not entirely reversed itself in the Ferguson case?

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Mr. ANDERSON: Yes, and it ought to have done it long ago. That was on the question of class legislation with reference to cities.

Mr. PECK: Was not the trouble under that induced by the original rule, which was wrong?

Mr. ANDERSON: Yes; I did not care to go into that. The supreme court was responsible for the very situation and it had to remedy it at last.

The gentleman says in this report that he had gone over these reports in an "idle day." If he had taken time in that "idle day" to have spoken to any one of the gentlemen from Montgomery any one of them could have obtained a typewritten copy of my speech, and he could have found what I did say, and consequently his criticism could not have been made with reference to myself or the Convention. It stated this, and I have taken an extract from the typewritten copy. Mr. McMahon stated that I had made an attack on the floor of this Convention on the supreme court because I said it was controlled by outside influences and returned judgments because of influences on the outside. This is what I stated:

Mr. ROCKEL: Do you mean to say that the supreme court is influenced in some way?

Mr. ANDERSON: I certainly do not mean to say that they are affected in any way by any outside influence, but I do want to say, for if I did not answer you it might be said that I could not, that I have represented individuals for twenty years in all kinds of courts and in ninety per cent of such cases I have been on the side of the individual fighting a corporation. I do not deserve any credit for it; I got paid for it. My employment has necessarily caused a habit of thought and I admit that I am prejudiced. It could not be otherwise, and I could not divest myself of that habit of thought or that prejudice by being elected judge and going upon the bench. I would be inclined to see all of the circumstances in a favorable light to the plaintiff's interest, or in trying to be fair, knowing my prejudice, I would lean too far the other way. But I believe, notwithstanding my habit of thought and my prejudice, notwithstanding my over twenty years on the side of the individual, I could be as fair on the bench as any man who had twenty years or more training on the side of the corporation.

Mr. ROCKEL: Then we have put the wrong kind of men on the supreme bench?

Mr. ANDERSON: If you agree with me that I would be the wrong kind of a man to be placed on the bench, then you must agree with me that men of long corporation training, men who have specialized in favor of corporations, are also the wrong kind of men to place on the bench.

If that be an attack on the supreme court, I made it, but if it is true that men must respond to their environment, if they must become part of it, then it is not an attack upon the supreme court. The gentleman in the newspaper stated that the jurors are sympathetic to a degree that warps their judgment, and judges, in view of the assaults of socialists and labor unions, lose their nerve, and it is left to this tribunal to finally dispose of the case on its merits and according to law.

In other words, Mr. McMahon told the supreme court the jurors could not be trusted; that they were warped by sympathy and could not return a fair verdict; that a judgment in a common pleas court and the judges on the common pleas bench were not fair; that they were influenced by socialists and labor unions; that the judges on the circuit court bench were influenced by socialists, labor unions and the common rabble, and consequently the only place he could get justice was in the supreme court.

Now, a word upon the kind of case the gentleman was representing. Six years ago this May a man by the name of Marker was crippled for life while working for the street railway company in Dayton. He was told by a man named Disney to go in between the tracks and couple a car to the one he, Disney, was on. Marker got in there to make the coupling, and Disney, because he was drunk, ran the other car down and crashed into him and made him a cripple for life. Six years ago this coming May that accident happened. It was shown by six witnesses—I wish I could go into the record; I have read it carefully—it was shown by six witnesses that this man Disney had been in the employ of the railway company for a long while; that he had been a drunkard and was drinking around his work and frequently was so drunk that he couldn't perform it; that this drunken condition was known to the president of the road long before the accident happened; that the president permitted that drunken man to work there and by reason of the condition of that drunken man Marker was injured for life.

Mr. MARRIOTT: Was the case you are referring to decided?

Mr. ANDERSON: No; it was just submitted the other day.

Mr. MARRIOTT: What can be your idea in referring to the facts? Are you anticipating the supreme court will affirm the lower court?

Mr. ANDERSON: No; I have no interest in the outcome of the case at all. I make this point: I have read from that which Mr. McMahon said before the supreme court where he stated that the judges below—there were several of them—could not be trusted with the trial of the case, and further that the common pleas judge who had decided against the corporation lost his nerve because of socialists and labor unions; that the circuit court which had decided against the gentleman could not be trusted because they had lost their nerve owing to the rabble, and he said they had lost their nerve because they decided the street railway company was to blame for retaining in its employ this man who had been repeatedly drunk around his work and whose drunkenness and insobriety were known to the president long before Marker was injured for life. That is the point I am trying to make.

In conclusion, I want to say this, because I shall not have an opportunity to go into this as I wish: If any attack is made upon any of you men I shall help you, if that attack be unjust, instead of trying to prevent a proper explanation being made. I thank you.

Mr. HALFHILL: I would ask the indulgence of the Convention on the same matter of privilege.

Mr. JOHNSON, of Williams: I would like to ask a question, Mr. President—

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The PRESIDENT: The gentleman from Allen [Mr. HALFHILL] has the floor.

Mr. HALFHILL: I have the floor.

The PRESIDENT: Does the gentleman make a point of order?

Mr. JOHNSON, of Williams: I would like to ask a question, with the gentleman's permission.

Mr. HALFHILL: I do not care to yield.

The PRESIDENT: The gentleman does not yield.

Mr. JOHNSON, of Williams: I would like to ask him a question before he begins.

The PRESIDENT: The gentleman from Allen has the floor and he can not be interrupted save on a point of order.

Mr. JOHNSON, of Williams: I do not want to make a point or order, but I believe this whole matter is out of order. Still I will not make the point.

Mr. HALFHILL: The only reason I ask the indulgence of the Convention upon this particular point is that in a report of a short debate upon an amendment to Proposal No. 184, which occurred during last week, I referred to the statement of the gentleman from Mahoning and I characterized it in language that was equally forcible, if less elegant than that of my friend Hon. John A. McMahon, as shown by the records of the Convention. I was not called to account for that at the time, and I expressly used the words that the argument of thirty-three cases that were cited here as decided in favor of corporations and one against, in a specific number of reports, without stating the further fact of all the hundreds of cases that were decided against corporations, reported and unreported, was a slander upon the supreme court of Ohio. Now if I state a thing like that in open debate in this Convention and am not called to account for it, or it is not in any way refuted, I should not stand here and listen to a charge against a man like John A. McMahon, who has no peer in the state of Ohio as a lawyer, and not say a word in his behalf.

Mr. PETTIT: Mr. President, it is apparent that the gentleman is not rising to a question of personal privilege.

Mr. HALFHILL: I insist it is a question of privilege and I intend to read into this record what I said.

The PRESIDENT: Does the gentleman make a point of order?

Mr. PETTIT: Yes. It appears from the gentleman's statement that he is not appearing here and addressing us now in his own behalf, but on behalf of Mr. McMahon.

Mr. HALFHILL: The reflection in the address this morning is a reflection on me, and that is why I rise to a question of personal privilege. If in discussing this subject I must discuss Mr. McMahon incidentally, I see no objection to it. Now, I want to read—

Mr. PETTIT: I insist on my point of order. . .

The PRESIDENT: The president will rule that the gentleman is in order, but is speaking under the rule that limits his address to five minutes.

Mr. HALFHILL: I want to read a portion of Mr. McMahon's address that is applicable to my own statement made to this Convention after the preliminary statement that was read by Mr. Anderson. He said:

Before proceeding to figures let me state a few preliminary facts, necessary to their proper understanding.

Our reports of cases decided in this court contain two classes. One class embraces cases that are fully reported. These are cases that are, as a rule, reversed, and the court gives its reasons for overruling the lower court. The other class embraces decisions in which the court, as a rule, gives no opinion. These cases are generally cases in which the supreme court affirms the lower court without report giving its reasons.

The fully reported cases are generally under the practice of the court, cases in which the lower courts are overruled. In order to arrive at the work of this court, however, one should consider all the cases decided by it, not merely those reported in full.

That is just the language that I used.

And it is in the failure to put the two classes of cases together that Mr. Anderson has insidiously (I wish I could say innocently) spread abroad a base slander upon the members of this court.

Mr. ANDERSON: The gentleman says that is just the language he used. Have you read a report of what you said?

Mr. HALFHILL: I have, practically.

Mr. ANDERSON: You have not stated it. I have it before me. You didn't make that statement. I say it flatfooted. You did not do it.

Mr. HALFHILL: I say that practically I did.

Bearing in mind the above explanation let us look into the last three volumes of the reports of this court. They are volumes 82, 83 and 84, beginning with the January term of 1910.

In volume 82 there are thirteen fully reported cases in which corporations, big and little, were interested. In three of those the corporation lost. In one corporations were on both sides. In the others a corporation won.

But when you examine the decided but unreported cases in which corporations, big or little, figured, you find that the corporations won forty-four, but lost forty-eight.

In volume 83 we find eleven fully reported cases in which corporations were interested. The corporation won eight but lost three.

But when you turn to the decided but not fully reported cases, you find that the corporation won twenty-nine but lost fifty-two.

In volume 84 we find thirteen cases fully reported in which corporations were interested. The corporation won in seven, lost in three, and in the eleventh both parties were corporations.

When you turn to the decided but not fully reported cases we find that the corporation won in twenty-six but lost in thirty-nine.

Mr. ANDERSON: Will you permit me to read just what you said?

Mr. HALFHILL: I will read it if I can find it.

Mr. ANDERSON: It is not there, not anything like it. It is entirely plain and you are deliberately stating something that is not true.

Mr. HALFHILL: Now I will prove it.

Mr. ANDERSON: I mean just what I say.

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Mr. HALFHILL: I say I will read it if I am given time to do it.

Mr. ANDERSON: Don't you want to do right—won't you read it now?

Mr. HALFHILL: Certainly.

Mr. ANDERSON: Then read it and show what it was.

The time of the gentleman here expired.

Mr. LAMPSON: I move that the gentleman's time be extended fifteen minutes.

Mr. ANDERSON: I second that motion.

The motion was carried.

Mr. HALFHILL: This is not the matter at all. This is not what I referred to in my remarks a while ago.

Mr. ANDERSON: Will you not do me the justice to read this?

Mr. HALFHILL: That is not what I refer to at all.

Mr. ANDERSON: Could there be any mistake?

Mr. PECK: I think this whole matter is out of order. I do not believe in any of this proceeding. I propose to offer a rule that hereafter no member shall be allowed to rise to a question of privilege on anything said outside, and if he proposed to raise a row about anything said in the Convention it must be done the same day. This thing of bringing personal controversies in here and occupying our time is too much of a waste of time and is an outrage upon the rest of us.

The PRESIDENT: Does the member make a point of order?

Mr. PECK: Yes; I make it now.

The PRESIDENT: The point of order seems to be the same point that has heretofore been made, that it is not a question of privilege. The president has ruled that it was, but would be glad to hear an appeal from the decision so the Convention could decide the matter.

Mr. PECK: I certainly think you are wrong.

The PRESIDENT: Does the member appeal from the decision of the chair?

Mr. PECK: I certainly do.

Mr. HALFHILL: My time has been extended.

Mr. DOTY: As a general proposition we are all in sympathy with what Judge Peck says. The statement of the member from Allen [Mr. HALFHILL] has been challenged right here now, and I for one do not propose to vote to prevent the member from Allen from either correcting the statement he has made or answering the charge made against him.

Mr. PECK: I don't think there was any charge made against him. He volunteered in defense of Mr. McMahon.

Mr. WINN: I rise to a point of order.

The PRESIDENT: There is a question before the Convention.

Mr. LAMPSON: I moved that the gentleman from Allen be given fifteen minutes of the time and it was accorded him.

Mr. DOTY: I have the floor to talk to the appeal.

The PRESIDENT: The member has the floor.

Mr. DOTY: I want to call attention to the exact situation we are in. As I heard the matter—I may be mistaken—the member from Allen [Mr. HALFHILL] made a statement and the member from Mahoning challenged the truthfulness of that statement.

Mr. WINN: When was the last statement made?

Mr. DOTY: Just a moment ago.

Mr. WINN: Is that a question of privilege?

Mr. DOTY: The thing is in such shape that I do not want to withhold from the member of Allen the opportunity to answer that charge.

Mr. WINN: I understood the member from Mahoning [Mr. ANDERSON] rose to a question of personal privilege and undertook to defend himself against an attack made upon him by some person some other place than in the Convention. Then the member from Allen [Mr. HALFHILL] rose to a question of personal privilege and his claim of personal privilege is one to defend the supreme court. Is that right?

Mr. DOTY: I want to answer the member.

Mr. PETTIT: That is all it is.

Mr. DOTY: The whole matter has gotten along further than that. The member from Hamilton [Mr. PECK] has made a statement that the whole thing should not have been allowed, but it was allowed and the member from Allen [Mr. HALFHILL] has gotten to a place where his present statement is challenged here and now. I do not know which is right, but I believe the member from Mahoning [Mr. ANDERSON] thinks the member from Allen [Mr. HALFHILL] should have a right to answer that challenge.

Mr. WINN: But do you understand the member from Allen has the floor upon the claim of the right to do so as a matter of personal privilege?

Mr. DOTY: That is true, of course.

Mr. WINN: And the challenge of that personal privilege is made by appeal?

Mr. DOTY: The member has not stated it exactly right. We are up against this situation right here and now, no matter what else can be said. He did have the floor and it was on a question of personal privilege. There is no question about that, and now his statement is challenged, and we are going to listen to his vindication. I don't think we ought to cut him off.

Mr. LAMPSON: The gentleman has been given by a vote of the Convention fifteen minutes in which to state his question of privilege and the only ruling the chair can make is to confine him to a statement of privilege.

The PRESIDENT: The point of order has been made that the member proceeding under this rule is out of order.

Mr. LAMPSON: The chair can confine him within the rule, but he has his fifteen minutes. The president has ruled that the member is in order, but an appeal has been taken from that decision.

The PRESIDENT: Yes, and the question is now only whether the decision shall be sustained.

A vote being taken and a division being demanded seventy-two rose in the affirmative.

The PRESIDENT: The chair is sustained. The member from Allen has the floor.

Mr. STOKES: The members of this Convention are here to transact business. I, therefore, move that this matter be made a special order for Friday afternoon at two o'clock.

The PRESIDENT: The member from Allen has the floor.

Mr. HALFHILL: Gentlemen, this is the matter I had in mind which I asserted upon the floor of this Convention and which I thought was a matter that demanded

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of me some statement here this morning. I said I had practically stated what the Hon. John A. McMahon had stated in the supreme court and for which he is taken to task. I did so state and I now refer to page 4335 of the transcript of the official reporter, in which the gentleman from Mahoning, who had just left the floor, asked me some questions on a matter then pending, and in answer to those questions I said:

And the question that has gone through the courts of Pennsylvania or any other state of the Union cuts no figure in the discussion and is quite beside the point. This is the sovereign state of Ohio and you are making fundamental laws for it, and I point to a condition which seems to me ought to be apparent to any man who is not biased or prejudiced to the extent of desiring that the supreme court of the state of Ohio should be shackled by a rule that should not be inflicted upon any court. What this proposal ought to do is to fix the rule that a majority of the courts shall control, and I say unless you do it, you will live to see the day when this hysteria, this attack upon the courts, made here, will be a thing to rise up and plague you. It is the courts of Ohio and courts of the country that we owe the liberties of the country. They protect the liberties of the country and the rights of the individual. And these cases that have been cited here, some thirty in number, to show that individual rights have been transgressed by the supreme court of Ohio are a slander upon the courts of the state of Ohio unless you take into account the hundreds of other cases where the rights of the individual have been fully and fairly protected by holding statutes unconstitutional, and I can cite a number of them right here in these reports.

Now upon that point I claim that the assault made here upon McMahon is an assault upon me as a member of the Convention and it should have been answered in debate if I was not right, and inasmuch as I am correct in that I made that statement in debate I believe it is within my rights and privileges to make the remarks I have made. I thank the Convention.

Mr. ANDERSON: Will the gentleman read the full explanation of the question which occurred in debate when you asked the question? Will you not do me that justice? Will you read this? [Handing the member from Allen some papers.]

Mr. HALFHILL: Certainly.

Mr. ANDERSON: I was not speaking about that at all.

Mr. HALFHILL: This is entirely another portion of debate.

Mr. ANDERSON: Will you read it?

Mr. HALFHILL: I will not. It is entirely another portion of debate.

Mr. KING: I move that we proceed with the regular order.

Mr. PIERCE: I move a reconsideration of the vote on Proposal No. 62.

Mr. DOTY: I second the motion.

Mr. WOODS: Gentlemen of the Convention: I want to call your attention to the statutes of Ohio on this proposition as they are, right now. First, I want to make

the point that I made yesterday that this is purely a statutory matter. There is not a thing in the constitution about the matter. It is all taken care of by statute. Now if you put a provision in the constitution that capital punishment shall be abolished, where are you going to leave our present criminal statutes? For instance, take section 12400 of the General Code, which provides:

Whoever, purposely, and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate rape, arson, robbery or burglary, kills another is guilty of murder in the first degree and shall be punished by death unless the jury trying the accused recommend mercy, in which case the punishment shall be imprisonment in the penitentiary during life.

Are you repealing part of that section and leaving the rest of it in existence? This is a matter you want to think about. We want to leave the statutes of this state in such shape that we can prosecute men who commit murder. Every attorney here knows that whenever we try a man for murder it is a technical crime and you have to prove every element of your case to the exclusion of a reasonable doubt. Now you are going to have a mix-up in every trial and a statute conflicting with the provisions of the constitution. I say to you, and I am willing to submit it to the fairness of any lawyer in the body, if you abolish capital punishment it should be done by statute and not by the constitution. You will make an awful mistake when you do it in the constitution.

Mr. LAMPSON: Suppose this were submitted to the people and the people vote on it the first of September next and adopt it. What would be the condition of criminals charged with murder in the first degree between the first of September and the time the legislature would meet?

Mr. WOODS: I don't know what the condition would be, but the first man convicted for murder in the first degree would raise the point and probably would get off by it.

Mr. THOMAS: Can that not be taken care of in the schedule?

Mr. WOODS: I don't know. You are dealing with something different. Every lawyer knows it only takes a little doubt in a murder case to bring about an acquittal by the jury. Now I want to call your attention to the present condition of the statutes in Ohio. Just remember what we have to prove in this state in order to convict a man of murder:

1. That the person assaulted is dead.
2. That the person alleged was the person killed.
3. That the accused struck or assaulted the deceased at the time and place alleged.
4. That the striking was with the instrument alleged in the indictment, or with any other instrument capable of producing death in a similar manner.
5. That death was caused by the blows inflicted by the accused.
6. That the accused did the act purposely and of deliberate and premeditated malice.
7. Venue.

And everyone of those you have to prove beyond a reasonable doubt. I submit to you, gentlemen, that the

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statutes of this state simply go to the utter limit, the clear limit. You can not electrocute me for committing murder in the state of Ohio under existing law unless I deliberately plan it all out beforehand to murder somebody. I have got murder in my heart, and I have had it there for some time. It has all been planned. The word "deliberate" is used in the statute and I submit to you, gentlemen, that the Constitutional Convention of Ohio in 1912, ought not to deliberately put something in the constitution that is a statutory matter in order to save the lives of men who will deliberately plan to take the life of another.

Mr. FACKLER: I think the proposal should be changed in a slight form. If we adopt it as it is and what we do is ratified, all criminals charged with first degree murder could not be punished until the legislature fixed the punishment for the crime. If this proposal is reconsidered I have an amendment to submit which I think will remove that objection, and will make the punishment for first degree murder the same as that provided now when a recommendation for mercy is given.

Mr. WINN: I want to call your attention to section 1 of the schedule of the constitution of 1851, and I think it is manifest to every person that something similar to this must be enacted by this Convention. That section reads as follows:

All laws of this state, in force on the first day of September one thousand eight hundred and fifty-one, not inconsistent with this constitution shall continue in force, until amended, or repealed.

Therefore you can see that before we conclude our work here we must of necessity pass something to keep in force the laws now in force; otherwise most of the proposals already agreed upon would create great confusion. I think the objection of the member from Medina [Mr. Woods] should not have any weight here because eventually in taking care of all the other proposals we will of necessity take care of this one by providing that the laws shall continue until the legislature shall alter them.

Mr. TALLMAN: I am opposed to tying the hands of the legislature as long as this constitution shall stand. I think legislatures that meet after the adoption of the work of this Convention—at least some one of them—will have a chance, whenever there is a great public demand, to do away with capital punishment. That public demand has never yet in my judgment arisen, and in my judgment it is extremely foolish for us to assume that this Convention can legislate, because it is nothing but a matter of legislation which the legislature could pass. The legislature could pass a bill similar to this proposal at any of its sessions within the next thirty, forty or fifty years. They would have it in their own hands. What you propose to do is to tie their hands so that no matter what the circumstances or condition may be in the future they can not act. Now what condition way arise? Even when we have capital punishment mobs often take the law into their own hands. How much more readily will they do it in aggravated cases where there can not be capital punishment inflicted by law? I say mob rule will increase one-half.

Then again why should the state burden itself with the care of a man who deliberately and premeditatedly takes the life of his fellow man. Why should a taxpayer keep him in durance vile and be at the expense of his board, at the expense of taking care of him in some way, in order to protect society? That time has not arrived yet and I don't think it ever will arrive.

Mr. MARRIOTT: Would not your argument apply as well to a man who commits burglary? Why should we take care of and board and feed and confine a man who commits burglary?

Mr. TALLMAN: A man doesn't have to commit burglary with premeditation. Here is what I object to: It being so thoroughly a matter of legislation, why do we arrogate to ourselves that this one hundred and nineteen members know more of the circumstances and conditions of society, and what society will need for the next thirty or forty years, than any legislature that will convene in all that time? Why should we tie the hands of the legislature during all that period? Have we all that superior wisdom?

Mr. KRAMER: Is not that whole section there purely legislative? Is not this legislative: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and inhuman punishment inflicted, nor shall life be taken as a punishment for crime," etc. Is not that part we are attempting to add directly in harmony with all the rest of the section?

Mr. TALLMAN: It is in a measure legislation, but it establishes the principle that for the minor crimes bail can always be given and that right can not be cut off by the legislature. It is elementary in its nature, and for that reason is not legislative although it is found in legislation, and it takes care of the rights of innocent men who were kept out of prison before trial.

Mr. BROWN, of Highland: I used to feel, taking a broad view of the matter, that it was more humane to abolish punishment, until recently, when I began to study the matter. Since then I have changed my mind. In view of the statute requiring such an overwhelming proof of guilt that it is practically impossible to convict an innocent man of murder in the first degree, I believe we are perfectly safe so far as conscience is concerned, and I think there are many criminals in this state and in many states who would make it a business to submit to impulse to murder inherent in their characters if they knew there was no punishment for it beyond imprisonment for life. I believe we ought to have some way of adequately repressing unrestrained impulse to murder.

Mr. WINN: Do you think a provision of a statute or of a constitution inflicting a death penalty would have deterred that negro from committing that crime?

Mr. BROWN, of Highland: I think the negro under our constitution would indulge his proclivities—

Mr. WINN: What is your notion about what stimulated him?

Mr. BROWN of Highland: His natural depravity, the very thing we are trying to guard against and rid ourselves of, the untrammelled use of the impulse of natural depravity to commit murder.

Mr. HARRIS, of Hamilton: "Vengeance is mine" saith the Lord. I trust that this Convention will make the proposal of the member from Butler [Mr. PIERCE] part of the fundamental law so that it may be a clarion

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cry to our sister states, who have not adopted similar measures, and to the civilized world that the Fourth Constitutional Convention of Ohio is not only progressive in matters political, but is also progressive along the lines of broad humanity and that greater civilization which is touching us. To hold man responsible on account of his environment, or by reason of heredity or by reason of some creative power for which he was in no way responsible and can not control, though the individual man may be a brute, is not humane, and it is time that society refuses longer to be brutal. All of the statutes of the world will not prevent a man whose brain is beyond his control from committing crime, nor will they deter any of the other individuals sufficiently weak from committing crime. A civilized state ought to say that on account of the individual's mental weakness, and on account of the creative power to which he did not contribute and which he can not control, it will refuse longer to act as the carnivora by taking human life. Let us discard the brutality of judicial murder and show that we are really and truly created in the image of God.

Mr. READ: I would like to say in corroboration of the gentleman from Hamilton [Mr. HARRIS] and in opposition to the gentlemen from Medina [Mr. WOODS], Belmont [Mr. TALLMAN], and Highland [Mr. BROWN], who regard this as not being a constitutional matter, that it is a fundamental principle. The statute law deals with details and we will arrange for these afterwards, but here we are laying down the fundamental principle that belongs to the constitution. It is just as fundamental as the other part of the clause about bail and punishment, etc., which are found in the old constitution.

It is my judgment that no one proposal the Convention can pass will be more commendatory of its wisdom or greater proof of its progressiveness than the passage of this proposal to abolish capital punishment.

It is repugnant to the moral sense, debasing to the nature of man, to stain his hands with the life-blood of his fellowman. The sacredness of human life and the safeguards which should be thrown around it to protect it from the murderer require the most careful and stringent provisions. It is well that the wisdom of the ages should be invoked to help blot out this iniquity.

It is not true that capital punishment deters from the commission of crime. The sight of a dozen scaffolds or a hundred electrocuting chairs will not prevent a man from committing murder. That has been the experience and is the statement of those who have charge of prisoners and who know much more than we do about this matter.

It is an important question—What shall we do with the depraved wretch who, in anger, with malice, or from fear, cruelly kills his victim? Shall we in turn kill him and descend to his depth of infamy? Or shall we consign him to the gloom and monotony of prison life that he may drag out a miserable existence, held by the chains his own misdeeds have forged, where, conscience-stricken, forsaken and doomed to hard labor, he may work out the effects of his wrongdoing until his forfeit is paid? Is it not better that he should thus pay the penalty of his crime than the state, in cool and deliberate repetition of his crime, should murder him?

For the state of Ohio to discard a practice that imposes a demoralizing function on the executors of its law would be to remove a great stumbling block from the legal pathway to a broader justice and more advanced civilization.

We read in the archives of the past that the earliest forms of punishment were prompted by the idea of vengeance, but as broader and wiser views of life and the causes leading to law violations became better understood, the idea of retaliation and retribution began to make way for the theories of prevention and reformation. Now it is well established in the minds of philanthropic, thoughtful men that the chief aim of all punishment should be reformation, not revenge.

The advocates of capital punishment sometimes quote to us from Holy Writ that "Whoso sheddeth man's blood by man shall his blood be shed." It should be borne in mind that this was merely a primitive and local regulation, a sort of license granted the friends of the dead victim to slay the slayer. It was superseded later, repealed, as it were, 850 years later, by a fundamental law, a command by Jehovah. It was given out on Mt. Sinai, in one short, distinct, decisive, imperative sentence, to Israel and to all the world. There was no exception made. It was sounded in thunder tones, midst fire and smoke to all the people and to all generations of men. To the individual, to the prosecutor, to the judge and jury, the highest tribunal of the land, the Lord said "Thou shalt not kill."

Will you, dare you, in defiance of divine decree thwart the purpose of the Almighty and arrest the development and redemption of a human soul? It is well that the magnitude of the responsibilities you ask the state to assume in taking a human life should give you pause.

Mr. PECK: I move the previous question.

The motion was carried.

The PRESIDENT: The question is, Shall the vote by which this proposal failed to pass be reconsidered?

Mr. WOODS: I move to lay that motion on the table.

Mr. DOTY: The previous question has been ordered.

The VICE PRESIDENT: The point is not well taken. The motion to lay on the table was lost.

The VICE PRESIDENT: The question now is, Shall the motion by which the proposal failed to pass be reconsidered?

The yeas and nays were regularly demanded; taken, and resulted—yeas 68, nays 39, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Kramer,
Antrim,	Farnsworth,	Kunkel,
Baum,	Farrell,	Lambert,
Beatty, Morrow,	FitzSimons,	Leete,
Beatty, Wood,	Fluke,	Leslie,
Beyer,	Fox,	Malin,
Bowdle,	Hahn,	Marriott,
Brown, Lucas,	Halenkamp,	Miller, Crawford,
Brown, Pike,	Halfhill,	Miller, Ottawa,
Campbell,	Harris, Hamilton,	Moore,
Cassidy,	Harter, Huron,	Nye,
Cody,	Harter, Stark,	Peck,
Crosser,	Hoffman,	Pettit,
Davio,	Holtz,	Pierce,
Doty,	Hoskins,	Read,
Dunn,	Hursh,	Redington,
Dwyer,	Keller,	Smith, Geauga,
Earnhart,	Kilpatrick,	Solether,
Eby,	Knight,	Stamm,

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Stevens,
Stillwell,
Taggart,
Tannehill,

Tetlow,
Thomas,
Ulmer,
Weberbrecht,

Winn,
Wise
Mr. President.

Those who voted in the negative are:

Brattain,
Brown, Highland,
Collett,
Colton,
Cordes,
Crites,
Cunningham,
DeFrees,
Donahey,
Elson,
Evans,
Harbarger,
Henderson,

Johnson, Madison,
Johnson, Williams,
Jones,
Kehoe,
King,
Lamson,
Lonostreth,
Ludey,
Mauck,
McClelland,
Miller, Fairfield,
Norris,
Partington,

Riley,
Rockel,
Roehm,
Rorick,
Shaw,
Smith, Hamilton,
Stalter,
Stewart,
Tallman,
Wagner,
Walker,
Watson,
Woods.

The motion was carried.

The VICE PRESIDENT: The question now is on the adoption of the proposal.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

After line 13 add the following: "Until otherwise provided by law, persons convicted of crimes heretofore punishable by death, shall be punished by imprisonment in the penitentiary during life."

Mr. McCLELLAND: I hesitate to enter upon the discussion of legal matter for fear that a farmer and ex-minister might make the same mistake in discussing law that the lawyers do when they attempt to discuss a biblical question. After listening to the discussion of the Bible by lawyers I was reminded of what Robert Burns said:

"Some books are lies
Frae end to end
And some great lies
Were never penned
E'en meenisters, they hae been kened
In holy rapture
A rousing whid at times to vend
And nail't wi Scripture."

That was humorous about the ministers because they don't so often make mistakes, but if Burns had been here yesterday and listened to the lawyers attempting scriptural quotations he might have put that same idea of his in poetical phrase and said:

E'en lawyers, they hae been kened
In legal rapture
A rousing whid at times to vend
And nail't wi Scripture.

But that would have been too near the bald facts to be humorous. It is a little surprising when the legal fraternity come to use scriptural arguments to see the perfect confidence which they assume that they understand the Scripture beyond dispute.

I shall not enter into any scriptural argument. There is not time for it in ten minutes, and where it was used for nearly half an hour, as it was yesterday, you could not expect to answer it in five or ten minutes, but the statements were made with such abandon, with such exaggeration, and with such freedom from accuracy as to be of little value it seems to me. But further than that, it was argued we are compelled to take this step and adopt this proposal in order that we may be progres-

sive as told us yesterday. Now there are five states that have made this progressive step, and I think it was stated that all of the five adopted it over fifty years ago. The other forty-three states of the Union do not believe in it and have not adopted it, because they have not seen that it worked advantageously or was a wise provision in those states where it has been adopted. It seems to me it is rather hasty for us to assume that we are in the line of progress when those who have done it did it more than a generation ago, and the results there, even according to the quotations from letters of governors, gave, not judgment in regard to the provision of the constitution there, but their personal opinions only, and that without any chance for observance or comparison.

The question is not merely whether it is well to abolish capital punishment. I am not sure, were this a legislature and I had the honor to sit in the body and a bill was before the legislature to abolish capital punishment, that I should not vote for it. It appeals to me as to every kindly man in its behalf. There is a strong sentiment in its favor, but that is one thing and it is another thing to tie up the legislature for all time to come by a constitutional prohibition.

The legislature next winter can pass a law which will abolish capital punishment, and then if the state finds in the near future that it is not working well, that it is not producing good results, that mob law increases instead of diminishing, they may find it desirable to repeal the law, but if we put it in the constitution it can not be repealed.

Mr. EVANS: There are not as many people hung as ought to be. The number ought to be increased instead of diminished. I have visited in Pulaski and Carroll counties, Virginia, and I am acquainted with those people, and I am familiar with several characters which were in the terrible tragedy at Hillsville. I knew Judge Massie very well and knew him to be an upright, honest man, and everything that could be desired of a citizen. He was shot down in cold blood, and I believe that in a case of that kind to let a man off with his life would be abominable. The state of Ohio has been in existence one hundred and ten years, and we have had a fixed policy as to crime, that we leave the detection and punishment of it to the legislature. We have done that since 1802, and I am proud of the state of Ohio because there is no crime defined in the constitution. I am opposed to limiting or qualifying the police power of this state in this organic instrument we are about to make. The matter of defining and punishing crime ought to be left entirely to the legislature. I think it was all well enough to change from hanging to electrocution, but I am in favor of the retention of capital punishment. I say, don't let us mar the record of this Convention by putting anything in the constitution that infringes the exercise of the police power by the legislature. We should not limit the police power in the slightest degree. Let us keep up our proud, honorable history as a state in that respect. There was a great deal of mawkish sentiment manifested in this Convention about the question of woman's suffrage, and there was much more manifested on the question of capital punishment. I believe if a man commits crime he should be punished. I fully agree with the sentiment which would so manage society and its affairs as to prevent the commission of crime, but this Convention has frowned down on that method. I want to

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do away with this vote selling and vote buying. I thought it would help to do it if we had made an educational qualification for suffrage.

I considered that would be progression in the right direction, but you turned that down, and for the next hundred years we will have to deal with these people who sell and buy votes, and will have to be governed by political bosses who deal with us at their pleasure.

Now don't let us make another mistake. We made a mistake there and condemned ourselves to the rule of bosses and to buying and selling votes in perpetuity. Now let us in this particular follow the policy of the state for a hundred and ten years and not change it.

Mr. PECK: I again move the previous question.

DELEGATES: No.

Mr. PECK: If you want some more talk then I will withdraw it.

The PRESIDENT: The previous question has been regularly demanded, and we will take a vote on it.

The motion was lost.

Mr. DOTY: The mistakes of the Convention as viewed from Scioto county are somewhat like the mistakes of Moses—some of them never happen. The mistake to which the member from Scioto [Mr. EVANS] adverts and about which he is very much concerned, is not a mistake unless others of us agree as to restricted suffrage. If the member from Scioto has any idea or feeling that the votes of people can be purchased because they have not a school education, that is another matter. But I don't understand that anywhere in the state of Ohio the people convicted of vote selling have been particularly ignorant. Sometimes they were not.

But to come to this question: I have observed in the short time that I have been on earth that there is an element in the enforcement of law which seems to have been overlooked, and I don't think it is a question of religion or the interpretation of the Bible or the tremendous showing of what the lawyers have done for humanity. I think it is a question of whether the laws are certainly executed.

The member from Shelby [Mr. PARTINGTON] gave some statistics yesterday that are to my mind a very strong argument in favor of the abolition of capital punishment. He did not use the statistics to that end, but so far as I could judge they did not fit in with the able argument he made in support of his contention.

Mr. WOODS: Do you not think there is a whole lot of other criminal statutes that ought to be repealed?

Mr. DOTY: Yes.

Mr. WOODS: Then start in and take them all out.

Mr. DOTY: Start in and if it is right I will vote to take them out and if it is wrong I won't. The member from Shelby [Mr. PARTINGTON] pointed out that one murderer out of three in England was executed for his crime, whereas in this country not to exceed one to one hundred or one to eighty or one to fifty-seven, or some big number. Does not that show to your mind that there is something the matter with the punishment, or with the certainty of punishment, or whatever it may be?

Mr. STALTER: I want to ask you if the penalty for all murders were execution, and if the illustration as given is the difference between first and second degree

murder? Have you given in your figures both first and second degree murders?

Mr. DOTY: Who used them?

Mr. STALTER: The illustration you gave from the gentleman of Shelby.

Mr. DOTY: I do not understand what he referred to or just how you are going to divide his statistics, but I undertake to say that the punishment for crime is more certain in England than here, and I say to you it is the certainty of punishment that deters rather than the severity. That is just as true in Michigan and China and Ohio as it is in England. Certainty of punishment is what we should endeavor to secure. A very wise man has said that if you make the laws too sanguinary the juries will fail to convict. Many a time a jury fails to convict in a capital punishment case because they think the laws are too sanguinary. They don't want to hang a man.

Mr. WOODS: How about the recommendation for mercy?

Mr. DOTY: The recommendation for mercy is coupled with the execution of the law. That is something that shouldn't be allowed. The jury should not be allowed to say whether a man should be punished in one way or another. The jury should simply say "guilty" or "not guilty." The result of the whole thing is that we have nine thousand murders and only one out of fifty-seven of the murderers is executed, and we see juries, prosecuting attorneys and judges getting away from the sanguinary part. Don't forget that next Friday night there will be a man electrocuted in this city, and we are citizens of the state of Ohio.

Mr. JONES: It seems to me we are making a great mistake in reference to this matter for two reasons.

In the first place, it is purely a legislative matter. As I have heretofore said on other questions, there are some legislative matters proper to be dealt with in the constitution, but this is not one of them. Those matters about which there is no substantial differences of opinion among the people, fundamental rules and principles, even if of a legislative character, can be properly incorporated in the constitution. Those provisions intended simply to regulate the exercise of some power can also be properly included, but here you have a question of pure penalty for a specific crime and there is just as little reason for this bit of legislation as there is for legislation in the constitution in respect to any other specific crime.

Another thing, if this is to be a rule proper to embody in the fundamental law, it is likely to remain for fifty years, and we are tying up the people of the state no matter what the demand in the future may be so that they can not do what they want to do with regard to a penalty for a specific crime. It has been suggested here that the death penalty does not prevent crime. No penalty prevents crime, but does anybody or will anybody contend that the death penalty does not restrain the tendency to commit crime? Does not life imprisonment tend to restrain the tendency to commit crime? And if life imprisonment will tend to restrain the tendency to commit crime, if a man's life is more precious to him than his liberty, how can you say that the possibility of his being deprived of life will not restrain? If the matter is left in the hands of the legislature it will be

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what gentlemen constantly referred to in the discussion on the initiative and referendum, as the "shotgun behind the door." You don't have to use it unless you want, to, and you need not use it in any specific case unless the judgment of twelve men, who have had an opportunity to consider all the circumstances, after full deliberation and under a charge from the court, with all these safeguards that can be thrown around the exercise of judgment by any body of men, say the death penalty should be inflicted.

Can anybody say that under such circumstances it is liable to be an instrument of vengeance, that it is liable to be used wantonly or improperly? We all know that the great trouble with the administration of the criminal law in this country is to get enough convictions, to get a jury of a man's fellow citizens to find him guilty as often as they should. The great tendency is to run in the other direction, and the uncertainty of the execution and enforcement of law is the very thing, as referred to by the gentleman from Cuyahoga, that causes the great prevalence of crime in this country. It does not follow that because you have the power to inflict the death penalty that there is going to be any less certainty with regard to the administration of the law. Juries can go right along recommending mercy and life imprisonment will be inflicted instead of the death penalty. We have had too much mob law in this country. Some of you may remember a few years ago when thirteen lives were taken by the military in this state in defending a negro. What was the crime there? A woman had been outraged and the cry was that there was no adequate punishment. A man deliberately went to the house of a lone woman and assaulted her, and the righteous indignation of that community rose against him. That is typical of every community. They feel that under such circumstances the law provides no adequate punishment for the crime and they want to take the law into their own hands.

Mr. EARNHART: Mr. President and Gentlemen of the Convention: This matter has been discussed from all phases except one, and in the few minutes I have I want to travel in that direction. The whole matter resolves itself into one question.

The delegate from Warren [Mr. EARNHART] here yielded the floor to Mr. Elson who moved that the Convention recess until 1:30 o'clock p. m.

The motion was carried and the Convention recessed until the time indicated.

AFTERNOON SESSION.

The Convention was called to order by the president and the gentleman from Warren [Mr. EARNHART] was recognized.

Mr. TALLMAN: I ask the member from Warren to yield. I want to ask unanimous consent to introduce a resolution.

Mr. EARNHART: I yield.

The PRESIDENT: The member from Belmont asks unanimous consent to introduce a resolution. Is there objection? The gentleman from Belmont moves that the consideration of the pending proposal be postponed three minutes.

The motion was carried.

The PRESIDENT: The secretary will read the resolution.

The resolution was read as follows:

Resolution No. 105:

WHEREAS, The laws of Ohio provide that whoever in the night season maliciously and forcibly breaks and enters an inhabited dwelling house with intent to commit a felony shall be imprisoned in the penitentiary during life; and

WHEREAS, It appears to be the sense of the majority of this Convention that murder in the first degree should only be punished by imprisonment for life; therefore

Be it resolved by this Convention, That there is no substantial difference between the crime of burglarizing an inhabited dwelling during the night season and murder in the first degree.

The PRESIDENT: The resolution goes over under the rule.

Mr. SMITH, of Hamilton: I move that we resume consideration of the proposal which was pending when the resolution was offered.

The motion was carried and the delegate from Warren [Mr. EARNHART] was recognized.

Mr. EARNHART: The purpose of action on this matter should be wholly to diminish the commission of murder as much as possible. Taking that view of the matter, my own opinion is that when a man is executed it to some extent diminishes the value that ought to be set upon human life. We well remember that when we had public executions thousands or at least hundreds of people would congregate to see a criminal executed. That to my mind had a disastrous effect upon the morals of the community. I am satisfied in my own mind that this matter, as does every other example, carries great weight, and in order to diminish the number of murders we want to make it a matter of educational development and sentiment that will rise above that. Gentlemen to substantiate argument from this floor have seen fit to go back and quote from Scripture that when one man kills another his life ought to pay the penalty. I take it that there is more virtue in the present age and that we ought to confine ourselves to the present generation. I think in the matter of industrial activity, scientific research and the better conditions of morality we rise greatly above the ages to which the gentlemen have referred in order to substantiate arguments they have produced in favor of capital punishment. It seems to me the lesson is too plain. We remember when a few men were killed in the first skirmish of the Civil War what a thrill of horror it sent through every citizen of the nation, but after a while, when the big battles came on, unless there were twenty or thirty thousand men killed it was not thought to be much of a battle; the people became used to it; they expected it. You remember a day or two ago when the wires flashed the news and the newspapers published the account of the great steamship disaster how it thrilled the people? We had lost some of the feeling we had during the Civil War because we had partially recovered from it. Right along that line I want to say that when you abolish capital punishment and teach the people the importance of human life you will restrain men who would other-

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wise have it in their hearts to snuff out human life. I fully believe in the years gone by we have been setting an example that not only did not deter but that worked to the contrary. The dime novel gives instances in the "Wild West" when over a game of cards one man pulls out a pistol and kills another, and it educates the people to the opinion that human life does not amount to much anyway; so my whole argument is based upon the fact that when we rise above that ourselves we will lessen the evil results. Human tendencies are against it. We can see now that it is almost impossible to get a jury to convict a man for murder in the first degree without recommending mercy. We see it in the hearts of men, and properly so, and the assertion has been made upon the floor that it is purely a legislative matter. Whether that is so or not I do not care. I want this Convention to say to the people of the state of Ohio that we will rise above former conditions, and by this measure we will show not only to the people of the state of Ohio but to the people of other states as well, whose eyes are upon us now, that we are going to rise above present conditions. We are going to enlarge human conditions by placing in our laws a provision against capital punishment. I do not think I underrate the intelligence of the Convention to such a degree that it will not when the final vote comes, be on the side of humanity and right.

Mr. HAHN: Mr. President and Members of the Convention: I am in favor of the abolition of capital punishment. I believe in the sanctity of human life and I believe that every one of us, every citizen individually and the state collectively, should teach and preach the sanctity of human life. But as long as the state is the first murderer, as long as the state kills, what is the example set to us? There cannot be an idea that sanctity of human life is taught to our people when we ourselves kill. I believe my life under all circumstances is the most sacred and most inviolate possession that I have, and where is the man, where is the society, where is the state that has a right to divest me of it—to take from me my most sacred and most inviolable right? What is the state? The state is merely an agreement or contract which we enter into that the whole community shall be ruled according to a constitution. We have a right to concede to the state that it may take away under circumstances our substance, but we have no right to contract that it may take away our own life. If we say we have a right to take away our own lives it is pronounced the most immoral practice imaginable, and if we say we are in favor of the state taking away our lives, we are in favor of suicide. If I have not a right to take my own life no one else has, and I have no right to contract that anyone else shall. No principle of morality justifies me in taking my own life. It is a fundamental principle of society that I shall protect my life first of all, and consequently I have no right to give a right to the state which I do not possess, and the state has absolutely, according to all principles of morality and justice—no matter what the laws may be—no right to take the life of any individual.

We have heard about the Bible sanctifying the taking away of human life. My friends, the Bible has been misused whenever a great question was before the world. The Bible is the book of books, the greatest book in human literature. It is an inexhaustible source of re-

ligious sentiment, teaching and morality, but at the same time wherever there was a great issue one party always wants to take the Holy Book in its hands and defend its course by it, and so does the other party. The Bible is the grandest book imaginable, but in an age like this, where we have to develop civic morality and legal principles, the idea of revelation must not prevail. We must look at the Bible from the standpoint of evolution, from the standpoint of the historical development of the religious and moral genius that spoke to mankind. All of these laws at one time were excellent, but at the present many of the laws of the Bible are disregarded. Why do we stick to just this one law? You will find in that same Bible that man shall not shed blood. How many are there now that keep that commandment, and why do we want the other? My friends, it is inconsistency in our nature. On the one side we are for humanity and for righteousness and we shrink from doing wrong to anybody. We say love thy fellow man as thyself. On the other side we are in favor of the principle of revenge, for capital punishment is nothing else but revenge—fierce, brutal revenge. There is no justice, there is no morality, there is no humanity in it.

They consider the crime: Yes, gentlemen, there is heinous enormity in the crime of killing a person, but we must not always look merely at the enormity of the crime. We must sometimes consider the criminal himself. Who is the criminal? Why was not there a single word spoken here of kindness and humanity and sympathy for the criminal? Are all criminals depraved? Oh, no, my friends; there are criminals who are not themselves to blame that they are criminals. Is it our fault when we inherit consumption or cancer or insanity or shortsightedness or deafness or blindness? No more is it the fault of a great many criminals that they have criminal proclivities and that they were born with criminal eccentricities.

The time of the gentleman here expired.

Mr. REDINGTON: I am not in favor of capital punishment, but I am in favor of punishing severely any person who commits the crime of murder in the first degree. I am one of those who believe that we can devise ways and means whereby such a man can be punished sufficiently without taking his life. I think with solitary confinement or some other means we can provide something that will strike more terror to the heart of the average criminal than the fact that he takes only the chance of being electrocuted. We are seeking to prevent crime, and you will find you have not prevented crime although you have had upon the statute books for many years this particular mode of capital punishment.

I do not believe you have a right to take a man's life. Whether we can prove it or not we all believe that man is immortal, that he has a soul. If we were called to prove that, the wisest man could not prove it. He cannot prove the transmission of souls. He has to rely upon the revelation of the Good Book to prove that fact, and we all believe it, and if a man does have a soul what right have you to cut off his future without chance of reform? Are you so stingy that you cannot provide some home for this man in order that he may have some time to prepare himself for eternity?

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I find members are basing some of their arguments on the Scripture. Scripture oftentimes is misused. I do not believe my Creator, who is all powerful and all wise, and a God of love, ever authorized that statement of "an eye for an eye and a tooth for a tooth." I do not believe that my Creator ever authorized a story that He hardened Pharaoh's heart from time to time and caused pestilence and misery and the death of thousands and then by chicanery inveigled the Egyptians out into the bed of the Red Sea and drowned them like rats. I do not believe my Creator ever sent the wild bears from the woods to eat the children up because they called a prophet "old baldy." I believe those stories are libels. I believe the Creator was as wise ten thousand years ago as today, and you couldn't get the average man to do today what Jehovah sanctioned ten thousand years ago, according to some of those stories. You can quote them, but the next thing is to prove that our great Creator ever sanctioned them. I believe if you have a villain in your community who is so far devoid of good morals and good citizenship that he deliberately commits a murder, it is your duty to devise some punishment whereby you can not only reform the man but can strike terror to the hearts of others who would do likewise; but that you have any right to snuff out that life or send him into eternity without preparation I deny. I believe that the age and the time has come when we should take an advanced step and say that we will not be a party to a judicial murder. Who in this audience would willingly be an executioner? Who would willingly strike the fatal blow to snap out a human life? If you don't want to do it, why authorize anybody else to do it? I say to you, no matter how low a man is nor how guilty let him have his life and suffer with it until nature takes it from him.

Mr. FARNSWORTH: There is a bluff on the Maumee river near my home that has an interesting history. History tells us that in early days there were two friendly tribes of Indians camped near the bluff. The braves would go out into the forest to hunt while the children played around the wigwams and the squaws performed the labor incident to the family. One day by some mischance a child fell over the bluff into the river and was killed. Is so happened that the wife belonged to one of the tribes and the husband was a member of the other. When the husband returned at nightfall he was very much incensed at what he considered the neglect of his wife in not attending to the child, and, taking advantage of the Indian law, based no doubt on the Mosaic law, he in turn pushed her over the precipice to her death. Her friends in the other tribe, believing in reciprocity, took the first opportunity to kill him, and so the barbarism continued until the civil authorities had to take a hand. That was the Indian law of a death for a death. Shall we, in spite of our boast of higher civilization, lower ourselves to the barbaric level of killing one man because he has killed another?

There are other phases that have been overlooked. You have spoken of the effect on the man who is executed. Have any of you stopped to think of the jurors? Have any of you ever been one of the jurors who sent a man to death? If you have been, do you care to repeat the experience? Does not that feeling have a ten-

dency to keep the best and most civilized men from jury service?

I myself believe that in the near future we shall evolve some plan of reforming as well as punishing convicted criminals. I believe that punishment should be twofold, punitive and reformatory. Oftentimes it is not the criminal's fault entirely; often his ancestors have had something to do with it. Human nature is not wholly bad. There is a chance to reform every one. A man may change his course in a moment, but he must have time to reform. I believe it is a duty we owe to a community to give every convicted criminal abundant opportunity to reform, and I have ample faith that at some time in the near future we may devise something that will reform as well as punish.

Mr. BEATTY, of Wood: A great many years ago God handed out the law to Moses. He gave the Ten Commandments and among the ten was this: "Thou shalt not kill." That is all I have to say on this question.

Mr. ANTRIM: Last Friday when I returned home I took this proposal with me because I knew it was coming up this week and I wanted to vote intelligently on it. When I returned home I was not decided as to how I should vote, and so I took several hours on Saturday to look up some statistics and read one or more excellent articles on the subject, and I want to say that after I had finished my reading and my investigation and had given the subject some thought, I decided that the wise thing to do was to vote to abolish capital punishment.

We have heard one argument repeatedly on the floor of this Convention and that is if we retain capital punishment it will exercise a deterring influence on the criminally inclined. I do not believe it. Statistics show it is not true. Take the state of Maine. The statistics of Maine have been very carefully collected and we learn that during the twenty years preceding the time when they abolished capital punishment there were two hundred and fifty or two hundred and sixty homicides. During the twenty-three years following that period, when they didn't have capital punishment, the number of murders went down to a hundred and thirty-five and that, in spite of the fact that during the latter twenty-three years the population was much greater than during the first twenty years.

Another thought. In the years from 1880 to 1883 there were twenty-six murders committed in the state of Maine. That was when they had capital punishment. In 1883 capital punishment was abolished and the number went down from twenty-six to eighteen. That proves that capital punishment in that state did not exercise a deterring influence on the criminally inclined.

Another point: One of the saddest things about the whole matter is that the innocent must suffer with the guilty. We have heard a great deal said in the course of this debate that most murders are committed among the lower classes, but I think if we investigate the subject pretty carefully we shall find that a great many are committed among the highly educated and well-bred classes. The murder that occurred in Virginia last year, the homicide that took place in Massachusetts and the case of the dentist in England and others might be cited. It is these cases that are specially sad. If we electrocute or execute such men we can see the tremendous amount

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of suffering the families of the well-bred and intelligent that are left behind.

Mr. WATSON: A great deal has been said in the course of this argument in favor of the murderer and his family, in favor of his wife, but nothing has been said in favor of the wife and family and relatives of the man who is stricken down in cold blood, and deliberately so by the murderer. The gentleman from Warren [Mr. EARNHART] spoke about public lynchings. No one on the floor is advocating such a thing. We do not believe in those public lynchings and that should not have been lugged into this debate. We have heard recently of the numerous mine disasters in this country, where hundreds of lives have been snuffed out, and in the majority of those cases it has been murder on the part of the corporation, which has become a law violator, and yet we hear no voice raised in protest against that murderer. A good many of the corporate interests of the country have become absolute murderers by the violation of laws designed to protect their employees and there is no talk against them. There is no outcry against them. When we look at the Cherry Valley disaster and sum that up it is absolute murder through violation of law. If Mr. Antrim's argument means anything then we should take away the jail sentence to lessen the number of house-breakings in this country. Oh, no; don't think for a moment that if you will lessen the penalty you are going to decrease crime. That is not the way to do it. As has been said, this provision is just "a shotgun behind the door" for the protection of society, and I hope it will remain there.

Mr. KNIGHT: I am decidedly in favor of the abolition of capital punishment and I hope it will carry for two reasons.

First: Taking up one objection, it has been stated that this is pure legislation and that it has no place in the constitution. Not so. It is no more legislation than the provision in the bill of rights which says trial by jury shall be preserved inviolate. That simply prevents the legislature from doing that one thing. The people have the right to say in the fundamental law that the death penalty shall not be inflicted for any crime committed in this state. It is simply barring the legislature from prescribing that penalty for any crime. It is no more legislation than the other matter to which I have referred.

In the second place, it is a principle in modern penology that the criminal law should undertake to deter from the commission of crime, and should undertake the reformation of the person convicted of crime as well as to punish for the offense already committed. It is a well-known fact, and a study of statistics will disclose it to be a fact, that the death penalty for any crime is not a deterrent in any greater degree, indeed not to as great a degree, than a lesser penalty strictly enforced. The deterrent feature of all criminal laws depends on the certainty of enforcement more than on the severity of the punishment.

One may quote Scripture to prove or disprove anything. If we had relied upon Scripture this country would still be blessed with slavery, for the fundamental argument in favor of slavery was biblical authority. If I understand anything about the Bible, and I am neither a lawyer nor a preacher, so perhaps I do, the net teach-

ing of the Bible is that humanity is progressing and that the spirit of Christianity is to assist in progress from barbarism to enlightenment, and I submit that in this year of our Lord it is a revolting proposition that one murder justifies another.

Now, as a matter of fact, every one knows that with the death penalty in this state, already referred to by the gentleman from Medina [Mr. Woods] there is not an accused person brought before the court under indictment for a first degree murder but that the question has to be put, and is put, to each juror, "Have you conscientious scruples against the death penalty? Would your verdict be influenced at all by the fact that if the accused person is found guilty he would be subject to the death penalty?" In no other crime and with reference to no other penalty is that question asked of a juror. Whoever heard a juror asked "Is your conscience such that you cannot find a man guilty because he would be sent to the penitentiary if found guilty?" Since that sentiment exists, we are defeating one of the ends of criminal legislation by imposing a penalty where it is known in advance that some if not all of the jurors may be affected in their judgment upon the evidence presented by the fact that they have a hesitancy in finding a man guilty because the penalty is one that they think ought not to be imposed.

Mr. HALFHILL: Mr. President and Gentlemen: We have but one lamp to guide us and that is the lamp of experience. We have but one method to get light upon a question and that is from history; and both history and experience incline us to the belief that we are progressing in the social scale.

On this particular question we have gone back a good way to cite authority. You remember the old law quoted by the reverend gentleman from Holmes [Mr. WALKER]. But even that sanguinary declaration had to be modified later by the Levitical law which established cities of refuge; and even in pagan countries there existed in the temples the right of sanctuary, and a great deal was done even in pagan days to moderate the severity of the law which declared that "whoso sheddeth man's blood, by man his blood shall be shed." Think of it! Our ancestors in England, from whom we get this law, in the year 1300 began to slacken a little. They occasionally got a little stronger by burning heretics, etc., but the gradual tendency was toward civilization and greater clemency, until one hundred years ago there were only two hundred crimes for which they did actually hang a man. In Blackstone's time there were three hundred and sixty-five such offenses. There was a rule in the English parliament when it enacted a criminal statute not to affix any penalty, because as a matter of course and as a matter of common usage the penalty went along with it and that was to hang. They exacted the supreme penalty for every crime except stealing property of less value than one shilling. So we have made some progress. There is not a crime in England today that is punished capitally except treason, piracy with violence, blowing up dockyards or arsenals, and murder in the first degree.

Gentlemen, I believe if any man has ever been associated with a murder trial he knows that he was under a very grave responsibility. The responsibility is something frightful to contemplate, for judge, jury, attorneys

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and all concerned. Society can punish and that is all that society ought to do. This idea of vengeance, relic of the old *lex talionis*, does not exist today and should not be advocated in any Christian country. The idea of society is to punish and prevent, punish and reform, and it is just as safe for society to immure one guilty of murder in the penitentiary for life and take away the executive power of pardon unless newly-discovered evidence is produced sufficient to warrant granting him a new trial at the hands of the jury, as it is to hang him. Is not that all that is necessary? I feel deeply upon the question and always have been convinced, ever since I first investigated, that capital punishment was both unnecessary and wrong. Here is that awful fact: That you may make a mistake in hanging a man and you can never rectify it. When you make that kind of a mistake there is no way to undo it. Now, that is the legal and moral side, but there is a utilitarian side. It does not prevent crime. Juries are too loath to administer it. The sureness and the quickness of punishment is what prevents crime; and if you sum it all up together you can safely lay down the general proposition that it is not right for the state to take the life of any one of its citizens or to take away that which it cannot give back.

Mr. SMITH, of Hamilton: I dislike greatly to vote against the proposal introduced by my friend Mr. Pierce and I am willing if he desires, at the next session of the legislature, or if the initiative and referendum passes, through that source, to help him pass such a law as he is now seeking to have this Convention pass. When I told a member of this Convention that I felt obliged to vote against this proposal he said "Why, Smith, you are cruel." Well, I think it is cruelty for this Convention to submit to the people so many propositions of a legislative character. Every man in this Convention could, with a very little thought, get up some meritorious proposal and bring it in here and win our sympathy and support, but it would not be our duty to vote for it for that reason. We were sent here to do a definite work, and that work was to change the organic law of the state and not to pass laws. Why, if we start here and pass legislative provisions we will be here until next year and possibly draw another hundred thousand down. I am sure nobody wants to do that. Every additional proposal submitted to the people puts added burdens on the people. It is going to take some time for the people to study these proposals, and all I want is to appeal to you that where we can, let us draw the line; let us decide to vote against proposals purely legislative; let us resolve to cleave straight to the line of duty, and that is changing the organic law the way the people who sent us here wanted it changed.

Mr. DUNN: There are a few of us who have said very little in the Convention, but you will notice that we have been doing one thing—we have been voting. I confess that on this question it is a difficult matter for me to decide how I shall vote. I have not obtained all the information from the addresses of members of the Convention which I would have been glad to have received, but I shall vote on the side of mercy. It seems to me that when we have any great question before the Convention, we divide into two camps as enemies and argue our prejudices, instead of coming together and studying the question unitedly and trying to solve it in

favor of the whole people. This question of abolishing capital punishment is certainly an exceedingly important one. I want to vote right on it. I am very doubtful whether you can say the state commits murder when she puts into execution a law in favor of capital punishment. The state in some degree stands in the place of God. If she decides that the good of society demands the punishment of a criminal in this way, I doubt that you can say the state commits murder. That is not a valid argument to me. I want to know one thing: What is the effect of capital punishment upon those who are in danger of becoming murderers? I remember when a student that this principle was laid down—I do not give the words exactly: "All public descriptions of any crime have a tendency to produce repetitions of the crime." If that is true, if it is a psychological fact, I ask this question: Does capital punishment lead to other murders or does it not? In a short talk with our honored secretary, who has made a very careful study of the subject, I found that the figures are against capital punishment. So I shall vote against capital punishment.

Mr. STAMM: This question has been ventilated from the standpoint of the lawyers and the preachers and the professors and the laymen, but very little has been said from the standpoint of the criminologist. This discussion should be viewed from every angle and we should have some views from medical experts on this question. If you will allow me I will quote a few expressions of those myself:

Penal law was formerly based more on philosophical than psychological grounds until about 1850. Regnault, Herbart, Drobish, Waits and Wundt showed that the objects of psychiatric-forensic judgment are diseased conditions of the brain, which have to be studied by means of all technical and anthropological aids of modern science, and not from the every-day psychological standpoint of the layman or from the unreliable analysis of metaphysical criterion. A careful study of criminal conditions along the line of modern science makes us apt to consider sheer moral depravity as a diseased condition of the brain which may have an hereditary origin, or be the result of some latent neurosis, epilepsy, hysteria, which may essentially limit the exercise of what we are wont to call free will.

Morel, the great French alienist, wrote some seventy years ago (*Traite' des Maladies Mentales*, p. 544):

I do not doubt for an instant that laws which regulate the penalty among all civilized people will some day have to undergo some modifications and the honor will redound to the physicians who have learned to recognize the many changes which heredity impresses upon the organism?

Kraft Ebing, probably one of the greatest psychiatrists, has no doubt that the anthropological study of criminals will bear fruit and secure a firmer basis for the question of responsibility as well as the method and form of punishment. He says:

The time will come when our views in regard to certain criminals and the penalty in its ethical and judicial foundation, especially where penalty of death comes into question, will become untenable; where the criminal will be treated or con-

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sidered more like a dangerous unfortunate and where the death penalty will be viewed as monstrous and inconceivable as witch burning and torture of former ages are looked upon by us today with a sense of shame.

Everything in this world has its cause; if the causes are the same the effect will be the same. Statistics demonstrate that if the causes remain the same the number of crimes will be the same, so that we can approximately predict how many crimes will be committed next year, even to their detail; how many cases of theft, how many cases of rape, how many murders; nay, even how many of these are carried out by the revolver, knife or poison. This should make it clear enough that crime is a social disease which may limit itself to the individual, but has its social origin.

Germany has five murders to one million inhabitants; so has England; France has twelve, Spain forty-five, Italy seventy-six and the United States seventy-five.

Lombroso says:

I have always found in my own experience that outrageous murders not to be explained according to the ordinary psychology of criminals are accompanied by psychical epilepsy.

Ferri, in *Criminology*, says, p. 8:

As for craniology, especially in regard to the two distinct and characteristic types of criminals, murderers and thieves, an incontestable inferiority has been noted in the shape of the head by comparison with normal men. An examination of the brains of criminals, whilst it reveals in the man inferiority of form and histological type, gives also in a great majority of cases indications of diseases which were frequently undetected in their lifetime. Thus Mr. Dally, who for twenty years past has displayed exceptional acumen in problems of this kind, said that all the criminals who had been subjected to autopsy (after execution) gave evidence of cerebral injury.

Mr. BOWDLE: Mr. President: Just a word in addition to what I had to say yesterday. I am happy to notice that the ministerial unanimity has been broken on this subject in the highly wise and philosophical utterance of Mr. Dunn. I am delighted to see that he has placed his Ebenezer by the side of the Captain of our salvation, whose mission in this life was to bring love and substitute it for the carnivorous instincts of humanity. It is said that this is not a proper matter for the constitution. I submit that if the matter of taking a glass of beer and eating a ham sandwich is properly within the constitution, the taking of human life is well within the limits of the constitution. So I shall expect every "dry" in the Convention to take precisely that view of the question.

It is very stimulating to observe that the law of love is gradually infiltrating into the hearts and minds of men. The object of Christ's coming was to bring that law of love and substitute it for the temporary and often cruel code that Moses was the head of and which had served its purpose in a rapidly evolving human body. I picked up last night the constitutions of some of the South American republics. It is instructive to see in those Catholic countries, to which we send so many missionaries for

their conversion, their constitutions show how they are endeavoring to substitute the law of love for the law of ferocity and revenge.

In the constitution of Argentina I found this:

The penalty of death for political offenses, torture of all kinds, and the whipping-post are abolished. The national jails shall be healthy and clean; they shall be intended for the safe-keeping and not for the punishment of the prisoners, and any measure which, under color of precaution, may tend to subject the prisoners to more hardships than are required for their security, shall render the court authorizing it liable to answer for it.

I found in the constitution of the United States of Colombia this provision:

The legislature shall only prescribe death as a punishment for the cases which are defined as the gravest, the following crimes judiciously proven, to wit: Treason to one's country in a foreign war, parricide, assassination, arson, assault in a gang of malefactors, piracy, and certain military crimes defined by the military laws.

At no time shall the death penalty be inflicted except in the cases provided in this article.

Thus in the United States of Colombia the ordinary crime of murder is not punished with death.

I find likewise in the republic of Ecuador the same broad views and the same love shown by those people in whose conversion we, the people of the United States, are so interested. And so throughout the constitutions of South America you find this effort to substitute the divine law of love for the old revengeful law. In the recent contest between Argentina and Chili over the national boundary, which was settled without resort to arms, the good women of Buenos Ayres and Valparaiso got together and erected an heroic statue of the Christ fourteen thousand feet above the sea level, on the boundary line, a testimonial to the efficacy of the principles of the Captain of our salvation in the settlement of international disputes.

Mr. WALKER: In your investigations did you find that human life was any more highly regarded in South America than in this country?

Mr. BOWDLE: I do not know whether they have any higher regard for life than we have. I do not know that we have such a high regard for human life in our advanced christian civilization here, but I know they are making an effort to get away from the old-time law. I am happy to see a reference to the pamphlet gotten out by our very accomplished secretary, Mr. Galbreath, which shows that statistics demonstrate that the law of love should be substituted instead of the carnivorous law.

Mr. JOHNSON, of Madison: A few years ago when we planned a reform in our method of capital punishment and changed from hanging to electrocution, a certain Irishman said that they had changed the plan in Ohio; that they didn't hang them any more, but killed them by "elocation." A further step in this progressive movement is now being taken, namely, we are trying to decapitate by constitutional oratory. In order to prevent further decapitation, I move the previous question.

Abolition of Capital Punishment—Relative to Question of Personal Privilege.

The previous question was regularly demanded and a vote being taken the main question was ordered.

The PRESIDENT: The motion is carried and the question is on the adoption of the amendment of the delegate from Cuyahoga [Mr. FACKLER].

Mr. EVANS: I move to lay that on the table.

The PRESIDENT: The motion is out of order. The question is on the adoption of the amendment.

The amendment was adopted.

The PRESIDENT: The question is now on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 69, nays 35, as follows:

Those who voted in the affirmative are:

Anderson.	FitzSimons,	Miller, Crawford,
Antrim,	Fluke,	Miller, Ottawa,
Baum,	Fox,	Moore,
Beatty, Morrow,	Hahn,	Nye,
Beatty, Wood,	Halenkamp,	Peck,
Beyer,	Halfhill,	Pierce,
Bowdle,	Harris, Hamilton,	Read,
Brown, Lucas,	Harter, Huron,	Redington,
Brown, Pike	Hoffman,	Smith, Geauga,
Campbell,	Holtz,	Solether,
Cassidy,	Hoskins,	Stamm,
Cody,	Hursh,	Stevens,
Cordes,	Keller,	Stilwell,
Crosser,	Kilpatrick,	Taggart,
Davio,	King,	Tannehill,
Doty,	Knight,	Tetlow,
Dunn,	Kramer,	Thomas,
Earnhart,	Kunkel,	Ulmer,
Eby,	Lambert,	Wagner,
Elson,	Leete,	Weybrecht,
Fackler,	Leslie,	Winn,
Farnsworth,	Malin,	Wise,
Farrell,	Marriott,	Mr. President.

Those who voted in the negative are:

Brattain,	Johnson, Madison,	Roehm,
Brown, Highland,	Johnson, Williams,	Rorick,
Collett,	Jones,	Shaw,
Colton,	Kehoe,	Smith, Hamilton,
Crites,	Lamson,	Stalter,
Cunningham,	Longstreth,	Stewart,
DeFrees,	Ludey,	Stokes,
Donahey,	McClelland,	Tallman,
Dwyer,	Miller, Fairfield,	Walker,
Evans,	Riley,	Watson,
Harbarger,	Partington,	Woods.
Harris, Ashtabula,	Rockel,	

The roll call was verified.

So the proposal passed as follows:

Proposal No. 62—Mr. Pierce. Relative to abolition of capital punishment.

Resolved, by the Constitutional Convention of the state of Ohio. That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alteration or amendments made to the constitution by this Convention, the following section, independently of the submission of any revision, alteration or other amendments, submitted to them, shall be separately submitted to the electors in the words following, to-wit:

ARTICLE I.

SECTION 9. All persons shall be bailable by sufficient sureties, except in cases of homicide, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime.

Until otherwise provided by law, persons convicted of crimes heretofore punishable by death, shall be punished by imprisonment in the penitentiary during life.

SECTION 2. At such election a separate ballot shall be provided for the voters in the following form:

TO ABOLISH CAPITAL PUNISHMENT.

	Abolition of capital punishment, YES.
	Abolition of capital punishment, NO.

SECTION 3. The voter shall indicate his choice by placing a cross mark within the blank space opposite the words, "Abolition of capital punishment, YES.", if he desires to vote in favor of the section above mentioned; and within the blank space opposite the words, "Abolition of capital punishment, NO.", if he desires to vote against the section above mentioned.

SECTION 4. If the votes in favor of the section above mentioned shall exceed the votes against the same, then said section shall take the place of section 9 of article I, of the constitution, regardless of whether any revision, alteration or other amendments submitted to the people, shall be adopted or rejected.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. PECK: Before we go on, I beg leave to offer a resolution.

The PRESIDENT: The gentleman from Hamilton asks unanimous consent to offer a resolution. If there is no objection the resolution will be offered.

The resolution was read as follows:

Resolution No. 106:

Resolved, That no member of this Convention shall be permitted under the guise of a question of personal privilege to reply to any criticism made in any other place than in this Convention in regular session; any reply made to criticism in debate shall be made the same calendar day on which such criticism is made or not at all.

The PRESIDENT: That goes over under the rule. The next business in order is Proposal No. 64 and the question is on the passage of the substitute.

Conservation of Natural Resources.

Mr. TETLOW: Believing that this Convention has reached a stage in its proceedings when we should have more action and less words, I have condensed into a few words my views on the question now under consideration.

The subject matter contained in this substitute proposal is of great import to this great commonwealth and will grow in magnitude with each passing year, and I feel that we living in this age owe to the coming generations the preservation of our natural resources, that fundamentally belong to them as well as to us. This proposal, if adopted, will give the lawmaking power of the state authority to provide for the conservation of all our natural resources, to adopt and regulate systems of mining that will tend toward the preservation of life; prevent the waste of minerals and provide for the measuring of coal. The principal mineral of this state and nation is coal, and being familiar with that industry I shall illustrate from that standpoint. The natural resources of this nation have been chiefly responsible for its wonderful progress, and coal has contributed most largely to its success. We see its power utilized in sending the ocean greyhound across the deep, we see it sending the throbbing locomotive speeding over rails it helped to make, we see its bright glow and feel its warmth within our homes, we see its power and energy in our industrial life, and, realizing its full value, we should conserve this power that means so much to future generations. The production of coal in the United States from 1814 to the close of 1910, including anthracite and bituminous coal, was 8,243,351,259 tons, and according to D. J. A. Holmes, director of the national bureau of mines, we have lost, never to be recovered, by our wasteful and destructive methods of mining approximately 5,000,000,000 tons of coal, and from my personal knowledge of mining conditions I know we lose about 40 per cent through our national methods of mining. Consequently I feel that Dr. Holmes in his estimate of loss is approximately correct. Since 1872 Ohio has produced approximately 600,000,000 tons of coal, and at the ratio of loss indicated our loss in this state will approximately be 240,000,000 tons. Ohio produced in 1910, 34,424,951 tons. In 1911 the Ohio tonnage was 30,342,039 tons. At the same ratio of loss in the last two years, Ohio lost over 25,000,000 tons that can never be recovered.

In European countries and under their system of mining over 90 per cent of the coal is mined and consequently less than 10 per cent is lost, which shows conclusively our weakness, and it also reflects discredit upon the system we employ.

What emphasizes the necessity for action is the amazing increase in our tonnage to meet the increasing demand and consumption, and to emphasize more fully I submit for comparison the tonnage production of two decades ago and the present production. Ohio in 1890 produced 11,494,506 tons and in 1910, 34,424,951 tons, showing an increase of about 300 per cent; in the United States, the production in 1890 was 157,770,963 tons and in 1910, 501,596,378 tons, or an increase of over 300 per cent, and when we consider that we are mining our most available and workable seams and add thereto the remarkable and ever increasing demand, should we not

think of the conservation of this mineral by preventing the great loss in our mining operations?

In speaking of the great loss of human life in our mining industry I do so with deep and mingled feelings; and many, many times have these words burned into my very soul that "man's inhumanity to man makes countless thousands mourn." Yes, my friends, I have spent my entire life in and around the mines, and I have seen hundreds of my fellow workmen go to needless and untimely graves, but with all that I haven't yet lost faith in mankind, and when the time comes that human life is placed above dollars justice will begin to reign.

It is a fact that all the ingenuity of man has been directed toward the cheapening of production, and in the mad race we have lost sight of a higher duty, the protection of human life.

I submit for your consideration a brief statement of the mortality in the mines. Taking the year 1910, which is a fair average for basis, we have the following indictment that cries out against our system of mining:

In Belgium the death rate per thousand persons employed was .95; in Prussia, 1.98; in Austria, 1.04; in France, 1.17; Great Britain, 1.43 and the United States 3.91. This shows our death rate four times greater than that of Belgium, whose mines are more dangerous, their shafts being deeper, involving greater problems in ventilation, timbering and equipment.

In 1910, 161 fatal accidents occurred in Ohio, 672 men were injured and the death rate per thousand employed was 3.3. In 1910, 3051 lives were lost in the mines of our country and since 1886, 36,586 lives have been lost. In European countries the mines are worked principally on what mining men term "long-wall advancing" or "long-wall retreating." By this system practically all the coal is taken out and the traveling and haulage roads are protected by artificial walls built of rock or slate, the old workings of the mine are quickly closed by the pressure and weight of the overlying strata and it leaves no space in the old abandoned workings for the accumulation of gas or coal dust.

In this country the principal method used in mining is known as the "room and pillar" system. About 60 per cent of the coal is mined by this process and about 40 per cent that is not recovered is used for pillars, which in the end is false protection, because in the old abandoned workings a condition is created that is dangerous. Proper ventilation is rendered impossible and the old and abandoned workings become a storage place for gas or coal dust, which are the elements that cause all of our mine explosions.

Some claim that it would cost a few more cents per ton to mine coal under the European system. I cannot accept this claim as correct, but even if it is the result to be obtained warrants the small extra cost.

In dealing briefly with mine explosions I desire to make in the beginning the unqualified statement that every one of the catastrophes due to explosions could be prevented. As I heretofore stated, there were two elements that furnished the basic cause of explosions, inflammable gas and coal dust. The inflammable gas encountered in mines, known as marsh gas or commonly called fire damp, creates its greatest destructive powers when the atmosphere becomes charged with about seven per cent of the gas. When the percentage of gas is be-

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low three per cent it will not ignite. Consequently if the sections of the mine are properly ventilated gas can be diluted and rendered harmless and driven from the mine. Coal dust is more dangerous and deadly than gas because it is more difficult to remove, but if the mines in the dry sections are sprinkled and the air currents charged with moisture by artificial means, or the dust is removed, the danger could be eliminated. The greatest handicap in proper ventilation and cleansing dust from the mine to protect life and property is our present "room and pillar" system. If we adopt European methods we will be able to more adequately protect life and conserve our mineral resources. I recognize that the one great crying need in the mining industry is national regulation to circumvent the stone-age cry of competition that arises when a single state attempts to rectify existing wrongs. My reason for wanting a constitutional provision giving authority to enact laws regulating the measuring and weighing of coal is to protect life and prevent fraud. For many years the miners have endeavored to have their employers pay them upon the basis of "mine run," or for all the coal they produce, but they have never succeeded, and they, in their weakness, have been denied justice by the strong. At present the miners of the state are paid only for coal that passes over a screen having an area of 72 superficial feet, with a mesh supposed to be an inch and a quarter between the bars, and the amount of nut coal and slack passing through the screen will average about 35 per cent.

One thing about these screens that is self-evident is that the coal passing over and through them wears the bars and increases the size of the mesh. Thereby injustice is done, for the wearing of the screen never favors the miners. From personal observation I have seen screens so worn that the miners were losing fully ten per cent of earnings that rightfully belong to them. You may ask why the miner would permit such a condition, but he usually suffers in silence for fear of discrimination. So with all his latent slumbering power he is oppressed through his own weakness.

In 1898 a law was passed in this state "to provide for the weighing of coal before screening" for the protection of miners, but it was declared unconstitutional by our supreme court, while the same kind of a law has been held constitutional in West Virginia, Kansas and Illinois. The Ohio court held that the law was an unwarranted invasion of the right of contract and that it placed a premium upon incompetency. I contend that our state has, under its legislative branch of government, the right to regulate the conduct of its citizens toward each other and the manner in which they shall use their property when the regulation of such is necessary for the public good.

If there were any basis for the action of the court in declaring that the law placed a premium upon incompetency at that time that claim cannot be raised now, because a complete evolution has taken place in the industry. At that time the great majority of our tonnage was produced by the hand-pick method, and there being no sale for fine or slack coal, the employers took exceptional care in selecting practical workmen, because the less fine coal produced the greater returns on their investment. The present conditions are directly opposite.

Of the 34,424,951 tons produced in our state in 1910, 30,083,468 tons was mined by machinery, so the machine now does the undercutting that required the practical miner in the past. The fine coal has become a valuable commodity, due to the patent stokers and modern methods of extracting the head units from fine coal, and the more fine coal produced the more goes through the screen and the greater become the returns of the employer. In the past the practical miner was in demand; now the inexperienced miner who produces the most fine coal is in demand.

Right here I desire to make a statement that in Illinois and West Virginia, where they have the mine-run system and where the miners are paid for all the coal they mine, they have increased their tonnage production to a greater extent than any other states in the Union in the last decade.

Mr. HOSKINS: I want to ask you a question right here purely for information.

Mr. TETLOW: All right.

Mr. HOSKINS: I want to know whether or not the wage-scale in the mining district is not based entirely upon the lump coal they mine, if the wage-scale is not higher in Ohio than in West Virginia, if the operators do not depend upon the fine coal really for their profit, and if Ohio can be asked to regulate or compel payment for all the coal mined until West Virginia is organized and brings up the wage-scale there?

Mr. TETLOW: I answer that by saying it makes no difference to the honest employer, because in the wage contract between the miners and operators they have a price fixed for screen coal, that which passes over a one-and-a-quarter-inch screen. They have a price for mine-run coal proportionately less according to the amount screened. For instance, if the miners were getting \$1 per ton for lump coal over an inch-and-a-quarter screen they would get sixty-six and two-thirds cents for run-of-mine coal. So it makes no difference to the operator whether the miners are on a mine-run basis or a screen-coal basis, if he is actually paying the miners for all the coal he mines, but in this state we have mines producing three thousand tons of coal in eight hours, and every ton of lump that passes over the screen wears it down and consequently the spaces become greater and the miner is always losing, and it is this injustice we cry out against. All we ask is that we shall be paid for that which is marketable coal, coal which can be sold in the market. There is no reasonable objection to the proposition, and it will not prevent the operator from screening the coal and making different grades to meet market requirements.

Mr. HOSKINS: Is there any provision in the present constitution under which these regulations can not all be made by statute?

Mr. TETLOW: Because the supreme court in this state decided in 1900 that it was an invasion of the right of contract and that it set a premium upon incompetency. But conditions have changed and I am satisfied if our court today had to rule upon the same question it would hold it constitutional because of these changed conditions. Practically all of our coal at that time was mined by the hand-pick method. There was not any sale for fine coal, only for the lump coal, and the fine coal was lost, but conditions have changed. Patent stokers have come

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into use. Fine coal is marketable; in fact, if you go into some of the state institutions of this state you will find they are using fine coal the miners do not get paid for.

Mr. HOSKINS: One other question about West Virginia: Is it possible in Ohio to increase the wage-scale, or the money paid to miners, so long as conditions exist as they are in West Virginia?

Mr. TETLOW: I do not think this is a proper place to discuss the question of wages, or whether the operator should pay in advance or not. Recently they have agreed to a contract giving a fraction over five per cent increase in Ohio to take effect as soon as it can be arranged, perhaps for the first of May.

The point is this—and I want you to understand it thoroughly—it does not make any difference to the honest employer if thirty-three per cent of your coal passes over the screen—it makes no difference whether you pay sixty-six cents per ton mine run or one dollar for lump, for they are relatively the same. What difference does it make to the honest employer who wants to pay for that which the miner produces, whether he pays sixty-six cents mine run or one dollar for lump, because, as I say, the only disadvantage is that the screen wears and the miners are always getting the worst of it? The miners have never been strong enough to get justice and that is why I think we should have a provision allowing us justice in this regard.

Mr. KRAMER: I never saw a coal mine. Do the miners get anything for that which goes through the sieve?

Mr. TETLOW: Not a cent.

Mr. KRAMER: Is that all coal?

Mr. TETLOW: Yes.

Mr. HARRIS, of Ashtabula: By way of preface to a question I am about to ask, I had understood that this proposal and the two proposals into which it was merged, provided for conservation, that is saving, to the end that the supply might be made to last longer, and I would be glad if you would explain to me—I am not at all expert on this line—but how will this tend to make the production last longer for the consumers of the country?

Mr. TETLOW: I tried to make it as plain as I could from a practical standpoint in the beginning. The only way to conserve mineral resources is by adopting certain methods of mining. Under our system, now in practice, we leave forty per cent of the coal under the ground that can never be recovered. Europe has systems of mining by which they mine practically all of their coal; in fact, some of the largest mining operators mine one hundred per cent of their coal while we mine less than sixty per cent. I claim that is the reason of our great loss. The waste of minerals ought to be regulated, and we should give the legislature power to regulate mining to bring that result about.

Mr. HARRIS, of Ashtabula: If I understood your answer to Mr. Hoskins it is that there must be something provided in the organic law that is not there now to enable that result to be brought about?

Mr. TETLOW: Exactly.

Mr. HARRIS, of Ashtabula: And I could not see where it was.

Mr. TETLOW: This proposal combines a number of things. We have in it the conservation of the forests and of the minerals and of the water power, and it also gives the legislature power to regulate the measurement of coal, and, speaking upon that particular part of the proposition, the weighing of the coal.

The great influx of inexperienced workmen into our mines has added greatly to our death rate. Take a mine generating gas; the air currents are rendering it harmless, but some inexperienced person leaves open a door which is used to direct the air current, the air is cut off from the section generating gas, an explosive mixture generates and the inevitable result follows. We have laws in this state that require each mine generating gas to be examined each morning by a fire-boss or inspector before the men enter the mine; he is required to make a written report on a blackboard outside the mine and to report thereon the condition of the mine, and if there is any danger in any section he is to so report. Then we permit men to enter the mine and work therein who cannot read or understand our language. Don't you think, my friends, the time has come for us to say, "I am my brother's keeper"?

In conclusion, I desire to say this proposal provides for the conservation of all our natural resources. As we look about us we see our timber almost exhausted. Should not we lay the foundation now to prevent the waste of our minerals? We should conserve our streams that future generations can harness their power and send electricity flowing into the needed channels. We, for the love of humanity, should protect the life and health of those who go into the bowels of the earth and give from the darkness of the mine so much light to the world.

Mr. STOKES: You speak about forty per cent here being left for pillars. What do they do in England?

Mr. TETLOW: They take the slate and rock that come out of the mines and with it build walls along the travel and haulage way; they remove all the coal; they do not use any timber, and consequently, when all the coal is taken from under the roof, the pressure gradually fills in the spaces made by the removal of the coal.

Mr. KRAMER: In the first part of the proposal you have laws "may be" passed in reference to forests, and then the latter part of the proposal says laws "shall be" passed. Was there any particular object in putting the "may be" in one place and the "shall be" in another?

Mr. TETLOW: None at all. It really doesn't make any difference. We can not force the legislature to pass the laws, but we can give them the power and the word "may" or "shall" does not make any difference whatever.

Mr. KRAMER: Is there any objection to making all of them "may" or all of them "shall," so the legislature could not think one was any more peremptory than the other?

Mr. TETLOW: No.

The delegate from Lawrence was here recognized.

Mr. LEETE: Mr. President and Gentlemen of the Convention: I wish to speak upon this question of conservation of natural resources of the state, because I believe that in this conservation we are all more or less interested, and the people that are to follow us in future generations are more interested than in almost any other

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question, and as my two friends have spoken upon the conservation of the forests and the mines respectively, I shall confine myself to the conservation of water power.

Conservation of water power! Some one would ask, What is it? It is the preserving, guarding, protecting and keeping in a safe or entire state everything necessary to the developing of said power. Some would ask, Is there any reason for us doing this? Why should we conserve water power? If you spend more than you make what is the inevitable result? Trouble and disaster, sure and quick.

Now, heat, light, force, energy and power are the essentials necessary to all people. Do you know that you are destroying the forests more than four times as rapidly as they are being reproduced, and that in cutting, logging and clearing you are so utterly reckless in the manner in which you do it that practically all the good timbers are taken and none but the worthless remain; that the young trees and underbrush are destroyed as well; that stumps, tops and litter are left in such piles and confusion that they invite forest fires which usually do complete the destruction the following year?

Mr. O. W. Price, vice president of the National Conservation Association, says in an excellent work of his:

Forests are to streams what the storage battery is to the electric wire—the source of useful power, and energy, and current in reserve.

When the rain falls on a forest, it spatters against the roof of leaves, and the heavy hard-pounding raindrops are broken up into a fine, soft mist. Any one who has stood under a tree during a shower doesn't need to be told that. When this mist reaches the ground under the trees, it falls on a soft bed of dead leaves. This bed has a wonderful power to soak up and hold water; and so the rain soaks slowly into the leaf litter, much as water does into a cloth, until it reaches the soil beneath. This is called the mineral soil, because it was made by the gradual wearing away of rocks of many kinds, which took more years than we count.

The water slowly works on down through this mineral soil, following cracks and channels already worn by the action of water for thousands of years; continually starting new channels of its own, joining with other rivulets, and so forming streams and even rivers underground. It is these underground waters, finding their way to the surface on the mountain sides, and in the valleys which make springs.

When the forests are gone, all this is changed. The sun beats down on the leaf litter, dries it up, and the wind scatters it, until only the dense, mineral soil is left, which bakes with the heat until it is sometimes nearly as hard as brick. When the rain falls on it, very little soaks in. The rest runs off down hill into the streams, carrying a part of the soil with it. We can see this going on in many places from the train. Over there is a bare hillside with great raw gashes and gullies worn in it by the countless little torrents of muddy water which have dashed down it after each hard rain ever since the forest was destroyed.

The author, continuing, in substance says that farther down the stream we see it filling its bed with debris, changing and cutting its banks to pieces, spreading over the rich land and turning good farm lands into unsightly sandbars and hideous patches of sun-baked mud. The stream has already taken and is taking its revenge for unwise use of the ax and fire.

Now gentlemen of the Convention, we believe all authorities agree that the exhaustion of the natural elements, such as the forests, oil, gas and coal, and which are now used to produce power, is in sight. Need I now ask, Have you not spent what you did not make, and have you not forever prevented your children and children's children from using these essentials? If that is so, what are our duties toward and what can we do to control and conserve the one remaining source of power in the state, namely, water?

Do you realize that we are now at a turning point in human progress and in the manufacture and transmission of power; that farseeing men and capital are now beginning to look forward and are securing suitable sites for the development of power, and that the state must move, and move quickly, if it wishes to protect and control the streams and water powers? Under this proposal the state can declare and maintain conservation districts and enforce scientific plans for the development and control of the waters therein. The practice heretofore has been to look for a great waterfall, build a large dam to secure a high and elevated head to develop large power, and use the same, usually for mill purposes, without any idea or care for stream control.

The effect in Ohio is usually an excess of water in the spring, damaging adjacent lands and properties, and with a scarcity in the fall.

Let us change all this and use common sense; store in suitable lakes, reservoirs and behind regulating dams, upon the high lands and upper courses of the streams of this state, the excess of the waters and rains falling during the winter and spring months, allowing, say, one three hundred and sixty-fifth part of this excess of these stored waters to pass on each day to the power sites below, and there utilize the power in the weight of the water as it falls by gravity in its onward course toward the sea. In this manner you can control the stream as to volume and constancy of supply, effectually stopping the filling up of its bed and of destructive overflows.

And further, from this constant volume you can develop an abundance of power for the uses of the people of the state without calling on the other natural resources of the state, and, further, this power will be everlasting, and as the cost of electrical transmission is not prohibitive in distances under one hundred and fifty miles, there will not be a single city or community in the state that can not be amply supplied with power from some conserved district within the state.

Some will ask, will it pay? In answer I will say capital is now seeking to acquire rights on a number of streams in the state, and have already secured some, and the people in the vicinity where such rights have already been secured will wake up some day to the fact that they are at the mercy of some corporation.

Mr. M. D. Burke, member of the American Society of Civil Engineers, in a pamphlet, says:

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Three direful evils not only threaten us, but are actually upon us, because of our failure to conserve and properly use the rainfall:

First. In its rapid and unobstructed descent from the uplands, slopes, and hills it carries with it, not only the soil, but it furrows the slopes with gullies, and produces slides of great extent, and is thus denuding and destroying millions of acres of valuable land.

Second. It carries such quantities of sediment into the larger streams that they become clogged, their channels are filled with bars, they erode their banks, destroying other lands, thus adding to the vast volume of sediment and they lose their usefulness as channels.

Third. In times of heavy, long-continued rainfall the larger rivers overflow their banks, and the property loss of the inhabitants of their valleys is very great, intense suffering, and even loss of life, resulting from these disastrous floods. In the smaller valleys the soil is frequently washed away from large areas of bottom lands, leaving barren wastes covered with sand and rock. Farmers spend much time and labor in building brakes and dykes in efforts to save from destruction their most valuable lands.

Four desirable benefits will accrue from a proper conservation of the rainfall:

First. By holding back the water you will retain with it the soil which it may have started from the hillsides or cultivated fields, and after this sediment shall have fallen to the bottoms of the pools only the clear water will escape, and the soil will be free for the taking and may be returned to the farms if wanted. The soil will thus be saved.

Second. By controlling the flow of the various tributaries the volume of water passing down the main channel will, like that of the controlled streams, be so nearly a constant flow that, after this work shall have been well advanced (it may be completed by generations yet unborn), the streams will not overflow their banks, and disastrous floods will be known only in history, and be read about as are the other hardships of the sturdy pioneers. Thus the losses and sufferings incident to disastrous floods will be eliminated.

Third. The water from the controlled streams will reach the navigable channels in nearly constant quantities, and will carry with it but little sediment. Hence it follows that the navigable channel will have a constant flow, which will be ample for navigation, and its channel, not being filled with debris, it will not be forced to erode its banks, but will deepen its channel, so that but little expense will be needed to maintain it in proper form for use by boats. Inland navigation will thus be secured.

Fourth. Impounding the water of the numerous tributaries upon the higher lands, places it in such position that it is available for power. Using it for that purpose does not detract from its value for any other purpose, nor eventually retard its arrival at the sea, or, by evaporation, to the clouds. By using it for power we will place in the hands

of the American people a force which will enable them to retain their present position in the van of progressive nations, and they can do anything which power will enable any people to do, without burning a stick of wood, a ton of coal, a foot of gas or a gallon of oil.

By passing this proposal you will not take one right or thing from any one, but you make it possible and mandatory for the state to protect the people and coming generations from "innocent stockholders" or capital seizing all the natural resources, thereby leaving the people to their mercy.

Mr. DWYER: I do not believe in Western Ohio there is one available water power. They are always trying to get water power, but there is very little water power.

Mr. LEETE: We want to control the excess water that falls in the spring and winter and keep it back and hold it in a reservoir so that one three hundred and sixty-fifth of it can be allowed to escape each day and keep the water-volume constant in our streams.

Mr. DWYER: I had a report made to me as to the water power in Western Ohio and the best that could be figured was seven hundred horse power, and that certainly wouldn't amount to very much.

Mr. LEETE: You are wrongly informed.

Mr. TETLOW: I offer an amendment.

The amendment was read as follows:

In line 14 after the word "regulation" insert the following words: "of methods".

Mr. MILLER, of Crawford: There is no longer any doubt entertained as to the necessity for the conservation and preservation of our timber supply. The nation is wisely taking steps to preserve our forests and many of the states are doing efficient and effective work. Among those states Pennsylvania, New York, Indiana, Illinois, Minnesota, Michigan, Nebraska, California, Washington and in fact nearly all of the states are doing something toward the preservation of the timber supply. Ohio is doing practically nothing except in an advisory way. Our experiment station will advise with the owners of timber lots as to how to care for them, and if a demand is made they will send from the forestry department of the experiment station a man to examine the lot and advise as to its management. They will also furnish landowners of the state a limited number of a certain kind of trees, provided they are planted and cared for under their direction. Other than this, we are doing practically nothing, except what is being attempted by the Ohio Forestry Society, of which I have the honor of being a member and on the executive board. Prof. A. L. Lazenby, of the State University, is president of the society, and it is maintained entirely by contributions from its own members. The professor is now abroad studying forest conditions. I know something of the difficulty of persuading landowners to take any real interest in this subject.

About the first argument offered is that they are required to pay taxes on this land and they can not afford to let it lie idle, and hence they turn stock into the timber lands and the pasturing of the timber lands is very detrimental. Perhaps you may have noticed as you go over the state that in those plats that are pastured the tops of the trees begin to die off in a few years

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and eventually the entire lot is destroyed. What we want to do is to encourage the owners of timber land to devote it exclusively to the growing of timber; we must take into consideration that the preservation of the timber supply in a great measure aids precipitation. There is no question any more that the timber of a country, in a great measure, controls the precipitation and the flow of streams, and it seems to me that these two propositions fit nicely together, and that we should give this proposal very careful consideration. One of the most important economic questions, it seems to me, is the control of the stream-flow of this country. I would like to quote just briefly from a report of Raphael Zon, chief of silvics of the United States forestry service. In this very exhaustive report, made to the forestry department, he says on this proposition:

Of all the direct influence of the forest the influence upon the supply of water in streams and upon the regularity of their flow is the most important in human economy. * * * A national policy which, though considering the direct value of forests as a source of timber supply, fails to take full account also of their influence upon erosion, the flow of streams, and climate, may easily endanger the well-being of the whole people.

Mr. LAMPSON: Is it the intention of the proposal to materially change the laws relating to the control of the use of water in ordinary small streams that flow through farms and the country and that are used for ordinary purposes?

Mr. MILLER, of Crawford: No; I don't think so. It is only enlarging the use of them. The riparian rights would be entirely reserved to the owners of the land.

Mr. JONES: I ask this question because I have not had an opportunity of knowing anything about the proposal: What is the power with reference to the encouragement in the matter of planting and cultivating forests that is proposed to be conferred in addition to what the legislature now has?

Mr. MILLER, of Crawford: I do not know that there is any particular additional power granted except the freeing of those tracts from taxation.

Mr. JONES: That is what I was coming to. Does that language confer any power except what now exists?

Mr. MILLER, of Crawford: Not so far as I know.

Mr. JONES: Then all is included in the one proposition to exempt timber land from taxation?

Mr. MILLER, of Crawford: I presume it is.

Mr. JONES: If it is desirable, in order to conserve the natural resources, to exempt timber from taxation, why not exempt pasture land from taxation—land that is put in clover—for that is the greatest conservator that we have in agricultural matters? Why not exempt land put in grass and clover, especially land put in alfalfa, the greatest of all conservators?

Mr. MILLER, of Crawford: I think it can be clearly shown that the forests have a greater influence on climatic conditions than any other agricultural product.

Mr. JONES: But may I ask if it is the purpose of this to regulate climate or to conserve natural resources?

Mr. MILLER, of Crawford: We are seeking to encourage the other things by preserving forestry. One of

the most important features that we have knowledge of is the control of the climate.

Mr. JONES: Do you think it is more important to encourage the growing of timber than to encourage the growth and cultivation of those things that feed mankind?

Mr. MILLER, of Crawford: I might answer that by asking another question: What would be the result if all the timber were removed?

Mr. JONES: In the prairie country, where it all has been removed for a million years, we have the richest soil in America and the greatest producing soil.

Mr. MILLER, of Crawford: I think conclusive evidence shows that forests have a great influence upon the precipitation and upon the climate. In the growing of forests trees there is no immediate result to the owners, while in the growing of the other crops you have mentioned there are immediate results.

Mr. JONES: In what way is it proposed to conserve natural sources in reference to draining swamp lands? Do you mean that if a man happened to own swamp land the state would have some power to exercise a different control over that than with reference to other lands he owns?

Mr. MILLER, of Crawford: Not at all unless the individual owner is not able to reclaim that land himself.

Mr. ELSON: The idea is to exempt from taxation all the forest land of the ordinary farmer?

Mr. MILLER, of Crawford: All the forest land devoted exclusively to the growing of timber.

Mr. ELSON: What is there to prevent a coterie of millionaires buying up a whole county for a hunting preserve?

Mr. MILLER, of Crawford: I don't know that anything would prevent it. I would not object to it. In that case we would get just what we are seeking for.

Mr. ELSON: Suppose they would buy up a whole county?

Mr. MILLER, of Crawford: Better yet. If there is any argument in the fact that forests are a great means of conserving natural resources and providing precipitation, controlling our streams and their flow, that would be a great advantage.

Mr. ELSON: Would you favor a large part of the state thus being in the hands of a few wealthy individuals and exempt from taxation?

Mr. MILLER, of Crawford: Of course I would not favor conditions of that kind. Now I have not a written speech and the questions disarrange my thought just a little.

Mr. EBY: Can you deduce any scientific evidence that the amount of forests have anything to do with precipitation?

Mr. MILLER, of Crawford: If you will wait a moment I think I can demonstrate that to you. I have just stated that in the exhaustive report of Raphael Zon he speaks of the important influence of forests in the supply of water in streams. Further he says:

Of the 44,015,400 square miles of land surface of the earth 79 per cent drains directly toward the ocean and 21 per cent forms an inclosed inland area without ocean drainage. The 79 per cent may be called the peripheral area of the earth's sur-

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face, and the importance of the evaporation from it is, on the whole, very great.

Prof. Ed Bruckner computes the "continental vapor" evaporated from this peripheral area to be about 21,000 cubic miles (20,871.3 cubic miles). It plays, therefore, even a more important part in supplying moisture to the air than does the vapor directly evaporated from the ocean. Bruckner estimates that the peripheral regions of the continents are capable of supplying seven-ninths of their precipitation by evaporation from their own areas.

He then gives a lengthy table which I shall not quote from. He continues:

An analysis of these figures discloses the fact that one-fifth of the entire vapor on the earth's surface comes from the evaporation on land; that only 7 per cent, or 5,997.5 cubic miles, of all the water evaporated from the oceans enters into the precipitation over land, and that 78 per cent of all the precipitation that falls over the peripheral land area is furnished by this area itself.

This is after an exhaustive examination, not only in the United States, but in other countries as well. I am quoting just short paragraphs from this report, because it is too extensive to read at length:

If precipitation over land depended solely on the amount of water brought by the prevailing winds directly from the ocean, rainfall would, of course, be confined only to a narrow belt close to the sea. Not all the water that is precipitated, however, is lost from the air current. A large part of it is again evaporated from the land into the atmosphere. The moisture-laden air currents therefore soon lose the moisture which they obtain directly from the ocean, but in moving farther into the interior absorb the evaporation from the land. Hence, the farther from the ocean the greater is the proportion which evaporation from the land forms of the air moisture. In fact, at certain distances inland practically all the moisture of the air, or at least as great a part as that formed originally by the water evaporated direct from the ocean, must consist of that obtained by evaporation from the land.

While the removal of the forest might increase the evaporation from the ground itself, yet the more rapid run-off and the absence of transpiration by the trees would reduce the total amount of water evaporated into the atmosphere. The land, even if taken up for agriculture, could never return such large quantities of rain into the atmosphere as the forests did. The result would be that less moisture would be carried by the prevailing winds into the interior of the country, and therefore less precipitation would occur there.

Mr. JONES: Will the gentleman yield to a further question?

Mr. MILLER, of Crawford: Yes.

Mr. JONES: Do the records show that on account of the falling off of timber in Ohio in thirty-five years there has been any decrease in the amount of rainfall in this state?

Mr. MILLER, of Crawford: I am not prepared to say that there has been any.

Mr. JONES: Are you not aware that the records of the weather bureau show there has not been any change?

Mr. MILLER, of Crawford: I presume that is so, but you will admit that the run-off has been greater. There has not been near the percentage retained in the soil.

Mr. JONES: Is it of not more importance to have the land of Ohio fit for cultivation and so used as to produce the most of what the people of the country demand than to produce something that is not demanded?

Mr. MILLER, of Crawford: I think you are right about that, but it was shown yesterday by the author of the proposal that there were almost a million acres of waste and other lands in the state of Ohio that can not be used for agricultural purposes. It is those tracts of land we are endeavoring to provide for reforestation, and also for the state to purchase lands of that kind and reforest them. We would then get the benefits from them, whereas now none is derived from those waste and abandoned lands.

Mr. JONES: Is it not a fact that substantially all the lands in Ohio will produce grass, and would not efforts at conservation be better directed if directed along the line of getting those lands in grass rather than into forests in consideration of the fact that there are millions and millions of acres in this country that can not be used for any other purpose except forests?

Mr. MILLER, of Crawford: I think the gentleman knows there are many tracts of land in Ohio that do not even grow good grass that might be used for forestry purposes.

Mr. JONES: Could they not be made to grow grass?

Mr. MILLER, of Crawford: I would not say they could not be made to grow grass, but you must acknowledge the fact that the taking off of the forests, even if the land were sown in grass, the run-off from those hilly tracts would be very much greater than from the forests. You know that a rainfall will continue for hours after the ceasing of the actual rain because the leaves catch it and it falls gradually on the beds of the forest, and if the bed is in good condition it gathers that moisture and it is carried off through seepage and not in the rapid run-off which produces the excessive floods we have now over what we had a few years ago.

I didn't expect to use so much time, though as chairman of the committee I believe I have some additional time.

Now I want to speak briefly in reference to the increase of floods brought about largely by the clearing off of our forests. This is a report by William L. Hall and H. Maxwell to the United States department of agriculture:

Popular opinion for years has been that floods are increasing in frequency and duration in many rivers of the United States. Until within a year, however, there had been no careful examination of records to see whether or not this popular opinion is based upon fact.

About a year ago it was thought worth while to look into the records to see whether any

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changes were discernible. The results were surprising. It was found that in many of the streams which take their rise in the Appalachian Mountains there has been a steady increase in the number and duration of floods during the past twenty or thirty years.

The increases seem to be greater on those watersheds where the condition of the surface has been the most changed. They are greatest in such streams as the Ohio, Cumberland, Wateree and Santee, where the most forests have been destroyed, and least on the streams where forest conditions have been least changed.

On the Ohio River measurements are given for twenty-six years. During the first half of the period there were 46 floods; during the second half 59. The number of days of flood during the first half was 143; during the second half, 188.

Repeated European observations, extending over long periods of time, and shorter observations made in this country, conclusively show that evaporation from water or other wet surfaces on the floor of the forest is but one-third or one-fourth that from similar surfaces in the open.

It is evident that any factor which decreases the surface or superficial run-off and increases the seepage run-off is of the utmost importance in regulating the flow of streams.

It seems to me that this is conclusive evidence that the destruction of forests has considerable to do with the stream flow and it seems to me that this question is of so much importance that the state of Ohio ought to take its place in the forefront among the states attempting to conserve and encourage reforestation or afforestation of our timber land. There is one authority, Mr. W. D. Carroll, of the United States forestry service, who says he thinks the best results can only be accomplished if the nation and states join hands in this work.

Mr. BROWN, of Highland: There has been a demand for this for many years. I have heard it from being associated with farmers. I think, however, the persons who would be disposed to take advantage of the privileges if the land were made free of taxation, might turn this into a method of speculation which would go beyond the purpose of the thing proposed, and as a partial safeguard against a potential abuse of it I wish to offer the following amendment:

The amendment was read as follows:

In line 6 between the words "the" and "growing" insert "original."

Mr. BROWN, of Highland: That amendment is offered for fear of the persons who have land, as I have, for instance, in large pasture fields, covered with worthless growing shrubbery which never will make timber, and never will make much at all, and can be properly utilized after a while for something else, but will never grow what you might call timber.

Mr. HALFHILL: I desire to call the attention of the president to the special order set for the hour of four o'clock.

Mr. MILLER, of Crawford: Will that allow for the exemption from taxation of such tracts?

Mr. BROWN, of Highland: Under this proposed amendment of mine it would permit persons who wished to grow timber originally planted by the person who owned the land and devoted it exclusively to timber—they would be privileged under the laws as made under this proposal; but suppose we don't say "original" and say "growing of forest trees." That might be held to cover such pasture lands as I have described. They might seek to escape from taxation upon large areas of land covered with shrubbery growth, and I think "original growing of forest trees" in there would safeguard somewhat. It would then read: "Laws may be passed to encourage the propagation, planting and cultivation of forestry and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry"—there is the end of the "exclusively"—"or to the original growing of forest trees." Now, the "growing of forest trees" does not come under the restrictive meaning of the word "exclusively," so I say "original growing of forest trees" would safeguard that so no one could take unfair advantage of it.

Mr. ULMER: I do not think it is necessary to have a very extended debate upon this proposal.

This is a matter of public economy. The protection of forests and the reforestation of land is something of great value to all the people in the state. The value is not alone confined to the owner of the forests, but it is a general good. As I understand the purpose of this proposal, it is to encourage reforestation and also to give the legislature power to buy land which is of little value for agricultural purposes for the purpose of reforestation. We certainly should give the legislature that power. In all European countries you find that the government takes extra care of forest land. Every government over there owns great tracts of forests, and these forests are valuable, not only in the form of timber, but as a protector of moisture to the land, and a protector and regulator of the flowing of water.

It is all out of place to raise these questions of detail. This is not a place to deal with all these minor questions of detail. We are passing on matters of general principle here. I think that we should give the legislature the power to pass such laws and let them work out the details. We can not work out the details of everything we do here. Let us adopt the principle and then it is up to the legislature to see that speculation can not slip in.

Now, as to the matter of mines, we all know that our riches in the earth are to a great extent wasted, not only to this present generation, but to the generations to come, and proper and economic handling of those matters would be a saving both to us and to them. We should not waste anything, but should save all that is possible for future generations. The regulation of mining is a matter in which the state should take a hand. The mining disasters we have had in this country are simply horrible to contemplate. Hardly a week passes that we do not see in the paper where ten or twenty or a hundred lives have been lost. Is it not the province of the state to protect the men who go down into the bowels of the earth from the speculator who has no sympathy and does not care for life because human life

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is the cheapest thing in the market today? Therefore, I say the part of this proposal dealing with mines is a just and proper regulation.

As to the water power, I think the streams belong to the whole people, and the state should have control over them. When any company or corporation in any part of the state produces power to sell to the people of the state the state should have it in its power to protect its people and to fix what the company should pay for this right in the first place, when it is buying its franchise, and at what price it shall sell the product of this water power.

What have they in the little country of Switzerland? After electricity, the great inventions came up. How long did it take that people to see the value of their natural resources? They have an immense amount of water power there, and the people, through the initiative, reserved all the water power rights to the government. Any corporation that wants to use some of the water power has to go to the government, and the government says what that company shall pay for the right and fixes the price at which the company can sell its product to the people. I think we should have the same thing.

In fact, from a careful perusal of this proposal, I can see nothing wrong whatever in the proposal. It is all good. There is not one word of wrong in it, and wherever anything develops from which a private corporation could try to take undue advantage the legislature can handle it. I hope the proposal will pass without any substantial change.

Mr. FOX: I want to ask Mr. Leete a question. I didn't understand something in his paper. In Mercer county we have the largest reservoir in the state, the largest artificial body of water in the world. There is a movement on foot now by some organization in the northwestern part of the state to get water from this reservoir by leading other reservoirs into this Mercer county reservoir, thereby bringing the water to a higher level. In that way, south of the reservoir, the water will back into the farms, and thus thousands of acres will be under water. Would this interfere with that in anyway at all?

Mr. LEETE: I am not familiar with the conditions there, but under the conditions of this proposal if any persons are injured in any way or form they will have to receive compensation for whatever damage is done. Whatever damage is done by reason of the development of water power that damage must be paid before the parties developing the water power may take it, in the same manner in which condemnation for railroad purposes is done. I do not really understand your conditions there. In fact, I understand there is a reservoir there and the development of power contemplates the raising of your reservoir so that there can be a constant flow of water there.

Mr. FOX: Yes; they want to lead other areas into that.

Mr. LEETE: We want the state to say where the conservation shall be, and what shall be the plan by which the excess water falling on the watershed shall be taken care of. That will all be studied out and worked to one scientific end.

Mr. FOX: I don't exactly understand it. I would like to be in favor of this proposal, but if it would per-

mit any such a thing as that—the flooding of those thousands of acres in my county—I shall certainly have to vote against it. The farmers received \$34,000 a few years ago for damages sustained, and they had to earn it twice before they got it. I think proper protection should be provided. A thousand additional acres would be under water.

Mr. BEYER: I would like to have a slight amendment made to this proposal, and I beg the indulgence of the Convention for a few minutes to explain why I want this amendment and exactly how I want it.

I heard some doubt expressed as to the importance of this question. There can be none. Any one who thinks it is not important is wrong. We spent three weeks on some questions, and if we make a mistake in settling them we have a chance to correct them and change them in a year or two, but there was a mistake made by our nation in destroying our woods which never can be made good, and I think it is now our duty to do the best we can to save what is left of the national forests. Of the forests that our forefathers found when they came to our eastern shores nothing is left but a few crippled trees. Travel along any railroad and look out of the windows of the car and see for yourselves.

It was suggested a few weeks ago on this floor that all development and industry in this country will have to be dug out of the soil by the farmers. That may be true to a certain extent, but the farmer himself and the good machinery on his farm will not get him good crops. Those depend on two things; the first is the soil and the second is the condition of the climate. If we remove all our forests the fertility of the soil will be gone in a short time. It will be washed off and it never can be replaced, and if our woods are cut down and the winds and the storms have a chance to sweep over the country, it will not be possible to do good farming any more. Why is it that our wheat fields all over Ohio are bare? Why is it we have to go over and sow them in oats and thousands and thousands of bushels of wheat are lost? Why is it we pay \$15 a bushel for clover seed? Some people say the farmers make money, but they don't with clover seed at \$15 a bushel. We don't sell clover seed; we have to buy it, and then, when we pay that awful price for it, it is doubtful if we will have a crop. Why is it that dams in the rivers can not hold the immense floods that we have every spring? Because the rain fall is not regulated any more by our woods, and it comes down and runs off all at once. There is nothing to hold it in the ground, and finally, after the water has gone, we have a dry spell. That is the reason cloverseed is up to such an enormous price. It is because we have cut down our woods and can't do anything else to remedy the evil but replant our woods by reforestation.

History is the best teacher of mankind, we say. Now let us go back to some other country. The Holy Land was the land of milk and honey, but if you go there today it is a desert. Why? They cut down all the cedar forests from their mountains.

Spain four hundred years ago was one of the richest nations on the earth under Charles V. What is it today? A few regiments of soldiers and a few vessels were sufficient to whip that nation. France for centuries conserved her forests, but the kings were finally destroyed, the Revolution came and everybody thought they could do

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as they pleased. They cut down all the forests and France has spent millions and millions of francs to replant them, but could not do it on the mountains. We haven't done much better. They say we are progressive and we are industrious. That is true in many respects, but we haven't been in this respect. Statistics will show that in England, Scotland, and Ireland they raise thirty-five bushels of wheat to an acre. We raise from nine to twelve, in spite of the virginity of our soil. Why it is? Because the moisture is not distributed any more. Gentlemen, we have an opportunity here. Let us do something to get our forests back and preserve what is left of them. Let us put the rest of our forests under management, and let us replant such tracts of land as are not much good for any other purpose. I have read the statistics of the state of Ohio and I see that there are ten counties that have from six thousand to fifteen thousand acres of land reported no good for any other purpose. Why can't we see that these tracts of land will be given to the county to make forest reservations? In forty years from now it will be grown up to such an extent that those counties will not have to pay a single cent of local tax. All the income necessary could be derived from the timber land. They have this in other countries and it will pay us, and pay us better than to clear the land, which itself won't grow much, and by the clearing of which our other land is deteriorated. I would like to have not only state forest reserves, but county and township and municipal forest reserves. I offer an amendment.

The amendment was read as follows:

After the word "purpose" in line 9 insert "by counties, townships and municipalities".

Mr. STOKES: I move the previous question on the pending amendments.

The PRESIDENT: The question is, Shall the debate be closed on the pending amendment? The effect is to bring to a vote the three pending amendments.

The main question was ordered.

A vote being further taken on the amendment offered by the delegate from Hancock [Mr. BEYER] the amendment was not agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Highland.

Mr. BROWN, of Highland: May I have the consent of the Convention to make a few words of explanation?

DELEGATES: No.

The amendment was not agreed to.

The PRESIDENT: The question now is on the amendment of the delegate from Columbiana.

The amendment was agreed to.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out the following: "and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry or to the growing of forest trees."

Mr. KING: Several have objected to me to that clause in this proposal and I am convinced myself that it is conferring a very broad power upon the legislature and not in that part of the constitution which will be devoted to the subject of taxation. Therefore, I don't think it belongs in this proposal, and it ought not to be conferred at this time.

Mr. MILLER, of Fairfield: I just want to read in connection with this the state tax commission's report to Governor Harmon:

The commission suggests that the constitution might well be so amended as to place beyond doubt or question the power of the state to levy taxes on incomes, inheritances and the production of minerals; and also to permit the exemption of timbered tracts of land from taxation in order to encourage forestry.

I hope the amendment will be defeated and I move to table it.

The motion was carried.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

Strike out all after line 3 and insert the following:

"The legislative authority shall have full power to provide for the conservation of all the natural resources of the state and to that end, may pass laws to encourage forestry, regulate the production of coal, oil and gas and preserve and control the water power of the streams."

Mr. STEVENS: If you will refer in your proposal book to Sub-Proposal No. 64 it will enable you more readily to see the purpose of this amendment. It seems to me up to this time in the discussion of the matter we have gotten the thing in a sadly complicated condition.

It was not in the best condition as to language at the start, but the discussion has rendered it more complicated than before. The amendment I propose seeks to do everything that anybody suggests toward the conservation of the natural resources of the state, and if I know anything about the English language I believe I have expressed it in shape to meet the purposes intended. I will read it: Strike out all after line 3 and insert "the legislative authority"—that is not only the general assembly, but the people at large under the initiative and referendum—"shall have full power to provide for the conservation of all the natural resources of the state"—could anything be more comprehensive than that?

Could anything reach the purpose better than that?—"and to that end may pass laws to encourage forestry, regulate the production of coal, oil and gas and preserve and control the water power of the streams."

Everybody knows the principal waste is in coal, oil and gas, and under this amendment all of that can be provided for by proper legislation as time goes on and necessity arises. This does all that the other does and it does it in good, plain English, and anybody can understand it, and when it comes to the legislature they will know exactly what it means. There is no room for misunderstanding if you pass my amendment. Let us get one amendment expressed in good, strong, expressive English so that somebody will know what it means.

Mr. DOTY: If your amendment were adopted and placed in the constitution could the legislature, if it wanted to, conserve forestry in this state by exempting from taxation certain tracts of land devoted to that purpose, if in their judgment they thought it was wise to do so—could they do it?

Mr. STEVENS: By passing a bill to do it they could.

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Mr. DOTY: But would they have that power under this amendment?

Mr. STEVENS: Yes; if you want to encourage anything or do anything is not the best way to encourage it to go out and set an example? That is the best way to do it.

Mr. DOTY: There may be some other way, but suppose the general assembly decides that the best way in their judgment to conserve forestry is to exempt forest land from taxation. How could they do it?

Mr. STEVENS: By passing a bill for that purpose.

Mr. DOTY: Don't you know another part of the constitution prohibits exemptions from taxation, except certain things, which doesn't include this?

Mr. STEVENS: The other part is no nearer to being adopted than this.

Mr. DOTY: It is the constitution today.

Mr. STEVENS: Then take care of that when it shows up.

Mr. DOTY: Do you think the people of Ohio will do as Captain Evans wants them to do—turn everything over to the legislature on taxation?

Mr. STEVENS: I think we will finish the job.

Mr. DOTY: You want to do half a job now and half some other time?

Mr. STEVENS: I don't want to cross a bridge until I get to it.

Mr. STILWELL: In your reference to conservation of water power you limit it to "streams." Why not include lakes?

Mr. STEVENS: I rather infer that you are not going to have very much water power unless there is a stream.

Mr. STILWELL: I don't think your answer is pertinent to the question.

Mr. STEVENS: I think it is. You have to have a stream before you have any water power.

Mr. STILWELL: But you have lakes as well as streams, and don't you know the state has no streams?

Mr. STEVENS: I don't say "state streams". I say "streams".

Mr. LAMPSON: Would not there have to be an exemption for that class of property specially named in order to take it from the prohibition of the uniform rule in the constitution?

Mr. STEVENS: Possibly, and if this Convention wants to do that they can do it by that means better than by putting it in here. That is the easiest way.

Mr. DWYER: The power to exempt from taxation is strictly construed and must be specific. There must be specific power to the legislature to relieve from taxation, otherwise the legislature can not do it, and therefore you must have it specifically granted to the legislature to exempt this property.

Mr. TETLOW: I want to analyze the situation just a moment. In the first place we have three proposals coming to this Convention that provide for conservation of our natural resources. One is by Mr. Miller, of Fairfield, exempting forest land from taxation; one from Mr. Leete in reference to water power and one by myself with reference to the minerals of the state. My proposal was amended in the Judiciary committee to cover all the natural resources of the state. The original number of my proposal is 230. Yesterday we had a special

committee to take the three proposals and concluded to deal with the question all at once, so that we could discuss the subject intelligently. If the amendment offered by the gentleman from Tuscarawas [Mr. STEVENS] is adopted everything aimed at in my proposal is defeated. The only thing you can do to conserve the mineral resources of the state, so far as applicable to coal, is taken away. We have lost since mining began two hundred and fifty million tons of coal by wasteful methods. If you want in the future to conserve those minerals and prevent that waste it can only be done by regulating the methods of mining. You can not save this coal by enacting laws for the production of coal. We do not want to limit production. If we can produce one hundred million tons annually, let us do it. Let us get all of the coal out of the ground, but let us not lose any. We don't want to limit production. What we want to do is to save all the coal in the ground to the people who live upon the top of it and not leave millions of tons underneath, lost forever. This proposal now before the Convention provides for regulating the method of mining, and that is the only way to conserve the minerals. The amendment also eliminates the question of regulating the weighing and measuring and marketing of the minerals, and that is one thing we want above all the others. I move that the amendment offered by the member from Tuscarawas [Mr. STEVENS] be laid on the table.

The motion was carried.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

In line 5 strike out "and exempting from taxation, in whole or in part."

Mr. WOODS: I want to vote for this proposal, but I do not want to vote in this way on matters of taxation. I do not think the farmer members of this body can afford to do it. If you are singletaxers vote for it. The principle is involved right in this proposition before you now. If you don't want to get that principle started in the constitution cut that out. I want to support the proposal, but I am opposed to this thing of everlastingly exempting property from taxation. We ought to be going the other way.

Mr. HARTER, of Huron: Do we need any encouragement to reforest land?

Mr. WOODS: I have never studied that.

Mr. HALFHILL: As I understand it that is the only thing that this is put in here for—to encourage it.

Mr. WOODS: If you take this out the general assembly can pass laws to encourage it.

Mr. HARRIS, of Ashtabula: Do you say they can do it now?

Mr. WOODS: It is a question in my mind whether they can not do it. I am strongly for conservation and I am willing to have the proposal strong.

Mr. HARRIS, of Ashtabula: Is any farmer going to take his broken land and set out young trees and reforest it unless some encouragement is given?

Mr. Lampson here took the chair as president pro tem.

Mr. WOODS: This doesn't provide for the farmer to do it. The state may buy up the land and do it. It may be done in many different ways under this proposal. I don't know how they intend to do it. I don't

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think we should say how it shall be done, but we simply should say it may be done.

Mr. HARRIS, of Ashtabula: My understanding is that it is to allow young timber to grow; partially exempting the land from taxation.

Mr. MILLER, of Crawford: Do I understand you to say that some farmers would be against exempting timber land from taxation?

Mr. WOODS: I said I didn't think the farmer members of this Convention in face of what they will have to meet in a few days can vote for this. I don't want to see you vote one way on this and then turn around and vote another way a little later on.

Mr. PECK: Is not this substantially the same proposition just made by Judge King and voted down?

Mr. WOODS: No; I only take part of Judge King's amendment.

Mr. PECK: But it is the substance?

Mr. WOODS: I was for his amendment.

Mr. PECK: And it was voted down promptly. Now I move that we lay this on the table.

The vote being taken the amendment of the delegate from Medina [Mr. Woods] was laid on the table.

Mr. MARRIOTT: Now I move the previous question on the whole thing.

The previous question was regularly demanded and a vote being taken the main question was ordered.

The PRESIDENT PRO TEM: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 91, nays 12, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Peck,
Antrim,	Harbarger,	Pettit,
Baum,	Harris, Ashtabula,	Pierce,
Beatty, Morrow,	Harris, Hamilton,	Read,
Beatty, Wood,	Harter, Huron,	Redington,
Beyer,	Henderson,	Riley,
Bowdle,	Hoffman,	Rockel,
Brown, Lucas,	Holtz,	Roehm,
Campbell,	Hoskins,	Rorick,
Cassidy,	Hursh,	Shaw,
Colton,	Johnson, Madison,	Smith, Geauga,
Cordes,	Kramer,	Smith, Hamilton,
Crosser,	Knight,	Solether,
Cunningham,	King,	Stalter,
Davio,	Kunkel,	Stamm,
Donahey,	Lambert,	Stevens,
Doty,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Longstreth,	Taewart,
Eby,	Ludey,	Tallman,
Elson,	Malin,	Tannehill,
Evans,	Marriott,	Tetlow,
Fackler,	McClelland,	Thomas,
Farnsworth,	Miller, Crawford,	Ulmer,
Farrell,	Miller, Fairfield,	Wagner,
FitzSimons,	Miller, Ottawa,	Walker,
Fluke,	Moore,	Watson,
Fox,	Nye,	Winn,
Hahn,	Partington,	Wise.
Halenkamp,		

Those who voted in the negative are:

Brattain,	Collett,	Jones,
Brown, Highland,	Crites,	Kehoe,
Brown, Pike,	Harter, Stark,	Keller,
Cody,	Johnson, Williams,	Woods.

So the proposal passed as follows:

Proposal No. 64—Mr. Miller, of Fairfield. Relative to the conservation of our natural resources.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be passed to encourage the propagation, planting and cultivation of forestry and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry or to the growing of forest trees; and also provide for reforestation and holding as forest reserves such lands or parts of lands as has been or may be forfeited to the state, and may authorize the acquiring of other lands for that purpose; also to provide for the conservation of all natural resources of the state, including all streams, lakes, submerged and swamp lands or other collections of water within the boundaries of the state, and for the formation of conservation districts; and shall provide for the regulation of all force, energy and power developed or to be developed from said water; and shall provide for the regulation of methods of mining, weighing, measuring and marketing of all minerals.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: I now call up the committee's report on Proposal No. 291.

The PRESIDENT PRO TEM: The secretary will read the report.

Mr. DOTY: I don't want it read. It was reported and read yesterday.

The PRESIDENT PRO TEM: The secretary will read the proposal.

The proposal was read the second time.

Mr. HALFHILL: I file the report of a minority of this committee:

The report was read as follows:

A minority of the Initiative and Referendum committee, to which was referred Proposal No. 291, entitled "To submit an amendment to the constitution relative to the recall of public officers, submit as a minority report the following:

Section 1a of the proposal agreed to by the majority report describes the scope, purpose and intent of this proposal and is in the following words, viz:

"Every elective public officer of the state of Ohio, or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law."

That for the purposes of this minority report it is not necessary to consider any of the subsequent sections of said proposal, for in its entirety it is obnoxious to the spirit of our institutions and is a supplemental blow aimed at the integrity of representative government.

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That the judges of our courts, being also elective public officers in this state and included within the scope of this proposal, the same is a gratuitous assault upon the honor and integrity of our judiciary, and no condition subsists or has ever existed in Ohio, that remotely justifies creating any such procedure, or making it a part of our fundamental law.

That the duties of every elective public officer of this state are defined by the law of the land, which law their oath of office compels them to obey and support, and if any transgress this obligation they should be tried by the law on charge duly made, before a proper tribunal, with orderly procedure under rules of evidence acknowledged and subsisting in all stable governments, and they should not be assailed from the hustings and tried at the polls by popular tumult or be compelled to face destruction of their honor through a verdict rendered by clamor, corruption, or partisan prejudice.

Therefore, if present methods of impeachment and trial for an unfaithful public official are deemed cumbersome or inefficient, we recommend such change in the organic law as will meet and remedy any condition fairly shown to exist, and we further earnestly recommend that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed.

JAMES W. HALFHILL, CHAS. O. DUNLAP,
E. L. LAMPSON, NELSON W. EVANS.

Mr. HALFHILL: Gentlemen of the Convention: A minority of the Initiative and Referendum committee, in dealing with substitute Proposal No. 291, have filed a report here in which they recommend that the majority report be not adopted, and that this Proposal No. 291 be indefinitely postponed. The substance and scope and purpose of Proposal No. 291 as embodied in the report of the majority of the committee is properly set forth and can be better explained by a reading of section 1a than in any other way.

This section, agreed to by a majority of the committee, is in the following words:

SECTION 1a. Every elective public officer of the state of Ohio or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

So I take it, that sufficiently explains what is embodied in this proposal and sufficiently explains the purpose of this minority of the committee in submitting to you the report recommending its indefinite postponement.

In other words, I do not see that it is necessary, upon such a report as we present here, for the minority to attempt to analyze or discuss the good or bad features of this particular report, inasmuch as we are objecting to it upon principle. I would admit, for the purpose of argument in discussing the body of the report in all

details, it has had removed from it some of the features of the recall as it appears in some of the western states where it has been adopted, meaning those features which are most objectionable, but the reason we have assigned in the minority report can be properly stated or paraphrased about as follows:

It is our belief that such a proposal as No. 291, if made a part of the constitution of Ohio, would in fact be a supplemental blow aimed at the integrity of representative government. And some of us who have discussed these other two heavenly twins of recent birth, the initiative and referendum, which accompany the recall, have so expressed ourselves heretofore to the Convention that you at least know in a measure the views of the member who now addresses you upon this particular question.

The proposal states that the judges of our courts, being also elective public officers, are included within the scope of this report, and that is attempted to be made a part of the constitution. I say that the proposal so states, which is not really a correct statement, but the proposal declares that all elective officers in the state of Ohio shall be subjected to the provisions of the recall as defined in the proposal, and inasmuch as all of our judges of all of our courts, from the supreme court down to the most petty court, are elective officers, then the provisions would extend to them.

The time of the gentleman here expired and on motion was extended ten minutes.

Mr. MARRIOTT: I don't think the gentleman is bound by the ten-minute rule.

The PRESIDENT PRO TEM: This is a question upon a minority report of the committee. We have not reached the second reading where fifteen and thirty minutes are allowed. This is to be treated as an ordinary amendment.

Mr. HALFHILL: We submit that judges, being all elective officers, a proposition to engraft the recall into the constitution is in fact a gratuitous assault upon the honor and integrity of the judiciary in Ohio, and that no condition exists or ever has existed that remotely justifies creating any such procedure or making it a part of our constitution. I have not heard at any time any assault made upon the courts of Ohio that has been backed by any real or genuine reason that would justify a changing of the ordinary and accepted way of impeaching public officers, or resorting to a method which is practically new and only a matter of experiment. And we further submit as a portion of the reasons for recommending the indefinite postponement of this proposal that the duties of every elective public officer in the state of Ohio are defined by the law of the land, which law their oath of office compels them to support, and if any transgress this obligation they should be tried by the law on charge duly made before a proper tribunal, with orderly procedure under the rules of evidence acknowledged and subsisting in all stable governments, and that they should not be assaulted from the hustings and tried at the polls by popular tumult, or be compelled to face destruction of their honor on a verdict influenced or rendered by clamor, corruption or partisan prejudice, and just the conditions I have enumerated would follow if a law were passed putting into operation the recall of judges.

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Now, gentlemen of the Convention, if it shall be found upon examination of our law, either the fundamental law of Ohio or the statute law of Ohio that there is not now an ample remedy whereby we can reach and cure any defects that ought to be reached and cured for the purpose of removing from office an unfaithful public servant, can we not remedy the method by impeachment, and can we not provide a way in which the public servant who is charged with having transgressed his oath of office can come into court or come into some tribunal, and be met face to face with his accusers, and have the evidence introduced and have the verdict rendered by an impartial tribunal rather than by a general vote at the polls? Who could state a proper indictment in two hundred words, and who could state a defense in two hundred words, upon a question that might affect the honor and integrity of a man to the extent of destroying his entire usefulness as a citizen? And we know that there are occasions in which public prejudice is great and public feeling runs high, in which even the office of judge, as great as it is and as respected as it is, might be dragged down, and the judge himself humiliated and his usefulness proscribed by a popular vote at the polls, influenced by prejudice and passion, whereas in truth and in fact, he was not guilty as charged.

The recall is claimed to be justified by the fact that any representative is but a general agent of all the people, and that being only a general agent of all the people that agency can be determined at any time by the people, and that we can by recall of the agent put an end to the agency. But I submit, if you are going to discuss it on that line, and all the writers in favor of the recall do so discuss it, that the parallel is not correct, and the representative is not the agent, and those rules of law should not apply because the agent always acts in the name of his principal and binds his principal, which is the people; and if you are going to insist upon legal terms in discussing this question, that the representative is a trustee, and a trustee always acts for and on his own account to the extent of being personally responsible, what is he responsible for? He is responsible for observing his oath, and his oath requires him to support the constitution and the law, and if he transgresses his oath he, personally, is responsible, and his beneficiary should have the right to take him into court before the proper tribunal and impeach him and remove him from office. Those are the conditions we think should obtain in a civilized community and in a great state like Ohio. We feel that you could easily remedy the defects in the law of impeachment if they are shown to exist, and even if it is necessary put the remedy into the fundamental law, but this particular method of removing public officers should not be engrafted upon the fundamental law of the state of Ohio.

Mr. DOTY: I wish to demand the yeas and nays on this when the vote is taken. I don't want it overlooked.

Mr. FACKLER: Gentlemen of the Convention: I think we ought to realize exactly the question that is raised by this minority report. The report does not undertake to criticize the majority report or the proposal, but it undertakes to say there should not be any means whatsoever provided by law in this state whereby the sovereign citizen may say to his servant, "You are misrepresenting rather than representing me, and I want

to stop your power to misrepresent." This is exactly the position in which this minority report places you. It does not go to the merits of the specific proposal before the Convention, but says it is not possible to draw any provision providing for popular removal of officers that will be satisfactory.

Now the gentleman who has just preceded me spoke about the recall of judges. That is going to the merits of our proposal, and if the Convention in adopting the recall proposition sees fit to embody the proposition with reference to the judges, it can do so, but in agreeing to the minority report you say no official—executive, legislative or judicial—shall be subjected to recall. Again we hear the cry that representative government is being assaulted. What is representative government? It is a government in which the man who for the time is exercising power is acting presumably in the interest of a majority of the people, and if a majority of the people are of the opinion that he is not so acting why should not they have a right to remove him? Is not that making it truly representative? We have seen very often men elected to a position and after they were elected they would right-about-face and no longer represent the men who elected them, but misrepresent them. How many cases of that kind have you had in legislative bodies? How many on the part of executives in this country? And when we say, "Just leave the power in the hands of the people all the time in order that the official may have as much regard for the citizen after the election as before," I do not see that there is anything very revolutionary about that.

But they say it is not right that the official "should be assailed from the hustings and tried at the polls in tumult." I will wager when the gentlemen were all conducting their campaigns before their counties they didn't say they were going out and appealing on the hustings in tumult. By what wonderful transformation is it that the intelligent electorates which sent these men to the Convention became after election day an insane mob, and continue insane, mark you, until a few years later, two or four or six years later, at the statutory period, they have another lucid interval and the electors of the state are again qualified to vote for the men who shall lead them? Men who believe in the recall believe in the sanity of the American people all the time, and that they are just as capable the day after the election to pass upon the qualifications of men who are to have the elective offices as they were on election day—nay, much better qualified, after the official has been tried and tested, to pass upon his qualifications and abilities than before they found him out.

We need not be afraid of this recall. No argument has been offered before you, and can not be, to show it has worked badly where it has been tried. It has not overturned representative government. It has made it more truly representative, and I ask you to vote down this minority report and place this question before the Convention on its merits and let us argue it out.

Mr. EVANS: Is it the expectation of the majority of this committee that from this time forward in the history of Ohio we shall only elect rascals to office that we have to recall?

Mr. FACKLER: No, but we do expect sometimes to elect rascals to office, and when we do elect rascals to

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office we want to let the people have a chance to take them out of office.

Mr. DWYER: The gentleman himself would come under this recall—

Mr. FACKLER: Yes; I am willing to place myself before the people to represent their will and be subject to recall when I don't.

Mr. PECK: I am very glad to be able for once to agree with the gentleman from Allen. He and I have disagreed many times and although I have great respect for the force and ingenuity with which he has presented his propositions, I have disagreed generally with them. I believe we voted together only once or twice, but I think we are going to vote together on this proposition.

I do not believe in the recall in Ohio. I am opposed to it and I hope the Convention will take the short way of putting an end to this business by adopting the minority report. I don't think the majority report should have been brought in here. I do not believe there is any necessity for the recall in Ohio. Our terms of office are so short that any practical application of the recall will keep the state, the counties, the localities, in a turmoil all the time, and if you want to disgust the people and make them disregardful of public life just give them elections all the time, morning, noon and night, breakfast, dinner and supper.

Mr. FACKLER: Has the gentleman read the proposition before the Convention to see that only at regular November elections officials can be recalled?

Mr. PECK: What good will it do? You elect a man and you have to wait a year before you recall him. In another year he would be out. I tell you there is no necessity for it. You have only two-year terms for most of the officers, and at the end of that time, if he has not done well, recall him. Most of them are anxious to be re-elected and the judicial term is short. This measure simply tends to keep the state in a turmoil for no good purpose.

Now look at it on general principles. Every man elected in our state and country has a certain number of opponents. They are his active critics. He goes into office subject to that sort of criticism and it won't take much for his opponents in many of the cases to bring about a cry for a recall. I don't want that sort of business. I don't believe it would be a good, a healthy or a proper policy. I do not want a government of factions that will be trying to drive this man out or put that one in. The people can proceed in an orderly and methodical way every two years to change their officers. They have done so and our experience with elective officers in the state of Ohio has been good. I have asserted in Cincinnati time and time again that the most courteous, polite and attentive officers were the men who were elected by the people. They have generally been efficient. There have been exceptions, but they were few, and the officers elected have done their duty and done it well, and their appointees have done their duty, and I see no reason why we should provide means for faction and opposition to create turmoil about every fellow elected to office and try to overturn the government. When the regular time for election comes around the people can take care of it. I am "forinst" the recall.

Mr. HARRIS, of Hamilton: I also plead guilty of being in accord with the gentleman from Allen on this

proposition, although I am frank enough to say that the recall embraced in this majority report is the most conservative recall proposition that I have ever read.

I am not dogmatic in my attitude of opposition to the recall of the administrative, legislative and executive officials, but I do not believe it sound public policy to make use of the recall in reference to either of them. I recognize that there may be some merit in the contention that as the executive, legislative and administrative officials, under our theory of government, are elected by the majority of the people, and supposedly to represent the preference of the majority on the particular political or other issue that may be before them at the time of the election, if the said officials fail to carry out the wishes of the majority which elected them, that same majority might have the right to recall them. Even this point of view, however, is based on the supposition that the same majority which elected them must recall, but not a part of that majority, added to the minority, which latter first opposed and voted against them. I trust you will grasp and appreciate the force of this proposition, because it ought to have a very important influence in determining the action of the present proponents of the recall.

An elected official whose duties are either administrative or executive is subject to being "ousted" from office under the theory of the advocates of the recall when the minority who voted against his original election, and therefore against the policies which he is supposed to represent, united with a sufficient number of the dissatisfied majority to create a new majority, which has the power to put the seal of condemnation upon this official who was elected but a short time before, and for a fixed term, to represent the political wishes of a majority, the greater part of whom are still in sympathy with the political views and actions of the official in question. It seems to me that this subverts the whole theory of our government. Is it unreasonable to suppose that the just-defeated political party, which is then the minority, will not always join with a discontented percentage of the majority to turn their minority into a majority? This would be the cleverest politics, if for no other purpose than to disrupt the majority party.

I have given you the view simply from the political standpoint. I am equally opposed to the proposition from sound public policy, because all of our public officials, executive, legislative and administrative, are elected for a comparatively short term. If there be dissatisfaction with their conduct the people have the opportunity within a very few years, generally not exceeding three, in most cases two years, to dismiss incapable or corrupt officials. In my judgment the injury that can be done by a public official during a short period of two or three years is slight, and the damage to the public interest not nearly so great as the inconvenience and demoralization of the public service by the recall, which, as before stated, can be accomplished by the original opposing minority plus a small percentage of the original majority. In my mind stability of government, whether of municipality, county or state, is as essential for successful administration in the interests of all the people, as is stability in the management of business affairs. Especially do I consider the recall ill-advised and wholly unnecessary where we have the

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far greater and more democratic political instrument at our hands, namely, the initiative and referendum. In reference to the recall of the judiciary my opposition to this is as irrevocable as were the laws of the Medes and Persians. Elective judges, although owing their title to their office by reason of the majority or plurality vote of the electorate, are not elected to carry out the wishes or political ideals of the majority or plurality vote which gave them title to their office. They are elected solely to expound the law, and this expounding of the law has absolutely no connection whatsoever with the wishes or political ideals of either the majority or the minority. The judiciary take a most solemn oath and assume the greatest moral and legal obligation when they take their office to absolutely ignore the wishes or ideals of the majority or the minority. Every elector, in casting his ballot for a judge, does so with the tacit understanding on his part that, so far as the candidates for judgeship is capable of doing, he will decide every case that is presented to him solely on its merits; that he will expound the law as he understands it, and that he will not be governed by the wishes of majorities any more than he would be governed by the wishes of a single individual out of that same majority. Any other view would mean anarchy, socially and politically. Personally, I have always advocated a limited tenure for the judiciary, so that in the event of a corrupt judge (possibly the greatest evil that can afflict humankind) he can be got rid of by failure of re-election at the expiration of his term, for I recognize that impeachment is very unsatisfactory, and, where the judge is mentally corrupt, or at least where there is no evidence of what I would call physical corruption, it is practically impossible to get rid of him by impeachment proceedings.

Mr. DONAHEY: I move that the majority and minority reports be laid on the table.

Mr. FACKLER: And on that I call the yeas and nays.

The yeas and nays were taken, and resulted—yeas 49, nays 48, as follows:

Those who voted in the affirmative are:

Antrim,	Brattain,	Collett,
Baum,	Brown, Lucas,	Colton,
Beatty, Morrow,	Cambell,	Cordes,

Cunningham,	Johnson, Williams,	Miller, Fairfield,
Donahey,	Jones,	Miller, Ottawa,
Dwyer,	Kehoe,	Nye,
Eby,	King,	Partington,
Farnsworth,	Knight,	Peck,
Hahn,	Kramer,	Redington,
Harbarger,	Lampson,	Riley,
Harris, Ashtabula,	Leslie,	Rorick,
Harris Hamilton,	Longstreth,	Shaw,
Harter, Stark,	Ludey,	Smith, Geauga,
Henderson,	Malin,	Stalter,
Hoffman,	Marriott,	Stevens,
Holtz,	McClelland,	Tallman,
Johnson, Madison,		

Those who voted in the negative are:

Anderson,	FitzSimons,	Stamm,
Beatty, Wood,	Fluke,	Stewart,
Beyer,	Fox,	Stilwell,
Brown, Highland,	Halenkamp,	Stokes,
Brown, Pike,	Halfhill,	Taggart,
Cassidy,	Harter, Huron,	Tannehill,
Crites,	Hursh,	Tetlow,
Crosser,	Kilpatrick,	Thomas,
Davio,	Lambert,	Ulmer,
Doty,	Moore,	Wagner,
Dunn,	Pettit,	Walker,
Earnhart,	Pierce,	Watson,
Elson,	Read,	Winn,
Evans,	Rockel,	Wise,
Fackler,	Roehm,	Woods,
Farrell,	Solether,	Mr. President.

The motion was carried.

Mr. HALFHILL: [During roll call]. I vote no so that the proposal can be explained. I do not want any matter, even if I am against it, to be disposed of in this way.

The PRESIDENT: The vote stands yeas 48 and nays 48.

Leave of absence was granted to Mr. Peters for today.

Leave of absence was granted to Mr. Rorick for the remainder of the week.

Mr. DOTY: I move that we recess until 10 o'clock in the morning.

The motion was carried and the Convention recessed until tomorrow morning at 10 o'clock.

FIFTY-NINTH DAY

(LEGISLATIVE DAY OF WEDNESDAY)

MORNING SESSION.

THURSDAY, April 18, 1912.

The Convention met pursuant to recess, was called to order by the president and opened with prayer by the Rev. Carl S. Patton, of Columbus, Ohio.

Mr. LAMPSON: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called when the following members failed to answer to their names:

Anderson,	Fess,	Mauck,
Bowdle,	Harris, Ashtabula,	Okey,
Brown, Highland,	Hoskins,	Price,
Cassidy,	Johnson, Madison,	Rorick,
Cod-,	Kerr,	Shaffer,
Crites,	Leslie,	Stalter,
DeFrees,	Marriott,	Walker,
Dunlap,	Marshall,	Weybrecht,
Elson,	Matthews,	Worthington.

The president announced that ninety-two members had answered to their names.

Mr. CORDES: [During roll call]. The gentleman from Wyandot has a leave of absence—

Mr. DOTY: A point of order.

The PRESIDENT: The point of order is well taken.

Mr. LAMPSON: I move that all further proceedings under the call of the Convention be dispensed with.

The motion was carried.

The PRESIDENT: The president wishes to report a mistake in announcing the vote last night. The vote was forty-nine in favor of the motion to table and forty-eight against. So the report of the committee and the minority report are both tabled and the question is on engrossment.

Mr. LAMPSON: Engrossment of what?

The PRESIDENT: Engrossment of Proposal No. 291.

Mr. LAMPSON: I make the point of order that the proposal was included in the majority report which went to the table. The report is an entirety and it can not be separated. If the secretary will read the majority report he will find that the original proposal is named in the body of the report.

The secretary [reading]:

Mr. Fackler submitted the following report: The standing committee on Initiative and Referendum, to which was referred Proposal No. 291—Mr. Watson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended.

Mr. LAMPSON: The report is back with the "following amendments." The report in its entirety is laid on the table and it takes with it all the papers which

accompanied it. Under our rules all the papers referred to the committee when the report is made are reported back. Whatever they may be, they are part of the report. Our rules recognize as a distinct thing reports, proposals and amendments. Rule No. 57 reads as follows:

The laying of an amendment upon the table, or its indefinite postponement, does not carry to the table the proposition sought to be amended.

But that rule distinctly refers to the laying of an amendment on the table. This is the laying of a report on the table, an entirely different thing, which under the rules is treated as a distinct thing, and whenever the report went to the table it carried with it all the papers connected with it, and in this particular case the proposal itself is named right in the body of the report and the report can not be separated.

Mr. DOTY: If the point of order were sustained, it would violate every principle upon which the rules of this Convention are builded. These rules under which we are operating are similar to the rules of the house of representatives of this state which have been in force for many years. They are built upon the theory that looks to the life of a measure. The whole tendency of the rule is to preserve the life of the proposal and not for its death. That is shown by our Rule No. 57, which makes it possible for this Convention to stop debate upon an amendment without touching the life of the main question. It resolves itself back to what is the main question now before this Convention? What was the main question when this report was made? When the committee reported back Proposal No. 291 with some amendments, the next step of that proposal under our rules was engrossment. That was the main question. I am speaking of the majority report, because the principle is the same no matter how many minority reports we have. The majority of the committee recommended what? That that proposal, which was before the Convention and which was a thing by itself, shall be passed, provided the amendments that the committee proposed are incorporated. Mark you, there are two things, the proposal itself, the next stage of which is engrossment, and the subsidiary proposition amending it first before it gets to a final vote on the main question. It is just exactly like we are doing here every day when we propose an amendment to a proposal. Sometimes we lay that amendment on the table. Here, instead of a member offering an amendment, the committee proposes an amendment, and by our action we laid that amendment on the table. That sort of motion under a proper and fair interpretation of Rule No. 57 lays the amendment itself on the table and does not go to the main proposition. There can be only one main proposition under any circumstances. At various stages of our process in getting these measures through, the main question is sometimes one thing and sometimes another.

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Mr. DWYER: The motion to lay on the table embraced both. The motion was to lay the report and the amendments on the table.

Mr. DOTY: If that had been the motion I would be wrong, but I will read the record. I heard the motion made.

Mr. DWYER: I heard the motion made too, and it embraced the whole thing.

Mr. DOTY: The record reads: "Mr. Donahey moved that the majority report and the minority report be laid on the table." So there was nothnig said about the main proposition. The main proposition before the Convention was only one thing and that was engrossment.

Mr. LAMPSON: Will you allow me a suggestion?

Mr. DOTY: Yes.

Mr. LAMPSON: We hadn't reached the second stage and before we reached that we laid both reports on the table.

Mr. DOTY: We reached that stage right after the report had been read the second time.

Mr. LAMPSON: We had referred it to a committee—

Mr. DOTY: That is not a stage necessary to the life of any bill, as the member knows. We can introduce a proposal right now and not refer it to a committee and carry it to engrossment the next stage, but you cannot take it from first reading to second reading without engrossment.

Mr. KNIGHT: Under the gentleman's theory, where is the proposal?

Mr. DOTY: Before the Convention on the question of engrossment.

Mr. KNIGHT: How did it get there?

Mr. DOTY: By being returned to the house by the committee to which it was committed.

Mr. KNIGHT: Embodied in their report?

Mr. DOTY: The proposal is not embodied in their report. I defy anybody to show it. It is referred to in the report because necessarily the report must refer to something. But it is not embodied in the report, as the member from Franklin [Mr. KNIGHT] well knows.

Mr. LAMPSON: Suppose we grant what you say about where the proposal is now. When we recessed, according to your idea, it was suspended in the air above the table? Did it drop when we recessed?

Mr. DOTY: What happens when we recess when the member from Ashtabula has the floor? Does he drop on the floor or is he suspended in the air?

Mr. LAMPSON: I don't stand on the floor.

Mr. DOTY: No, you go to lunch, but you come back and demand your rights. We have been doing that so many times that I think even the member from Ashtabula [Mr. LAMPSON] understands that. When we recess whatever right a proposition has it retains.

Mr. LAMPSON: When before in this Convention upon presentation of a report and action upon it have we considered that the proposal was an independent report? At no time in the proceedings of this Convention have we separated a proposal from our action on the report.

Mr. DOTY: We have done it every time we have acted. There is never a time that we don't act separately. The first thing we do when the report of a committee

comes in is to act upon the report, which is what? To amend the bill before engrossment.

Mr. LAMPSON: To postpone a report carries with it the report and everything connected.

Mr. DOTY: Yes, the postponement of a whole proposition, as we did the other night, when the gentleman from Allen [Mr. HALFHILL] made a motion to postpone the whole thing, and the whole thing was postponed. It was not killed and it came up at the time to which it was postponed, at the same stage and in the same condition as when the gentleman asked to have it postponed.

Mr. LAMPSON: If it were not for Rule No. 57 would you contend—

Mr. DOTY: No, that is the whole thing—Rule No. 57.

Mr. LAMPSON: You admit that under general parliamentary law the proposal went with it?

Mr. DOTY: Yes; and just right there—that is what I said when I started in, that our rules looked to the life of a proposition rather than to its technical death. That is the very reason we have Rule No. 57 in our rules.

Mr. LAMPSON: Laying the proposition upon the table does not necessarily kill it. We have rules for taking it from the table.

Mr. DOTY: I know, but it comes near killing it. For instance, there is just once a week that this Convention, by a majority vote, can take from the table any proposition that has been laid on the table. It takes a two-thirds vote any other time; that is, it takes a two-thirds vote for a suspension of the rules so that a motion to take the thing from the table can be made. Any time but Monday night it takes a two-thirds vote to get the privilege of making that motion.

Mr. LAMPSON: Do you not admit that a special rule taking some particular thing out from the operation of the general rule must be construed strictly?

Mr. DOTY: I say it must be construed in accordance with the thoughts of the majority of the Convention. If a majority of the Convention desires a strict construction and desires or upholds a point of order so as to produce a strict construction looking toward the death of this or any other proposition in the same predicament, that must be the rule of the Convention.

Mr. LAMPSON: Find in Rule No. 57 anything about laying reports on the table.

Mr. DOTY: Of course, the member is simply trying to make a distinction between a report that amends and a motion that amends. That is all the difference between the member and myself. I maintain that the fair and honorable and straight interpretation of Rule No. 57, looking to the life of the proposal by Mr. Watson, is the interpretation I am contending for, and there is no difference in the parliamentary effect between a committee recommending an amendment and a member recommending an amendment. The upholding of either motion amends the proposal and that is all there is to it. Therefore, if the committee has recommended an amendment and that amendment is laid upon the table, in all fairness we are in the same shape we would have been if the member from Ashtabula had proposed an amendment and it had been laid on the table.

Mr. LAMPSON: Were only the amendments laid on the table or were both the reports laid on the table?

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Mr. DOTY: That is what the record shows. The report was in effect to amend. The report does not incorporate or embody the proposal itself, but just refers to it so that if it is adopted we know what proposal is adopted.

Mr. WINN: Suppose the minority report had been laid on the table—

Mr. DOTY: We would have come to a vote upon the majority report.

Mr. WINN: But if the gentleman from Ashtabula is right, why would not that carry the whole thing? The proposal is referred to there.

Mr. DOTY: You are right.

Mr. LAMPSON: If you had moved to lay the minority report upon the table that would have been the scope of the motion.

Mr. DOTY: That is what I contend for. The member from Ashtabula [Mr. LAMPSON] is right at last. If we had moved and carried a motion to lay the minority report on the table the majority report would have still been before us. Do you dispute that?

Mr. LAMPSON: No, but the motion included something else.

Mr. DOTY: We included something else. Now just use your imagination a while—

Mr. LAMPSON: I am not using imagination—

Mr. DOTY: I know you are not, you haven't any. As the gentleman from Defiance [Mr. WINN] put it, if a motion had been made to lay the minority report on the table and it had been carried where would we have been according to the legitimate carrying out of your theory? It would have carried the whole thing.

Mr. LAMPSON: No, it would not.

Mr. HALFHILL: Does that take the original proposal as it went into the hands of the committee—is it the engrossment of the original proposal that is before the Convention?

Mr. DOTY: It is, in my judgment.

Mr. HALFHILL: Then the proposal recommended by the majority of the committee you treat as an amendment?

Mr. DOTY: That is on the table and the question is on the engrossment of the original proposal, and if that question is voted upon by a yea and nay vote and is voted down that is an end of it. It is engrossed, it goes on the calendar for a second reading.

Mr. THOMAS: I suggest that the president rule.

The PRESIDENT: The president will rule that the point of order is not well taken.

Mr. LAMPSON: I respectfully appeal from the decision of the chair.

The PRESIDENT: The gentleman from Ashtabula [Mr. LAMPSON] appeals from the decision of the chair.

Mr. JONES: I do not profess to be expert upon parliamentary rules—

Mr. DOTY: There are not such things.

Mr. JONES: —or the rules of this Convention, but it does occur to me as an ordinary layman upon the subject that all that is necessary to solve the question at issue is to make a simple application of what is admitted by the two gentlemen. They both agree that under general parliamentary rules the carrying of this motion to table would carry the whole matter to the table. Now, it is contended that Rule No. 57 creates an

exception to the operation of that general rule. It is only necessary to apply the familiar principle that applies to all legal propositions, that an exception to a general rule can only relate to the matter mentioned in the exception. What, therefore, in the matter mentioned in the exception? The general rule carries the whole matter, proposal and all, to the table. Now, the matter mentioned in the exception is this: "The laying of an amendment upon the table—"

Mr. WINN: I rise to a point of order.

The PRESIDENT: State the point.

Mr. WINN: The president having ruled that the point of order of the gentleman from Ashtabula [Mr. LAMPSON] is not well taken and the appeal having been taken, there is nothing before the Convention except the appeal, which is not debatable.

The PRESIDENT: An appeal is debatable and the gentleman is in order.

Mr. JONES: I again want to call your attention to the matter included in this rule that makes an exception. As I said before, the whole matter, including the proposal, in the absence of this rule is carried to the table. Now, Rule No. 57 provides this: "The laying of an amendment upon the table, or its indefinite postponement, does not carry to the table the proposition sought to be amended." So this rule only relates to action upon amendments, and this not being an action upon an amendment it is clear to my mind that the general rule obtains.

Mr. MOORE: Mr. Watson brings a proposal to this Convention, No. 291, which proposal is referred to the committee on Initiative and Referendum. That committee amends this proposal and brings its report to this Convention, which report is laid on the table. The proposal itself is just as much alive as ever. The work the committee has done has not been concurred in, but has been laid on the table, and the proposal itself is as much alive as ever.

Mr. LAMPSON: I just want to say one word. If the gentlemen will consult the journal they will find that the motion was to lay the majority report and the minority report upon the table and there was no question of amendments.

Mr. HALENKAMP: Suppose the proposal were introduced and referred to the committee and a majority of the committee in reporting it back to the Convention recommended certain amendments, and the minority of the committee recommended certain other amendments, and the amendments of neither satisfied a majority of the Convention. How could the Convention proceed so as to get action on that proposal?

Mr. LAMPSON: They can move to recommit it, they could adopt the report or proceed to amend the proposal in numerous other ways, but whenever they laid the report on the table it would be there until taken off.

Mr. HALENKAMP: They could not dispose of the majority report or the minority report—

Mr. LAMPSON: Yes, they could. They could dispose of the minority report by itself and then they could take any action on the majority report that they saw fit, but if they decided that they didn't want to consider the majority report and laid it on the table it would rest there with all it contained and with all it was connected with until taken therefrom.

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Mr. STEVENS: I voted for this motion to table these two reports, but I want to say that the main question up here is a question of recall, and if we are going to kill the recall in the Convention let us do it fairly and squarely and not by hair-splitting technicalities. I want the motion to prevail, but I want the prevailing of that motion to be fairly and squarely understood. Let us not have the friends of the recall, and there are lots of them in the Convention and outside, saying, after we go home and submit our report, that we wiggled the thing through and killed it while the minority was not looking.

Mr. LAMPSON: I am in entire sympathy, so far as the vote on the main proposition is concerned, with the gentleman, but this is a question of parliamentary procedure affecting not only this proposition but affecting every other one that may in like manner come before the Convention. I do not think we would allow our judgment on parliamentary proceedings to be warped by any opinion on the main proposition. I am willing to join with the gentleman in helping to bring about a fair vote on the proposition.

Mr. STEVENS: Do you not regard the main proposition as vastly more important than a parliamentary proposition?

Mr. LAMPSON: It is perfectly easy to take the main proposition from the table.

Mr. DOTY: Yes, once a week. Is it easy now?

The PRESIDENT: The president is ready to have a vote on the appeal. The president will state his reasons for making the decision. It has been the invariable practice of the president that when a report of a committee is made reporting a proposal back to the Convention to use this form: "The question is on agreeing to the report of the committee." When that motion has been carried invariably the next step has been this—the president has said with reference to all these questions: "If there be no objection the proposal will be engrossed and placed on the calendar for second reading." If objection is made at that point, clearly that objection brings before the Convention the question of engrossment, and on the license question that objection was made and a vote was had on that. It is true that in all these other questions we have hurried from that point because there has been no objection. As soon as a report of a committee is agreed to the president says: "If there is no objection the proposal will be engrossed." There has been no objection and the Convention has not taken notice of that step. It seems to me the point of the member from Cuyahoga is well taken, and at any rate the Convention suffers nothing. The decision is on the side of the greatest possible deliberation and consideration of the proposal pending.

The question now before the Convention is an appeal from the decision of the chair and the question is, Shall the decision of the chair be sustained?

Mr. HALFHILL: If I may be permitted to suggest, the simple way is to withdraw the appeal and make a move to take the two reports from the table.

Mr. LAMPSON: At the suggestion of the delegate from Allen [Mr. HALFHILL] I withdraw the appeal and I move that we take the minority and majority reports from the table.

Mr. DOTY: I second the motion.

The motion was carried.

Mr. DOTY: I now renew my demand for a roll call on the adoption of the minority report.

Mr. EVANS: I ask a clear statement of the question now to be voted on.

The PRESIDENT: The committee reported back this proposal with amendments. A minority report was made. The question now is on the adoption of the minority report and the secretary will read the minority report.

Mr. LAMPSON: I suggest that all the secretary need read is the recommendation of the minority report at the end of the report.

Mr. THOMAS: I want it all read so the members will know what they are voting on.

Mr. TALLMAN: The adoption of the minority report does away with the majority report.

Mr. LAMPSON: Indefinitely postpones the majority report.

The minority report was read by the secretary as follows:

A minority of the Initiative and Referendum committee, to which was referred Proposal No. 291, entitled "To submit an amendment to the constitution relative to the recall of public officers," submit as a minority report the following:

Section 1a of the proposal agreed to by the majority report describes the scope, purpose and intent of this proposal and is in the following words, viz:

"Every elective public officer of the state of Ohio, or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law."

That for the purposes of this minority report it is not necessary to consider any of the subsequent sections of said proposal, for in its entirety it is obnoxious to the spirit of our institutions and is a supplemental blow aimed at the integrity of representative government.

That the judges of our courts, being also elective public officers in this state and included within the scope of this proposal, the same is a gratuitous assault upon the honor and integrity of our judiciary, and no condition subsists or has ever existed in Ohio, that remotely justifies creating any such procedure, or making it a part of our fundamental law.

That the duties of every elective public officer of this state are defined by the law of the land, which law their oath of office compels them to obey and support, and if any transgress this obligation they should be tried by the law on charge duly made, before a proper tribunal, with orderly procedure under the rules of evidence acknowledged and subsisting in all stable governments, and they should not be assailed from the hustings and tried at the polls by popular tumult or be compelled to face destruction of their honor through a verdict

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rendered by clamor, corruption, or partisan prejudice.

Therefore, if present methods of impeachment and trial for an unfaithful public official are deemed cumbersome or inefficient, we recommend such change in the organic law as will meet and remedy any condition fairly shown to exist, and we further earnestly recommend that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed.

Mr. HOSKINS: Is that all of that report?

Mr. DOTY: It is not. That is all of the report that is a report. The rest is a stump speech.

Mr. HOSKINS: I would like to know what attitude we are placed in in voting upon this proposition. I am in favor of the indefinite postponement of the entire matter, but if I heard correctly yesterday there were arguments involved in that report to which I cannot subscribe. That is the reason why I might hesitate to vote for the minority report, whereas if it were a simple recommendation for indefinite postponement of the entire matter, I would be willing to vote for it, because I believe that you who are in favor of the initiative and referendum are lugging in too much and that there is danger of injuring the chances of the adoption of the good things you have already done. I am in favor of the indefinite postponement of the whole proposition, but I am not willing to subscribe to all of that argument.

Mr. DOTY: Then just make a motion to strike out all of the stump speech of the member from Allen [Mr. HALFHILL] and that will relieve the situation.

Mr. HALFHILL: I object to that.

Mr. HOSKINS: I am not on to all of the parliamentary skids.

Mr. LAMPSON: Will the gentleman yield?

Mr. HOSKINS: Yes.

Mr. LAMPSON: Does not the gentleman understand that all he votes for is the conclusion at the end, that the rest is mere argument?

Mr. DOTY: If you call it an argument, all right.

Mr. HOSKINS: The only proposition was whether or not a vote for indefinite postponement of this matter was a vote upon all of the allegations contained in the bill of particulars.

Mr. LAMPSON: The only thing that we are voting upon is the report.

Mr. DOTY: That is all.

Mr. HOSKINS: Waiving aside all questions of any stump speech that may be contained in the minority report, I desire to suggest to the members of the Convention that we ought not to pass this proposal. It is really not a recall proposal at all in the ordinary acceptance of that term. It is a sort of makeshift on which I fear some of the gentlemen of this Convention desire to go on record for probably political reasons. Possibly it is not intended for anything else. I heard the demand made last night to have a record vote. I was content to let this baby sleep where you placed it yesterday and that is where it should have remained. The stump speeches of the majority report and of the minority report all belong in the grave yard, and I desire, as far as I am concerned, to put them there. I hope that before this Convention is concluded you will simply put

both of these reports upon the table where you had them last night.

Mr. SMITH, of Hamilton: I want to ask Mr. Hoskins if he is willing to vote that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed?

Mr. HOSKINS: Undoubtedly. I have not the language before me, but I move—

Mr. KING: I have just what you want written up.

Mr. HOSKINS: Are you sure of it?

Mr. KING: Yes.

Mr. HOSKINS: I yield the floor to Judge King then.

Mr. KING: I offer the following motion—

The PRESIDENT: The question is on the agreement to the amendment to the minority report.

Mr. DOTY: If we vote this amendment in we have the main question on the matter. Then if the main question is passed on by a yea and nay vote we will have a fair and square vote on it.

The secretary read the motion of Mr. King as follows:

Resolved, That Proposal No. 291 and the report of the committee amending the same be indefinitely postponed.

Mr. DOTY: That is a different proposition, but it is perfectly satisfactory when you understand it. That is a resolution postponing the whole matter. It takes out the stump speech and brings up the question whether you will have the recall on a yea and nay vote.

Mr. HOSKINS: I desire to protest that we did not put up any such issue. The gentleman from Cuyahoga [Mr. Doty] is simply attempting to draw a line when the line is not drawn in the proposition at all. Your recall proposition is a mongrel, hybrid cross-breed. It is not a recall proposition at all and ought not to be set up by any one who believes in the recall. I want to reiterate that I believe it is forced in here for the sole purpose that certain gentlemen may go upon the record for the purpose of running for office this year. I do not think there is anything else in it.

Mr. FACKLER: The gentleman from Auglaize undertakes to criticize the report of the committee by saying it is a mongrel recall. It provides for the recall of every elective official, twenty per cent for state officials, twenty-five per cent if he is any other official. It provides that the recall can only be voted upon at regular annual elections. That was to get away from the argument constantly made by those who opposed the recall that the expense incident to a special election for the recall would defeat it. It provides also that in the recall elections a majority of all those voting at the election must vote in favor of the recall of the official in order to remove him from office. If the gentleman from Auglaize wants to have a record vote, let him come before the Convention and amend it and fight it out just as we did the initiative and referendum, but any man who votes for the resolution of the gentleman from Erie [Mr. KING] places himself on record as opposed to any kind of a recall coming out of this Convention.

Mr. WINN: There are fortunately a few of us who are not candidates for office and who have no political aspirations.

Mr. MILLER, of Crawford: Did you say "a few" or "two"?

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Mr. WINN: I said a few. I want to say that there are a few of us who are not candidates for office and who have not any political aspirations. Those of us who are in that class have no fear of the effect of our votes upon the people. We have no fear of the recall in case we should be elected. So we are safe on all sides. Now I think every member of this Convention should understand and every elector in this state should know that whoever votes in this Convention in favor of the pending motion, which is to postpone indefinitely the proposal, votes that way to avoid an actual definite distinct vote upon the proposition.

Mr. HARRIS, of Ashtabula: Will there be any doubt in the minds of our constituents if we vote to postpone it that we are against it?

Mr. WINN: My notion is that there will be no doubt, but the member from Auglaize, whose judgment is as good as yours or mine, thinks that the electors of the state might be fooled that way.

Mr. HARRIS, of Ashtabula: You know that you and I may yet be candidates for office. Is not that true?

Mr. WINN: That is such a remote possibility that it has not affected me so far as my position on this question is concerned. I want to say again before I take my seat, that there is just one way by which we may have an opportunity to amend something that is before us so as to make a satisfactory recall proposition. Hence if the member from Auglaize [Mr. HOSKINS] is in absolute good faith respecting this question, then let something be pending here around which we may build such amendments as may be necessary to make it workable, and then we can vote for it; but if this motion prevails the whole proposition is dead, probably forever so far as the Fourth Constitutional Convention of Ohio is concerned.

Now I am in favor of the recall. I have never occupied any position where I did not understand that I was a servant to those who sent me there and that they had a right to kick me out when they wanted to. There is not a man in the hearing of my voice who ever employed a man to do work for him without retaining within himself the right at any time to discharge such employe. I have in mind now an instance of a man who has held office over and over again in the state of Ohio who, when called upon to bear in mind the oath he took at the time he took the burdens of the office, said, "I have but little respect for the laws of Ohio." I would have it made so easy that a man can be made to have respect for law, and when he pledges himself to support the constitution of his country and the constitution of his state and the ordinances of his municipality, I would have him know that he must respect every one of them; and that when he disobeys that oath of office those who placed him in office should have the right to put him out. I say when you have a man in office surrounded by the recall he will have respect for the constitution of the country and of the state and for the ordinances of his municipality.

Mr. EBY: Has not that man been repeatedly elected mayor of that municipality by a majority of the people of his municipality?

Mr. WINN: And if a majority want to recall him I want it made easy to do so.

Mr. LAMPSON: Suppose there are three candidates, a democrat, a republican and a socialist, and that the socialist party compose forty per cent, and the republican party thirty-five per cent and the democratic party twenty-five per cent. The socialist would be elected, but not by a majority of the votes. The other two by combining could recall him.

Mr. WINN: Certainly, and I would have it made so easy that whenever that man did not regard his oath of office the majority of his constituents could recall him. We are always willing, except in a case of that sort, to trust the dear people. We all say we have confidence in the people and I am not afraid that when a man in public office discharges the duties of his office as he should that there will ever be a time when the majority of the people will ask to have him recalled. It is only when he disregards the trust placed in him and tramples under foot the laws of the land that they want to recall him, and then they ought to have a right to do it.

Mr. PETTIT: I have not had an opportunity to say anything on this subject heretofore and I desire to say very few words now. We had an eloquent discussion some time ago on the initiative and referendum and there was a wonderful sight of talk about trusting the dear people, on very small per cents too, on that subject and one gentleman from Hamilton county was very loud in his vociferations as to the dear people on that proposition. I want to say, in order to make the initiative and referendum what it should be we should have the recall immediately following it. If we can trust the people on the initiative and referendum, why not trust them on the recall? One of the arguments that has been advanced here against the recall is that the county officers only have a two-year term now, but there is a proposal before the Convention extending the term to four years and making them ineligible to re-election. Why should any official in any county have the right to neglect his office and the people not have the right to recall him at a general election at the end of one year? If we are going to trust the people on the initiative and referendum, trust them on the other proposition. I don't know what right the member from Auglaize has to question any man's honesty on this matter. He talks as though favoring the recall were mere sentimentality on our part. We have had instances in my section of the state where the recall should have been applied. They say that judges ought not to be recalled; that is mere sickly sentiment. A man who is a coward on the bench was a coward before he went there. I am in favor of the recall and I believe a majority of the Convention are.

Mr. EARNHART: I want to say a word in defense of some of us who are candidates.

Not having any instructions from the people of my county in regard to this matter I want to say that in this as in every other case where I have no instructions I intend to vote what my judgment tells me is right. I intend to hew to the line, let the chips fall where they may. I intend to fight for what I think is right. If I go down in defeat I want to go for what I think is right and proper. I think this recall is an accompaniment of the initiative and referendum, to put in the hands of the people a weapon that they need now and will need in the future, and I want to be recorded on the side of progress. I don't want the state of Ohio to be found

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wanting when the opportune time comes to be placed in the front rank of the sisterhood of states.

Mr. READ: My conception of the situation at present is that we are not voting strictly upon the report, but it is more a question of justice to the proponents of this proposal. Many of us were elected delegates with the understanding that we would advocate the adoption of the recall. Now there comes in here a minority report as a substitute for the majority report and a motion is made to indefinitely postpone a proposal which has come out in regular order from the Initiative and Referendum committee. Out of courtesy to that committee's report this Convention ought to be permitted to consider that proposal. Anything that keeps this Convention from properly considering it is unjust, unfair and discourteous to that committee as well as to others who are trying to get the recall before the Convention. I therefore appeal to the members of the Convention to vote down this minority report in order that the majority report may be properly presented and that it may go to engrossment and come up before the Convention in due time.

Mr. MILLER, of Crawford: It seems to me it is quite unfortunate that this proposal has to be considered before the fixing of the terms of the different officers. If we are to have long terms of office I am quite sure that the recall proposal will receive additional help, but under our present tenure of two years a good many of us feel that we now have sufficient opportunity to recall.

Mr. FACKLER: The term of executive officers has not been lengthened.

Mr. MILLER, of Crawford: If the recall goes through, the short ballot committee will recommend a four-year term for state officers, and the proposal of Mr. Baum provides a four-year term for county officers. If I thought those terms would be given I would vote for the recall, but under the present tenure I shall vote against it.

Mr. PIERCE: When I was a candidate for the position of delegate to the Constitutional Convention I went before the people of my county and told them that I was in favor of the recall applied to all officers, including the judiciary. I was the only candidate out of nine in my county who did that, and for some reason or other I received more votes than any other candidate before the people.

I am in favor of the recall. I am particularly in favor of its application to the judiciary. I think if we can get it for that office it will do more to reform the country than any other one thing that this Convention can do. I believe, if the citizen can take an ordinary man and make a statesman out of him before the election, that after the election he ought to be able to take the statesman and make an ordinary man out of him. If we can trust the people to put us into office we ought to be willing to trust the people to take us out of office. It is amazing to me that officers who claim they are in favor of rule by the people will come to a convention like this and try to prevent the people from ruling. We adopted the initiative and referendum to give the people more power and we now should adopt the recall for the same purpose, and I hope the amendment offered will not prevail. I would like for the gentleman to withdraw it, because I would like to see this question reduced to an issue. I agree with the gentleman from Defiance

[Mr. WINN] that we should get this question at issue, where we will understand it and where the people of the state will understand it, and let us have a fair, square, honest vote upon it. It is immaterial, except so far as my individual vote is concerned, whether it be voted up or voted down, but I do want to give the people of the Convention an opportunity to vote honestly so that the people will know what we are doing.

Mr. HALFHILL: Let us take a little inventory of the situation and find the point at which we have arrived in discussing the question now before us. When this minority report was brought in here signed by four members of the Initiative and Referendum committee, they subscribed their names to a document every word of which they believed to be the solemn truth, notwithstanding the fact that it has been referred to in a way that would indicate that some member or members of that minority committee were preparing stump speeches for their constituents. I am not aware that any one of those four gentlemen is a candidate for any office, and I think in a solemn matter of this kind, where we are considering whether or not we will make a great departure in the fundamental law of the state of Ohio, there is nobody who would put in a report to this Convention which he did not honestly believe and could not conscientiously defend.

Last night before the author of this proposal which we are discussing had a chance to express himself, and while the Convention was in a measure tired, these two reports were carried to the table. I conceive it to be entirely proper that we take them up so that the issue can be fairly and squarely presented, and it is now fairly and squarely presented, and while the four members of the Initiative and Referendum committee who signed the report which sets forth what we believe about this measure recommend its indefinite postponement, we have no pride in that report and are willing that the argumentative part of it be carried out of existence by the amendment presented by the gentlemen from Erie county [Mr. KING]. What does he recommend? He recommends a fair, square proposition to indefinitely postpone Proposal No. 291 and all the amendments relating thereto, and that presents to you fairly and squarely the question. Are you in favor of the recall in the state of Ohio or are you not? If anybody doubts my position upon the question I would like to relieve him of that doubt. I am in favor of hitting it squarely between the eyes and killing it dead forever, and we can do it by sustaining this minority report. I think the recall as understood and applied to public officers is the most obnoxious thing that ever invaded the precincts of the state of Ohio. It is contrary to all the accepted traditions of a free judiciary as we have inherited them from our English ancestors.

Mr. PETTIT: Are you not also opposed to the initiative and referendum?

Mr. HALFHILL: I will answer the question when I get through, if you will pardon me. I say it is the most obnoxious thing as a proposed governmental agency that has ever invaded the precincts of the state of Ohio, and I believe I can prove it on principle. For five hundred years in England the sovereign power of that country, which is the king and parliament, has never interfered with the judiciary and has not dared to do so. For

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five hundred years in England that has not been done, and now we, in this twentieth century, dare to say that the sovereign power, which is the people, may come in and interfere with the free exercise of the judicial rights and powers of a judge under the law and under the oath that he has taken to observe the rules that control and govern his high office. Judges are elected to represent not only the majority but the minority, and if abstract principles of justice crystallized into the constitution of our state amount to anything, then the judge under his oath of office is bound to stand by and contend for those principles, no matter what the majority of the moment say about it; and if he humbles himself to the will of popular passion and refuses to protect the rights of the most humble citizen, whether the majority demands those rights to be taken away or not, he is not fit to be a judge. However you apply it to other officials, you have the judges incorporated in this proposal, for we elect all our judges in Ohio. I want you to understand now that we are straight up to the question of whether or not you will depart from the accepted traditions that have obtained since our organization as a state, and whether or not you will entertain the entrance into the fundamental law of the state of Ohio of this principle of the recall, for that is what your vote means right now. Any member who is opposed to the recall ought to vote to sustain the minority report.

Mr. STILWELL: Was not the abolition of human slavery a departure from the traditions of the nation?

Mr. HALFHILL: The abolition of human slavery came about through and by virtue of the civil war, but it took a joint resolution of the congress of the United States, recommended for passage by the president and this brought about an amendment to the constitution. That is how that came about.

The time of the gentleman here expired and on motion was extended.

Mr. HALFHILL: Permit me to answer the question of the gentleman from Adams. I was opposed to the initiative and referendum as reported here and I am opposed to direct government. I have always said that I was in favor of the initiative and referendum as an aid to representative government if properly safeguarded, but I do not think the plan adopted by this Convention was properly safeguarded.

Mr. ULMER: I do not have to state that I am in favor of the recall, because when you look over the proposal book you will find Proposal No. 11, relative to the recall, was introduced by me. Although it has not been reported out I have not made any kick because I do not look for notoriety. As long as the principle I stand for is carried out I don't care who gets the credit for it. I noticed that other proposals were submitted and I was satisfied. I hope the minority report will be voted down. I believe in equal rights. I believe the people as a whole have just as much right as any private individual or any corporation, and I believe in the recall which is fair and square, fair to the people and to the public officers and when this minority report is voted down and the majority report is voted up and engrossed, at the proper time I shall have an amendment which will protect the man in office also. We ought to give the people the right to recall any public officer who proves himself unfit, immoral or dishonest, it makes no difference what

the office is or to what branch of government the officer belongs. The people should have the right to remove an unfaithful officer. It has always seemed a funny proposition to me that the people can put a man in office and can't take him out. So I say let us vote down the minority report, vote in favor of the majority report, engross the proposal and then have it for a fair, square proposition to be amended.

Mr. HARBARGER: I shall not vote for the recall. While I am personally in favor of the recall, in view of conditions and my instructions and my desire to truly represent the people who elected me, I am compelled to vote against it. As far as I know the wishes of my people, I want to carry them out regardless of my own personal views. I am perfectly willing to have this matter come up and be discussed and fairly voted on, and yet I think I shall have to vote for the tabling of the whole matter.

Mr. SMITH, of Hamilton: I do not believe the Convention is in doubt as to what the question is we are going to vote upon in a few minutes. The question is whether or not this Fourth Constitutional Convention of Ohio wants to submit to the people the question of the recall. Now I sounded a note of warning to the Convention yesterday without avail when the question of capital punishment was under consideration. I want to do the same thing now. I am afraid we are going too fast. We are trying to do too much. Just realize, gentlemen, it has taken us four months to pass the proposals that we have passed. The people of the state of Ohio have to assimilate and study and decide upon these questions for themselves before voting on them. Let us band ourselves together and make a firm and united stand. Let us decide upon certain vital changes that we will submit to the people and then be willing and be courageous enough to vote against some of these other propositions which of themselves may be meritorious but are questions which ought not to be submitted to the people at this time when so much is at stake. The submission of these many minor propositions may injure the greater work that we are trying to do.

Mr. PETTIT: Why should not this question be submitted as well as any other question?

Mr. SMITH, of Hamilton: We are all entitled to our individual views on the matter, but I have a clear conviction, gathered from the people I have talked to about the situation and from a consideration of the matter, that if we submit this recall proposal and submit many other legislative propositions like the abolition of capital punishment, it is going to distract the attention and divide the minds of the people on the great questions we shall submit. In other words, it is going to make our work in convincing the people that what we do is right very much harder.

Every additional matter we submit makes it more difficult to center attention, and therefore I am in favor of limiting the number of things to be submitted to the great constitutional questions.

Mr. PIERCE: Are you going to pass over every proposal that comes up hereafter for the same reason?

Mr. SMITH, of Hamilton: No; to be frank with you, I am not. But I think the great propositions are, first, the initiative and referendum. We should bend every energy to get the people to adopt that. Then,

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secondly, we should make our constitution simple of amendment. And there are some other questions that I shall vote for. I believe, though, we must differentiate one question from another, and, to be entirely frank, this question of the recall antagonizes a great many people. The initiative and referendum antagonize some people and I feel a little safer about the initiative and referendum without the recall.

Mr. PECK: You remember that we were elected in Hamilton county and signed a pledge?

Mr. SMITH, of Hamilton: Yes.

Mr. PECK: Do you remember that when the pledge was prepared that the recall was deliberately omitted?

Mr. SMITH, of Hamilton: Yes.

Mr. PECK: And it was published all over Cincinnati that we were not in favor of the recall?

Mr. SMITH, of Hamilton: The understanding is that it was not quite that. It however, was, that we felt it was inadvisable to let the Convention go on record as favoring the recall because it might endanger the initiative and referendum.

Mr. PECK: Well, I am satisfied if we had advocated the recall some of us would not have been here.

Mr. ANDERSON: Did not the Progressive League, of which the mayor of Toledo was president and Mr. Bigelow was secretary and treasurer, meet in convention and discuss what this Convention ought to do, and did they not deliberately and intentionally leave out the recall?

Mr. SMITH, of Hamilton: I am not competent to answer that. I think many gentlemen were in favor of the recall. If they left it out, as the gentleman says they did, they left it out as a matter of policy.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: If there is one thing I admire above another it is an open opponent, and on that account I raise my hat to the gentleman from Allen [Mr. HALFHILL]. He says he would like to swat the recall between the eyes. I am here to keep him from doing it if I can. However, I admire his spunk. He is out in his own uniform and under his own colors.

There is one thing in his talk this morning that impressed me, and that is his reverence for the English judiciary. I also lift my hat to the same power. The English judiciary has always maintained its own self-respect. It was never influenced by any class when it came to hand out law for the British nation. Three years ago there was the great engineers strike, the greatest industrial conflict in the history of the world. It extended from London to Hong Kong and back the other way. In the eleven months that it continued it all but paralyzed British industry. In all that time the British judiciary never issued an injunction nor was there a bayonet unsheathed. I have seen little industrial conflicts here at home when there was a distinct understanding with the judiciary beforehand that the representatives of a party on one side were to apply for the injunctions and it was arranged that the court would issue them. When the courts become the handmaid of policy, how do you expect honest men to respect them? I am not giving you a story; I am giving you history. All sovereignty is vested only in the people, and I wish to ask, Is the servant above the sovereign? Who says that the American people will interfere with any judge

who even tries to approach common honesty in the discharge of his duty? We have witnessed the shortcomings of the judiciary in our day and we regret them, but the people who have been up against this class of abuses want to exercise their powers to prevent those abuses. I have seen judges on our benches handing down decisions as judges when they themselves and their families, as stockholders, were the beneficiaries of the judgment rendered. And then they tell us we should not reach for those men and attempt to recall them. I wish to say the quicker you get the recall into active operation the quicker will you sustain the honest judge and his position. It will always be his pride to say they never mentioned the recall in connection with his name. And the weak-kneed judge, whose son probably is a corporation employe at a large salary and who has taken his inspiration at the breakfast table, is very apt to remember that John is in the employ of the company. Who is not conversant with that view of the situation? We will have our eye on that gentleman and we will have the hooks on him. We can pull him down from his proud pedestal and keep him from besmirching the ermine by rendering a plausible decision in favor of John's employer. The recall will not hurt any honest judge, and it is only the rogues that we expect to go gunning for by the use of the recall.

In conclusion, we cannot be too careful. We are only the trustees of the rights that come to us. Remember that the rights we have are not alone ours, but that we are holding them for those who follow us, and let us endeavor to deliver to those who follow us as large a meed of right as we inherited. If we do that we will have performed our full duties to those who follow after us, and it is up to us to try to do it.

Mr. WATSON: Gentlemen of the Convention: I read the other day on the door cap of the main entrance, of the state house at Chillicothe, Ohio, which door cap now rests in the relic room of this building, these words: "General good, the object of legislation, perfected by a knowledge of man's wants and natures abounding means applied, by establishing principles opposed to monopoly."

That is one of the reasons why I am heartily in favor of the recall.

There is a science of American government. That science is the reflected will of the people. The Jeffersonian theory, as well as that of Lincoln, is that all political power is inherent in the people. That power is evinced by the people throughout our constitution and the laws in three co-ordinate branches of government, the executive, the legislative and the judicial. But how much of the legislative function is in fact performed by the legislative branch of our government? The courts have by a series of interpretations managed to write into the laws in many, and it must be said in most, important cases, interpretations which materially and in some cases absolutely, ignore and reverse the will of the people as expressed by their legislative branch. In short, the judicial branch of the government has gradually overshadowed until it has well-nigh overturned the function of the other branches of the government and made these two co-ordinate departments of government entirely subordinate and beneath and within the power and control of the judiciary.

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I contend that this is one of the gravest problems confronting us as a state and nation—the greed and usurpation of the judicial branch of the government. I contend that laws created and enacted to represent the people's will and for their benefit should be interpreted by the courts in the light and spirit actuating their enactment, and the judiciary should lend itself to such spirit and interpret such will and spirit of the people. What is the sovereign power of America? What but the people? The constitution of the United States is but their creation. The constitution of the state of Ohio is but another of their creations. When your supreme court has decided a question of which it has jurisdiction in your state, to whom can you appeal? No branch of the government is provided to which such an appeal may be taken. It is absolutely arbitrary and supreme. An answer must at once suggest itself; there is but one tribunal to which an appeal may be taken from the decree of the judiciary—the people themselves. Without that appeal you have created an agency of government that has absolute arbitrary power. If the people have not the right to overturn that decree by recalling the agency that has uttered it, then the creature has become superior to the creator, and your boasted self-government has become a sham and delusion and is merely a counterfeit of what you fondly believe you have.

What recourse have the people of the United States from a decree of the supreme court thereof, an institution created by the people through the constitution as an agency of government?

And yet, when it has uttered its decree, has issued its fiat, has promulgated its mandate, no matter to what extent such decree may violate the principles of liberty or the rights of the citizens, no matter how subversive of all such rights, no matter how revolutionary in form, even though it override its former decision, as it did in the Standard Oil and Tobacco Trust cases, and despoil all the cherished canons of freedom, there is no pathway open to the people except obedience. The recall of the judiciary is not an agency to withdraw the judicial powers from that function, but to enliven and inspire the judiciary with the spirit of the times and to make it as responsive to the public welfare as the spirit and will of vested property and gigantic vested interests. Both must have their protection, both at the hands of the judiciary secure that protection. Neither must be absolute, but if a contest shall come there must be in the hearts and souls of the judiciary the feeling that human when in conflict with property rights shall under the spirit and essence of our government be superior. The recall of the judiciary is the means whereby the creator is to place itself above its creature. It is to put into the political life of the nation the application of the scriptural injunction which declares: "Remember now thy Creator in the days of thy youth, that thy days may be long in the land which the Lord thy God giveth thee."

The recall of the judiciary is as necessary to maintain the supremacy of the people over all their agencies and creations as was the struggle of the fathers to establish liberty and to proclaim it throughout all the land unto all the inhabitants thereof. If it be claimed that the recall will terrorize the judges, I answer that no judge worthy the name will be swerved one jot or tittle from

his true opinion, and as proof I cite the fact that no difference can be observed in the decisions of a manly judge at or near the close of his term from those at or near the beginning of his term. I invite your closest scrutiny from now on to the judicial decrees of our own most worthy judge. He comes to the people for re-election, and very properly too, for we all say, "Well done, good and faithful servant, enter thou into thy reward"—a second term. I warrant no difference will be observed in his decrees because of the fact that he desires the rewards of faithful service. No faithful servant of the people fears the people. It has been said that man can not be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found other men in the form of angels fit to govern him? Let history answer that question. Besides, by section 17 of article IV of the constitution, any judge of the state, since the adoption of the constitution in 1851 can be removed by a concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein. It will be thus seen that the recall is now in the constitution and has been since it was adopted on the third Tuesday of June, 1851, affecting judges alone. Has this summary power terrorized your courts or intimidated them? Has it taken away their independence, this summary recall which has existed for sixty years? And yet men apparently sensible see or pretend to see in this self-defensive power of the people a menace and threat to our institutions.

It is urged that the recall of the judges would subject the judiciary to the clamor of the mob. The man who believes the people are a mob does not believe in a republican form of government. He should leave this country. He has no place here; his spirit is treasonable. Respect the judges, of course, the same as we respect men in other offices who do their duty; no more, no less. We cannot respect them if they are arrogant or tyrannical or treasonable or despotic, and if they are not held responsible they become to a greater or less degree arrogant, tyrannical, treasonable and despotic. They are entitled to the respect earned by the justice and wisdom of their judgment, and this should be measured, not by them, but by the sovereignty that creates them. Let their work be done in the light of the power they serve. The more direct and severe the light, the greater will shine the glory of their work well done.

"Resistance to tyrants is obedience to God." Such was the sentiment awakened in the heart of Thomas Jefferson as he stood in the lobby of the Virginia house of burgesses and heard the impassioned harangue of Patrick Henry in a burst of righteous indignation at the attempt of parliament to intrude his country by the infamous stamp act of 1765. And such was the sentiment born anew in the hearts of the twenty-five governors of states when they declared that "tyranny in judicial ermine is as hideous as a Czar." Truly was it exclaimed in that now immortal session of governors, "We have made history." You can trample human rights under foot for a while, but that inherent right, which man cannot give neither can he take away, will assert itself in the sentiment, "Resistance to tyrants is obedience to God."

The PRESIDENT: The time of the gentleman has expired.

Mr. DOTY: I rise to a point of order.

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The PRESIDENT: State your point.

Mr. DOTY: I don't understand that the gentleman's time is up. We are working under the half-hour rule.

The PRESIDENT: No; we are working under the five-minute rule.

Mr. HARRIS, of Ashtabula: I move that the gentleman's time be extended.

Mr. TANNEHILL: I think Mr. Watson as the author of the proposal should be given time to conclude his remarks.

Mr. WALKER: I think under the rule he is granted thirty minutes.

Mr. DOTY: No; I don't think he is. You don't get the thirty minutes until the second reading. The rule is now five minutes.

Mr. TANNEHILL: I move that the gentleman be given time to conclude his remarks.

The motion was carried.

Mr. WATSON: The action taken by the governors is no surprise to reading and thinking men. The surprise is that some action was not taken long ago. Who has not known that for years the federal judiciary has been the "city of refuge" to which the plunderbund flee when the state seeks to protect her people? Every man, trust or combine that sees fit to assail state enactments flees to this "city of refuge"—the federal judiciary. Judge McPherson held the Missouri law confiscatory. Judge Van Devanter (now on the supreme bench because of his service to the trusts and monopolies) held the Arkansas law confiscatory. Judge Sanborn held the Oklahoma law confiscatory, and now he lays on the straw that breaks the camel's back by declaring the same in reference to the Minnesota law.

And then we have Judge Hanford, of Seattle, who was recently hanged in effigy because of his injunction in behalf of the street-car line in Rainier Valley. And was this a mob? No. The speakers were the mayor of Tacoma, one state senator and one man who last year was a candidate for the republican nomination for United States senator.

The Seattle case is vital. Here we have a federal judge against whom the people protest. He had repeatedly given decisions in favor of corporations, and finally, when he granted an injunction to a street-car corporation, restraining the people from even asking transfers, although the state supreme court had decided they were entitled to transfers, the people arose and denounced him in a mass meeting. After this mass meeting the two editors of the Seattle Star and six of the speakers were arrested on a charge of "conspiracy to obstruct justice." If these men are convicted it means that a precedent will have been established which will permit judges under fire to arrest and punish with jail sentences every one who dares to criticize them. It will be the first step toward the establishment of a judicial kingdom. Again I say "Resistance to tyrants is obedience to God."

Also we have the detestable Archbald, of Wire Trust fame, who gave each of the eighty offenders, upon the plea of nolo contendere, the nominal fine of \$1,000. Thus it is the federal courts fine the criminal Sugar Trust and the consumers of sugar are today paying the fine.

And then we have Judge Jackson, Judge Grosscup and Judge Pollock, whose names are well known to or-

ganized labor because of their servility to the special interests.

Federal court decisions of recent date read like the briefs of corporation attorneys. "Whose we are and whom we serve" has been translated by the federal judiciary to mean the trusts instead of the meek and lowly Nazarene.

I do believe that I should give
What's his'n unto Cæsar;
For it's by him I move and live,
And get my bread and cheeser.

Such seems to be the sentiment of the federal judiciary in its outrageous attempts to reduce the states to mere federal provinces.

Rate reductions in North Dakota, South Dakota, Arkansas, Missouri, Oklahoma and Minnesota have all been struck down by the hand of the federal judiciary. Are the ten million people of this empire of states ignorant, depraved or anarchistic? Nay, verily, they are, on the contrary, intelligent, enlightened and patriotic. As the West is the child of the East, these are our children, whose rights are being trampled under foot by this agency of government. When the courts refuse to do homage to the scheme of representative government, then have we judicial tyranny. But why do the governors of the states call upon the supreme court to throttle Sanborn, of the United States circuit court of appeals? Is not the supreme court as now constituted another "city of refuge" for the plunderbund? Justice Harlan thought so in his philippic against the "rule of reason." In order to save Standard Oil and the Tobacco Trust, this, our highest tribunal—save the people themselves who uttered this agency in representative government—reversed its decision in the trans-Missouri freight case.

Why not appeal to the people themselves, who uttered this agency? What is the sovereign power in the United States? What but the people?

Where tyranny begins law ends. It has been said "The tree of liberty grows only when watered by the blood of tyrants." Evidently before this matter is fully adjusted the tree of liberty will send forth new shoots.

Lastly, take the nine long years of "Beef Trust immunity." A federal judge always stood ready with the "immunity bath" to the packers' special plea in bar. How many of these malefactors have inspected jails? It is dawning upon the minds of many that there is truth in the statement that "Laws are like cobwebs, which catch small flies, but let wasps and hornets break through." Such was true in the days of Swift, who uttered these words, and such is evinced to us to-day.

These prosecutions have served only to make the law ridiculous and to bring the authority of the federal government into contempt. In no other civilized country would such a record be possible. Some day our federal judiciary will awake to the fact that they are but servants and not masters.

All this suggests a remedy, and that is the recall. Put the recall on all agencies of government, thereby bringing them into harmony with the spirit of the people who uttered these agencies.

Mr. TAGGART: How will your present proposal affect the federal judiciary?

Mr. WATSON: It will not at all. This is just preliminary to a point I shall bring up later.

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I notice that Judge Grosscup, whose career has been a reproach both to the judiciary and to the bar and who applied the "immunity bath" to Rockefeller after Judge Kennesaw Mountain Landis had fined him \$29,000,000 for rebating, will resign in October. He says:

The formative period is approaching. Next year's presidential election will, I believe, be the last one on the old lines, the settlement for the future will come, not through courts of law, but the courts of public opinion.

The chieftain of plutocracy evidently had read the handwriting on the wall, and is getting out of the way of the rushing avalanche of public opinion that is to scourge from the temples of justice the oppressor and his tyrannical decrees and enthrone the people.

There is no thought of striking down the judiciary and those who suggest this ought to know better. A judge has no right except as the law gives it to him, and the people make the laws. The judge's right to declare a law unconstitutional is not an inherent right. It is granted by the constitution and the constitution is made by the people. In fact, the constitution is distinctly a popular instrument. Individual rights are protected in constitutions because the people who make the constitution want those rights protected, and the people who make the constitution can be trusted to deal as fairly with judges as with other officials. The argument that a judge can have any power not conferred on him by the people, or can rightfully exercise power contrary to the wishes of the people, is either a relic of past monarchy, from which we have departed, or a foreshadowing of the plutocracy which some seem to desire.

The attempt to appeal to religious prejudices is as absurd as it is inexcusable. The religious belief of the people is more secure in the hands of the people themselves than anywhere else. Equally aside from the line of legitimate argument is the argument that the people may act in anger or excitement. Elections provide time for deliberation, not as much time as some of the predatory corporations have taken to wear out the patience of the people by postponement and delays, but time enough to allow thought and deliberate judgment.

It is our view that the purpose of the recall is "to make the judiciary subservient to the popular will." To what will ought the judiciary be subservient? Not unpopular will? We have had enough evidence that judges are human to enable us to withstand the appeal now made to us to put our judges in a class by themselves. Have we not seen influential criminals escape just punishment through their power to touch the sympathies of the court, and have we not seen judges decide political questions with just as much political bias as the ward politician? What state has not had its examples of political judges—and judges are just as likely to be partisan when they secure an appointive judgeship through a pull as when they obtain an elective judgeship through their push. Have we forgotten the electoral commission of 1876? Did we not have five supreme judges on that commission, and were they not the senior judges in length of service, and did they not decide according to their political bias just as the senators and representatives did? It so happened that three of the judges were republicans and only two were democrats; therefore Hayes was

seated. Had there been three democrats instead of two in the judicial group of the electoral commission Tilden would have been seated. It all depended upon the vote of one judge, and his vote depended entirely upon his party affiliations. He voted just as he voted at the polls, notwithstanding the fact that great constitutional questions were presented and mighty interests hung upon the decision.

Nothing is to be gained by shutting our eyes to the fact that judges are made of the same kind of clay that was employed on the rest of us, and it is just as well that the judge should have before his eyes constantly the possibility of a rebuke if he goes contrary to the sense of justice in the hearts of the people. A judge will be respected as long as he deserves respect, and why longer? If a judge betrays his trust it is better to let his sin fall upon himself than to have it rest upon the judiciary. There will be more respect for the court rather than less when the people have it in their power to remove an unfaithful servant.

I want to say, gentlemen of the Convention, that what is bringing this question so acutely to the people is not the unsoundness of the heart of the judiciary, but the unsoundness of heart of some of the men who constitute the judiciary, and the lawyers and judges should lend themselves to cut off the barnacles from the judiciary and to hold it up to be called clean, clean, instead of allowing the American people to hold it up and cry out unclean, unclean.

Now if a judge rests under suspicion the distrust is apt to spread to his associates, but when the people have the right in their own hands their failure to use it is an answer to the criticism of an official.

But suppose a mistake should be made occasionally. That is not a sufficient indictment against the system. Mistakes are to be expected, just as our constitutions contemplate the possibility of officials, even judges, proving false to their trust. But the right to make the mistake is what mankind has for centuries been fighting for. Let the mistake, if mistake must be made, be the people's rather than the king's.

Why is the power of removal lodged in the legislature except upon the theory that a judge may deserve to be removed? The recall is a form of impeachment in which the people act as a jury, and they can be trusted much better than any senate, even the senate of the United States. After the seating of Senator Lorimer who will claim that the United States senate is a better body to try an official charged with corruption than the people themselves?

The recall is coming and when it has come we shall have a higher standard of integrity and a more jealous regard on the part of our officials for justice and the public welfare.

Mr. TALLMAN: If the gentleman will yield I would like to move to recess until 1:30 o'clock p. m.

The delegate from Guernsey yielded for the motion and the motion was put to a vote and lost.

Mr. WATSON: One other point and then I am through. As I understand conditions, within a few years, probably two, the charter of the street railway system of Cincinnati will expire, and upon that question—

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Mr. DOTY: No; the charter will not expire. There will be a re-adjustment of rates only.

Mr. WATSON: Then I will pass that matter. I thank the Convention and will detain you no longer.

The Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. THOMAS: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant at arms will close the doors and the roll will be called.

The roll was called, when the following members failed to answer to their names:

Brattain,	Harter, Stark,	Miller, Fairfield,
Brown, Highland,	Henderson,	Norris,
Brown, Lucas,	Hoskins,	Okey,
Campbell,	Jones,	Price,
Cody,	Kerr,	Rorick,
Colton,	King,	Smith, Geauga,
DeFrees,	Lambert,	Stalter,
Doty,	Leete,	Stamm,
Dunlap,	Leslie,	Tetlow,
Dunn,	Marriott,	Watson,
Eby,	Marshall,	Weybrecht,
Fess,	Matthews,	Woods,
FitzSimons,	Mauck,	Worthington.

The PRESIDENT: There are eighty members present.

Mr. LAMPSON: I move that all further proceedings under the call of the Convention be dispensed with.

The motion was carried.

Mr. Kilpatrick arose to a question of privilege, and asked that his vote be recorded on Proposal No. 64, by Mr. Miller, of Fairfield. His name being called, Mr. Kilpatrick voted "aye."

Mr. Shaffer arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Shaffer voted "aye."

Mr. Pettit arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Pettit voted "aye."

Mr. Harter, of Stark, arose to a question of privilege, and asked that his vote be recorded on Proposal No. 64, by Mr. Miller, of Fairfield. His name being called Mr. Harter, of Stark, voted "aye."

Consideration of the pending question was then resumed.

Mr. ANDERSON: I understand the question before the Convention is the indefinite postponement of all that is before the Convention with reference to the recall. Am I correct?

The PRESIDENT: Yes.

Mr. ANDERSON: I understand at this time we are limited to five minutes. I intend to vote against the indefinite postponement of this matter for the reason that I do not believe in preventing any question from coming before the Convention. Incidentally I wish to say that I am against the recall of those officers other than judges for the reason, that as matters stand now offices to which they are elected have terms of two years. If an officer is recalled it can only be done after he has served one year and then he would go out under his term of of-

fice in one more year, so there is very little to be gained by the recall.

Mr. PETTIT: There are some offices with longer terms than two years.

Mr. ANDERSON: I am speaking of those who would hold office for two years. It seems to be somewhat of a ridiculous misuse of the recall to apply it where the term is only two years. If the other report comes in making the terms four years then the recall ought to be added.

Let us look at what a curious mix-up came about in Seattle. A mayor was elected. He was recalled not only by his enemies, but by the friends of the candidate who wanted to be mayor. Then after he was recalled the other man was elected. Then the friends of the man he had just ousted, together with the enemies that any man is sure to make who goes into the office and can't appoint everybody, recalled that man in office. So you see a most ridiculous misuse can be made of the recall. I want to call your attention to another matter. We had a Progressive Constitution League of which the mayor of Toledo was president and our president the secretary, and the league determined that the recall would not be pressed; in other words, that the different candidates over the state would not be asked to pledge themselves with reference to the recall, believing, and I think rightly, that the initiative and referendum was the great thing to be desired, and the thing to which they should devote their energy, with the understanding and belief that after the Convention adopted the initiative and referendum; and after the initiative and referendum had been ratified at the polls, then a majority of the people in the state of Ohio, if they wanted the recall, could grant it.

Mr. PETTIT: Was what that league did binding on any member who did not belong to it or didn't pledge?

Mr. ANDERSON: No; I was not a member and it was not binding on me, but the point is that apparently those people who believed in the theory at that time have decided not to press it, believing that the recall would be defeated.

Now I am giving an opinion that has been coming to me more firmly every day, that when we finish our work a constitution will be submitted to the people for the approval of the people in one document with two questions on the outside, one, the question of woman's suffrage and the other the liquor question. If you put the recall in the constitution itself and put it up to the people under the alternative of "new constitution, yes," and "new constitution, no," it will lose us tens of thousands of votes for the constitution as a whole. I believe the Progressive League was right and the recall should not be put in the constitution. I am certainly opposed to it, because we have not decided as yet that all the officers should have four-year terms.

Mr. THOMAS: If all the members of the Convention were through with their dinners, and were here to vote, I would move the previous question, but I want every one of you to understand exactly what this question is. I think it is understood that the recall proposal, as reported by the majority of the committee, is not satisfactory to the socialists in this Convention, or the state. The socialist proposal on the recall is contained in Proposal No. 161, introduced by Mr. Moore, and it pro-

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vides that, on the presentation to the proper authority of a petition for a recall of an elected officer, verified by ten per cent of the voters of the district represented by such officer, a new election to fill the office shall forthwith be called. There is a lot of mischief that an officer can do in two years from the time he is elected if he cares to undertake it, and in the report of the committee the recall only applies to the first year of a term of office for which the officer might be elected, because by the time the regular election would come around with a two-year term the term would be concluded.

Now while the question is being discussed about the recall of judges, I want to call attention to the fact that there is one judge in Ohio sitting on the bench who was indicted by the grand jury in two counties for embezzlement, and charges were preferred against him in the house and the senate. It is Judge Donnelly, of Henry county. The judiciary committee, a number of the committee now being under indictment themselves, did not consider the grand jury indictments, and refused a hearing on the subject, and the senate judiciary committee said that this indictment in itself was not sufficient evidence to even warrant having a trial on the subject.

Mr. HALFHILL: You would not say because a man is indicted and is defending himself against a charge of that kind he is guilty to the extent that the legislature ought to act on it, would you?

Mr. ANDERSON: A point of order. Is the gentleman of Allen [Mr. HALFHILL] suggesting a question of privilege in this matter?

Mr. HALFHILL: I want to make an answer.

Mr. THOMAS: If my memory serves me he was convicted in one case.

Mr. HALFHILL: Your memory is not correct.

Mr. THOMAS: It appears to me when two indictments by grand juries from different counties are found it ought to be sufficient to warrant at least a trial on that case before the legislature to find out whether there was any truth in that or not. The socialists believe that every public officer should submit himself to the will of the people when the people themselves believe he is not performing the duties of his office, and I feel that this particular amendment to the motion ought to be voted down and that we ought to have an opportunity to vote on the proposal as reported by the committee and amend it in such a manner as to provide for a real recall for judges and other public officers in Ohio.

Mr. DOTY: I desire to move, not for serving any purpose of my own, but for the purpose of having a definite time fixed, for a vote on this question.

I move that further consideration of the resolution by Judge King be postponed until 10:30 o'clock a. m. and be made a special order for that hour on Tuesday and for a vote to be taken on it at 11:30 o'clock a. m.

The motion was carried.

Mr. STILWELL: In order to satisfy what seems to be a desire among the members who expressed an opinion to me during the noon hour upon the subject, I move that when we adjourn today we adjourn until seven o'clock Monday evening.

The motion was carried.

Mr. HARRIS, of Ashtabula: As a matter of interest—I do not know whether it interests others, but I want to ask if this Convention expects to recess a week from

Monday night with the work all done and to reconvene at some time after that to finish the work of the committee on Arrangement and Phraseology? I can not understand how it is possible to act within the limits of what we have resolved to do and take this action which has just been taken.

The PRESIDENT: The next proposal is Proposal No. 230, which the secretary will read.

Mr. TETLOW: I move that Proposal No. 230 be indefinitely postponed.

The motion was carried.

The PRESIDENT: The next is amended Proposal No. 241—Mr. Dwyer.

The proposal was read the second time.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out lines 11 to 16 inclusive and in lieu thereof insert the following:

"Any judge of a court of record of this state may be removed from office by the governor whenever, after due trial as may be provided by law, it shall be found that such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that such judge has been guilty of misconduct in office involving moral turpitude, the persistent violation of a clear mandate of the constitution, intoxication while attending to the business of the court, gross inattention to the duties of the office or conduct tending to bring the court into disrepute. Laws shall be passed providing for the creation of commissions having authority to hear and determine the truth of any such charges and prescribing the methods of procedure with reference to the same."

Mr. Colton moved to amend Proposal No. 241 as follows:—

After line 10 add: "When the governor is on trial the chief justice shall preside."

Mr. EVANS: I offer a substitute.

The substitute was read as follows:

Strike out all after the resolving clause and the pending amendments and insert the following:

ARTICLE IX.

REMOVAL OF OFFICERS.

Any officer of the state, a district, county, city, village, or township may be removed from his office for nonfeasance, misfeasance, malfeasance, corruption, inefficiency, drunkenness, immoral conduct or for any other cause or causes which the court may deem sufficient. The jurisdiction for removal for all officers except judges of the circuit court shall be in that court. A petition for the removal of a circuit judge shall be filed in the supreme court and be heard there. Such petition shall be presented by any five electors and tax payers in the state, district, county, city, village or township, as the case may be, and security for costs shall be given. The officer shall be notified, as the law may prescribe, and shall have a preliminary hearing. If on such hearing, the court

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shall require the charges or any of them to be answered, the state shall take charge of the proceeding and prosecute it to a final result. The officer charged may resign at any time and if he does, the proceeding shall be dismissed at his cost. On the final hearing the court may dismiss the charges, or find the officer guilty of one, or more charges, declare his office vacant and remove him therefrom. Costs shall be adjudged as the court may deem proper. All further particulars under this article shall be prescribed by law.

The PRESIDENT: The question is on the substitute offered by the delegate from Scioto.

The substitute was not agreed to.

The PRESIDENT: The question is on the amendment offered by the delegate from Portage [Mr. COLTON].

The amendment was not agreed to.

Mr. ROEHM: I did not vote because I did not know what was voted on in those two amendments. We ought to get through with our business, but we ought to have a full attendance in order to do business. Several nights ago we started to do business. It was necessary to have three or four people change their votes in order to have a reconsideration of a matter and then consume an extra day to get it through. Why? Because we had a poor attendance. I object to having proposals called to which there is some opposition and considered by three-fourths or less of the members of this Convention. I do not believe it is fair to require that three-fourths of those present should be necessary to carry a proposal when it ought to be only a majority of the whole Convention. I believe we ought to have some means of compelling attendance. We ought to have reasonable rules, so the members will be present. I do not know what those amendments are that were lost, but I think that they should be reconsidered, and I move that the vote by which the amendment of the delegate from Portage was declared lost be reconsidered.

The motion was carried.

Mr. LAMPSON: Now what about the other amendment.

Mr. WINN: I make the point that the amendment offered by the member from Portage is a substitute for all the others.

The PRESIDENT: No; it is not.

Mr. COLTON: As the proposal now stands the lieutenant governor presides over the senate and if the governor is convicted the lieutenant governor would naturally succeed him and the lieutenant governor, having that interest, ought not to preside over that trial. My amendment provides that the chief justice shall preside on the occasion.

Mr. ELSON: Is it not a fact that there is no provision for a chief justice?

Mr. COLTON: But there always is a chief justice. One of the judges of the supreme court is chief justice. It seems to me it is a reasonable provision that on the trial of the governor the lieutenant governor should not preside.

Mr. FLUKE: It seems to me we are going at this matter in too much of a hurry. In the absence of the recall the people of Ohio have a right to expect that we submit something to them to allow removal of derelict

officials. For that reason I am very much interested in any proposal looking toward the impeachment of public officials. As far as I am concerned — it may be my fault — I have not had an opportunity to inspect this amendment and there are others in the same position. I would like to have some consideration given this matter. It is too important to run over. We would like to hear all of these things read.

The PRESIDENT: The amendment has been read by the secretary twice, but he can read it the third time if desired.

Mr. ROEHM: It was not in order, I believe, to move a reconsideration of the votes by which both of those amendments were lost, and I think the amendment of the gentleman from Scioto ought to be considered for the same reason I made the other motion. I now make that motion.

The PRESIDENT: The motion will not be entertained now. The question before the Convention is on the adoption of the amendment offered by the delegate from Portage.

The amendment was not agreed to.

Mr. ROEHM: Now I renew the motion to reconsider the vote by which the amendment offered by the gentleman from Scioto was laid on the table.

The motion to reconsider was carried.

The PRESIDENT: The question is on the adoption of the amendment.

Mr. LAMPSON: We would like to have the member from Scioto explain that.

Mr. EVANS: I have regarded the provisions in the constitution of this state and every state in the Union where provision is made for the removal of public officers by impeachment as an utter failure, and I think that all of that matter about the impeachment of public officers ought to be stricken from the constitution we are about to make. I believe that every one of the states, except one, and that is Oregon, retains these provisions as to public officers. I have formed the idea that the senate is not the proper body to try these charges. It is entirely too temporary. It is not judicial in its character and its remedy is impracticable; so much so that it is almost impossible, and it amounts to no remedy at all. Now I think that every officer — I don't care if he is a judge or what he is, legislative, ministerial or executive, or what kind of a term he has — ought to be removed for any of these causes read in your hearing. At the same time I say to you that when a man is elected or appointed to an office he has a property right in that office and he has a right to discharge the duties of that office and receive the emoluments until his term expires. He ought not to be removed by any public clamor and I think the only right way is to have a judicial tribunal. Let the charges be made against him, let the courts have a preliminary hearing and let the examining court say whether those charges are serious. If the examining court is satisfied on the preliminary hearing, just as a grand jury considering the question as to whether a crime has been committed, let the charges be heard and let the state take the matter up. Let the officer resign if he doesn't want to face the charges, but if he thinks he is not guilty and wants to face them, let the state take charge. I am opposed to the recall as presented. It creates a new tribunal, a tribunal which does not act

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judicially, and it is contrary to representative government and contrary to the spirit of our institutions. But I say the recall or removal that is embraced in this provision of mine is strictly in harmony with the principles of the organic laws of our state and of every other state, and it is a proper way to get rid of an officer if he is derelict in his duty or inefficient.

Mr. PECK: Do you bear in mind the provision of section 17 of article IV, which provides a simpler mode for removing a judge than any you have mentioned?

Mr. EVANS: Yes; I know about that.

Mr. PECK: I have not heard you refer to it.

Mr. EVANS: That has never been done. That remedy is impracticable.

Mr. PECK: Why any more so than yours?

Mr. EVANS: That takes him before the legislature, away from his home. Let us have a remedy right where the wrong is committed. That remedy is impracticable. Nobody resorts to it. I would wipe it all out of the constitution—everything that is said on the subject of impeachment.

Mr. PECK: That is not impeachment. It is simply by resolution.

Mr. EVANS: This matter has been adopted in Oregon. All matters that ordinarily are subject to impeachment have to be brought in the ordinary court. I think the people have good cause to demand the remedy in their organic law to remove a derelict officer. It is a crying demand. It is not by a public vote but by a judicial hearing, and I am in favor of that heartily.

Mr. THOMAS: Will you please state what your amendment contains? I think there are only a few of the members who understand.

Mr. PECK: Let us have it read.

The SECRETARY: It is Proposal No. 83 in your proposal book.

Mr. WATSON: Evidently the gentleman from Scioto [Mr. EVANS] is chasing this matter as far as he can: He chased it up to the supreme court, but he stopped there. Suppose we are going to try a member in the supreme court. In what court would you try that member? Would he have a new court? If the member of the new court were guilty of malfeasance or corruption where would you try him? Where is there any better body before which to try it than the people. There is no power greater than the people who have made those agencies of government. Speaking about it being contrary to the spirit of our institutions, the people are the bosses of all government. The people elect these officers for servants and the officers hold no property rights in their office except that which the people give them, and if they are chosen for services with the idea and understanding that for misfeasance or malfeasance or corruption the people can recall them, they would knowingly enter upon the sacred duties of the service with the feeling that that service must be justly rendered to their constituents or the recall would be effective. There is no power you could set up, real or imaginary, that supercedes the power of the people to govern themselves.

A vote being taken, the amendment offered by the delegate from Scioto was not agreed to.

Mr. NYE: I see in the amendment of the delegate from Cuyahoga [Mr. FACKLER] a provision that a judge may be removed if he is sick or unable to perform the

duties of his office extending over the period of six months. It is a well-known fact that men can't be disqualified for that long and not be disqualified for good, and I therefore offer an amendment.

The amendment was read as follows:

Strike out of the amendment offered by Mr. Fackler the following, beginning with line 5: "such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that".

Mr. WATSON: I offer as a substitute for Proposal No. 241 the majority report of the committee on Proposal No. 291.

Mr. PECK: I rise to a point of order. There are two amendments pending and it is not proper to offer the third one.

The PRESIDENT: The point of order is well taken.

Mr. BEATTY, of Wood: The recall being set for next Tuesday and this being of the same nature, I move that this proposal be continued until 11:40 next Tuesday.

The motion was carried.

Mr. PECK: I ask unanimous consent to present some reports from the Judiciary committee. I want to present them to get them on the calendar.

By unanimous consent Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 304—Mr. Halfhill, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all of lines 4, 5, 6, 7 and 8.

In line 9, strike out "section 2" and in lieu thereof insert "section 1."

In line 30 change the period to a semi-colon and add thereafter the following:

"and any existing court heretofore created by the general assembly shall continue its existence until otherwise provided by law. The judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall continue to hold their offices for the term for which they were elected."

Between lines 20 and 21 insert the following:

SECTION 2. That section 7 of article IV be amended to read as follows: There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. But the general assembly may provide by law to submit to the electors of any county the question of combining the court of common pleas and probate court in such county and provide that such courts shall be combined in any county where a majority of the electors at such election shall so vote. And provision may also be made for similar submission to the electors of the question

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of the separation of such courts in each county where the same may have been combined and for such separation when a majority of such electors shall so vote."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck the proposal as amended was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 325—Mr. Anderson, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all of said proposal after line 3 and in lieu thereof insert the following:

"Statutes in derogation of the common law shall not be strictly construed."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 305—Mr. Hoskins, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 225—Mr. Halfhill, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 69—Mr. Walker, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 303—Mr. Halfhill, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 120—Mr. Rockel, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 240—Mr. Anderson, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all of said proposal after line 3 and in lieu thereof insert the following:

"The right of action to recover damages for injuries resulting in death shall not be abrogated and such damages shall not be subject to any statutory limitation as to amount, but the recovery must be for the full amount of all damages so sustained."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 326—Mr. Anderson, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 166—Mr. Stilwell, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all of lines 4, 5, 6, 7 and 8 and in lieu thereof insert:

"SECTION 33. Laws may be passed to secure to mechanics, artisans, laborers and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or furnished material. No other provision of the constitution shall impair or limit this power."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

Mr. PECK: I move that the rules be suspended and Resolution No. 106 that I introduced the other day be considered now.

The motion was carried.

The resolution was adopted.

Mr. HARRIS, of Hamilton: I ask unanimous consent to introduce a report from the committee on Municipal Government.

Consent was given and the report was read as follows:

The standing committee on Municipal Government, to which was referred Proposal No. 272—Mr. FitzSimons, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

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Strike out all after the resolving clause and insert in lieu thereof the following:

To submit an amendment to the constitution. — Relative to the government of municipalities.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

SECTION 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SECTION 2. The general assembly shall, by general laws, provide for the incorporation and government of cities and villages; and it may also enact special laws for the government of municipalities adopting the same; but no such special law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SECTION 3. Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state, as a whole, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

SECTION 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SECTION 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility or to contract with any person or company therefor shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provi-

sions of section 8 of this article as to the submission of the question of choosing a charter commission.

SECTION 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SECTION 7. Any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government; but all such charters and powers shall be subject to general laws affecting the welfare of the state, as a whole.

SECTION 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors of the question "Shall a commission be chosen to frame a charter?" The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation and provision shall be made thereon for the election from the municipality at large of fifteen electors thereof who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provisions for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SECTION 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and shall be submitted by such legislative authority when a petition setting forth any such proposed amendment and signed by ten per centum of the electors of the municipality is filed therewith. The submission of proposed amendments to the electors shall be governed by the requirements of section

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8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any amendment so submitted is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto, within thirty days after adoption by a referendum vote, shall be certified to the secretary of state.

SECTION 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law. Any municipality appropriating private property for a public improvement may provide money therefor in part or in whole by assessments upon the abutting property not in excess of the special benefits conferred upon such abutting property by the improvement.

SECTION 11. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SECTION 12. The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SECTION 13. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors signing any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

SECTION 14. The adoption of this article by the electors of the state shall repeal article XIII, section 6, of the constitution.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Harris, of Hamilton, two thousand copies of the proposal, as amended, were ordered printed.

Mr. KNIGHT: It was the understanding between the committee on Education and the committee on Municipal Government that after the report of the committee on Municipal Government the committee on Education would file its report. That report from the committee on Education is ready. It is signed, but the vice president has it in his desk and it can not now be filed. I make this explanation so that when the report is made Monday night it may be, without objection, placed immediately following the report of the committee on Municipal Government.

Mr. DOTY: I move that the secretary be instructed to place the report of the committee on Education when it is made so that it will come right after the report of the committee on Municipal Government.

The motion was carried.

Mr. READ: I move that the Legislative and Executive committee be relieved from further consideration of Proposal No. 310 and that the same, according to Rule No. 82, be reported back to the Convention.

The PRESIDENT: The proposal is before the Convention and the question is on its adoption.

Mr. DOTY: No; the question is on its engrossment. What is the proposal?

The proposal was here read.

Mr. HARRIS, of Ashtabula: The secretary of the committee has the committee's report to submit and he also has other reports from the committee. That they are not submitted is an inadvertence.

Mr. McCLELLAND: Is it in order to move to recommit this proposal to that committee?

The PRESIDENT: It is.

Mr. McCLELLAND: Then I make that motion.

The motion was carried.

Mr. FARRELL: I move that we now adjourn.

The motion was seconded.

Mr. PECK: I have a few more reports to offer.

Mr. FARRELL: I withdraw then.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred proposal No. 322—Mr. Bowdle, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 4 strike out the words "the legislature shall have power to provide by law" and in lieu thereof insert the words "laws may be passed".

In line 5 strike out the word "medical".

Strike out all of lines 7 and 8.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Physical Training in Public Schools.

Mr. PECK: I now move that the committee on Judiciary and Bill of Rights be discharged from further consideration of Proposal No. 301, and that that proposal be referred to the committee on Education.

Mr. KNIGHT: On the 7th of March that proposal was taken from the committee on Education. The committee on Education objects to having this proposal foot-balled back and forth to it after the Convention has ordered it out of that committee's hands once. It is a proposal to amend the bill of rights, belongs in the hands of the Judiciary and Bill of Rights committee, does not belong to the committee on Education and the motion should not be agreed to.

Mr. PECK: It is a proposal to amend the bill of rights with reference to education and therefore we thought it belonged properly to the committee on Education. There is a very learned lady who wants to make a long speech to someone and we want the committee on Education to hear it. We heard several sections of it last evening. We think we heard enough and we would like to have the committee on Education take the last of it.

Mr. KNIGHT: The committee on Education has had all the light it needs on this subject and the Bill of Rights committee needs more light.

Mr. PECK: Nobody was in favor of it. I move that proposal be indefinitely postponed. I move that the committee on Judiciary and Bill of Rights be relieved from further consideration of that proposal and that the proposal be indefinitely postponed.

Mr. ANDERSON: Mr. President—

The PRESIDENT: All of those in favor of the motion.

Mr. ANDERSON: Mr. President—

The PRESIDENT: Do you want recognition?

Mr. ANDERSON: Yes.

The PRESIDENT: The gentleman from Mahoning.

Mr. ANDERSON: I believe delegates ought to have some little glimmering of intelligence before they vote on the question. For the benefit of those who want to know what they are voting about, the proposal seeks to put into the constitution a recognition of physical training in the schools. It is admitted by everybody that so far as the law is concerned it is not needed, but as the lady explained last night for the influence it would have it ought to be put in as are a good many other things, because physical training is so much needed in the schools; and I think it ought to be in the constitution. There are a good many other things going into the constitution not nearly so meritorious as this.

Mr. PECK: It was admitted by the advocate of this resolution that there was no lack in the power of the general assembly to pass any law necessary for physical education, and all she wanted was that it should go into the constitution for the moral effect it would have, but it seemed to me and also to other members of the committee that it would be an injurious addition, so far as the sound and appearance is concerned, to that clause of the constitution. I think it is section 5 or 7 of the bill of rights to which it is proposed to attach it, which provides for the encouragement of moral and religious education. She wanted to attach to that physical education. I think the word "education" is broad enough

to cover it all, and it has been construed so. The general assembly has passed numerous laws in aid of education, and the people seeking to have this incorporated in the constitution do not deny that.

Mr. KRAMER: This is the only proposal that I have introduced. I was sorry that I had to introduce one. Just a word in reference to what Mr. Knight said. This thing has been thrown backward and forward between those two committees long enough. We placed it in the hands of the committee on Education and immediately the committee on the Bill of Rights began to kick and said the thing belonged to them. On account of the objections raised by the committee on the Bill of Rights the proposal was referred to that committee. It was not the fault of the proponent or the Convention that it was so referred. It was referred to the committee of the Bill of Rights on their own demand. I am not saying what ought to be done with the proposal, but I will say this committee on the Bill of Rights has not given it any consideration. I say that for the benefit of the Convention. I was there last night when the lady was seeking to be heard, and she was not heard to any great extent. I want to make myself plain before the Convention. I think the proposal has considerable merit. I know it is as Judge Peck says, that we can do without it, but so could we have done without that proposal with reference to primary elections or the one with reference to capital punishment or about fifty other things we have done here. We could have done without putting any of those in the constitution. There is not one member in twenty of this Convention who has so much as read this proposal. If you want to vote for its indefinite postponement without reading it that is your privilege, but I don't think it is treating fairly the persons who are advocating it. I just want to read it and I want to show you it takes everything in the section to make a man. Then you can do as the Convention sees best. The conclusion of section 7, article I now reads, "Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws," etc. Now I simply want to put in after the word "knowledge" the words "and physical efficiency", so it would read "Religion, morality, knowledge and physical efficiency, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws," etc.

Mr. DOTY: I think the italicized words in line 13 indicate that something else has been added.

Mr. KRAMER: I will get down to that. The thought I want to express is that we ought not to vote it down simply because it can be taken care of without constitutional provisions. Everything here can be taken care of by the legislature without constitutional requirements, but it is the idea of those back of the proposal that it takes all of these things to complete and round out a man, and without physical efficiency, religion and knowledge are crippled. I don't care so much about it as the persons who are back of it do, and if you will give it a minute's consideration I think you will say it ought not to be simply voted down just because it could be done by the legislature without the provision.

Mr. ANDERSON: Is there anything in that that could harm any person if you would adopt it?

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Mr. KRAMER: No.

Mr. PECK: Then can you not put in the ten commandments? Is there anything in the ten commandments that will hurt anybody? That is a comment on Mr. Anderson's question.

Mr. ANDERSON: It might be well to let the Judiciary committee read them and get some knowledge of them.

Mr. KRAMER: It looks to me as if there could be no objection to recognizing this in the constitution just exactly as the constitution recognizes morality, knowledge and religion. It seems to me it is a proposition with considerable merit. Now there is another thing added to it. "Those being essential to good government and the success of government."

Mr. ELSON: Could not that be worded better?

Mr. KRAMER: Maybe it could be. I want to call the attention of the Convention to the action of the Judiciary committee. Just the minute the lady began discussing this proposition last night some member of the committee suggested it ought to go before the committee on Education, that it belonged there and he consented and so did I.

The PRESIDENT: The matter is not properly before the Convention and the chair will now put the question on the motion that the Judiciary committee be relieved from further consideration of the proposal. Then we will proceed with the discussion.

The motion was carried.

The PRESIDENT: The gentleman from Richland [Mr. KRAMER] still has the floor.

Mr. KRAMER: I am sorry that point of order wasn't suggested sooner. I don't care to discuss it further. If the Judiciary committee wants to get rid of it and the committee on Education doesn't want to take it up, do with it whatever you want. I would like to say it is a proposition that ought not to be simply passed up for consideration just as we did with Captain Evans' proposal this afternoon. You treated that proposition worse than you would treat a yellow dog. There were not nine men that voted on either side, and yet the proposal had a great deal of merit in it. That puts us in a bad light with our constituents. What can I go back and tell these people interested in the proposition? I can't tell them anything except that the Convention gave absolutely no consideration to it. Simply because one or two men thought it had no merit in it the rest jumped at the conclusion and voted to indefinitely postpone it. That is not the way I would like to go back to Mansfield and tell the people who are back of it. I want this thing considered and as the gentleman from Mahoning [Mr. ANDERSON] has said, if you would study it for a minute or two and arrive at the conclusion that there was nothing in it, I could tell the people at Mansfield that the Convention after most thorough consideration decided it was not worthy of adoption. What can I tell the lady interested in this proposal when I go back now? That is what I want to know. Simply because the ladies can't vote don't say they are not citizens. Now, what did we do with that Miller proposition that was presented by the ladies—

Mr. PECK: The gentleman should confine himself to the proposal under discussion.

Mr. KRAMER: I think that point is well taken.

Mr. BIGELOW: Mr. President: There seems to be no disagreement that there is nothing in this proposal that could not be accomplished by the legislature. I have today's issue of the Ohio State Journal and I am going to read a part of an editorial. I do not want to be understood as committing myself to all that has been published in the past or may be published in the future in that paper, but this is the editorial, entitled "Province of a constitution."

What is a constitution anyhow? It is an instrument defining inherent human rights and prescribing methods for their protection. When this is overdone, and it is sought to establish in that constitution custom, habit, convenience, or forms of opinion, then the object is defeated, and the will of the people, which is one form of human rights, is hampered or suppressed.

The province of a constitution is exceedingly limited. When one goes beyond it, he interferes with the freedom of the people, he crushes their will, and denies to them the exercise of their own wisdom. It is a most absurd and unjust thing for a convention to legislate for the people of Ohio, as they will be ten or fifteen years from now—to anticipate their desires and necessities and give these form and expression now. We cannot understand how reasonable men will insist upon such a course.

It has been stated that not only is the legislature competent to do all this measure proposes, but that we are asked to pass this proposal merely for its moral effect. I have not asked this Constitutional Convention to do a thing that the legislature of Ohio could possibly do. Personally I am in favor of considering every proposal that really requires a change in the constitution, considering it fully and carefully, even if we have to stay here from now until next Christmas, and there should be no curtailment of debate and no haste, no neglect of our work, but with important proposals pending it does seem to me an abuse of our privileges and the misuse of our time for us to spend time here discussing things we all agree the legislature can do, and I think the time has come for us to draw a line and confine ourselves to questions that are truly constitutional questions. There are great big questions before us. Let us turn our attention from these things to those big matters that are still before us. You know what we did yesterday. A motion was made by the member from Cuyahoga to adjourn in the middle of Thursday afternoon and what will be the result? We shall dawdle along until the warm weather and then the big questions that ought to receive the best thought and attention will not receive the consideration they deserve. I think the time has come to call a halt in this matter, to devote our attention to the business before us and do the things that ought to be done. I hope this motion to indefinitely postpone will prevail and the proposal will go on the table where it ought to be.

Mr. BROWN, of Lucas: I sympathize with the member from Richland over the buffeting around that this proposal has been receiving. Anybody who introduces a proposal is entitled to a hearing before some committee. Therefore, I move that this proposal be com-

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mitted to a select committee of one composed of the delegate from Richland [Mr. KRAMER] for such consideration and recommendation as he sees fit.

Mr. KRAMER: If you desire to do this thing don't do it for sympathy.

Mr. DOTY: I move that the proposal be laid on the table.

The motion was carried.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 232—Mr. Doty, having had the same under consideration, reports it back without recommendation.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 252—Mr. Weybrecht, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 4 strike out the word "cases" and in lieu thereof insert the word "manner".

Strike out all of line 5 and in lieu thereof insert the words "as may be directed by law."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

The PRESIDENT PRO TEM: The next business on the calendar is amended Proposal No. 242, submitting an amendment to article IV, section 2, of the constitution, relative to the elective franchise. The secretary will read the proposal.

The proposal was read the second time.

Mr. ROEHM: Mr. President and Members of the Convention: I trust that this Convention will indulge me a little time to present the arguments in favor of Proposal No. 242, first, for the reason that though, like many of you, naturally of a talkative disposition—in fact dearly loving to talk—I have not felt the necessities of the various occasions impelling me to indulge in that favorite and, with some of us, popular, pastime very often and long, upon the floor of the Convention, and, secondly, for the reason that notwithstanding I am not a candidate for either president of the United States, governor of the state of Ohio, congress or any other office (at present) I believe nevertheless that I have something to say which should go into the record, even though it might be said when I have finished, by the gentleman from Highland, that I have said nothing to the point on the matter in issue.

Yesterday a member of the Convention asked me whether I had any stock or interest in any voting machine or company, and suggested that if I had none I had better make that fact known to the Convention. I hesitated to bring this up for the reason that protestation of no material interest often comes from those very much directly or indirectly interested; but nevertheless, gentle-

men, I hasten to announce that, fortunately or not, I have no such interest. I had not heard of any opposition to this measure until day before yesterday. It might be opposed on the grounds that this proposal is not of such importance as to deserve the consideration of the Convention, in its endeavor to put a short program up to the people. It certainly cannot be argued that the method of registering and counting the ballots in use at present is up to the times, or within even twenty years of the times, in these days of registering devices and complicated machinery. All know the present system of the ballot can be improved upon, and if it may be improved by the use of machines to a possible elimination of all fraud connected with the registering and counting of votes of the electorate, no one is here who will not consider that this proposal is of such importance that it should be adopted. I will therefore first explain why voting by machines cannot be had under our present constitution.

April 28, 1898, the legislature of this state passed a law (93 Ohio Laws, p. 277), entitled "An act to authorize the use and purchase of voting machines for any and all elections to be held within any city, town or village of the state, and for the appointment of commissioners," which legalized the use of the voting machines at elections. As is usual in all such matters, the city of Cleveland, in its progressive or ultra-radical spirit (take your choice); purchased such machines.

One Karlinger, as an elector and taxpayer of the county of Cuyahoga, city of Cleveland, brought suit in the common pleas court to enjoin the alleged unlawful expenditure of public money and the interference with the free and lawful exercise of the elective franchise by payment out of the public treasury for voting machines, about seventy-six in number, already purchased by the defendants and by the purchase of additional machines and of the requiring their use at elections to be held in said county. (Karlinger vs. The Board, 480.)

This case, Karlinger vs. The Board, through the regular channels, reached the supreme court of the state of Ohio, 80 O. S. 489. There (pp. 489-490) the court spoke as follows:

It would be interesting to apply this general view (Monroe v. Collins, referred to herein later) of the subject to the legislation in question, but it is quite unnecessary, in view of the definite requirements of the second section of the fifth article of the constitution that all elections shall be by ballot."

The court further says:

This provision is taken literally from the former constitution of the state, adopted in 1802. In a school for the study of English it might be both interesting and useful to consider the meaning of the word "ballot" in primitive times, and the process by which its present meaning has been derived. But when the word was originally used as a part of the organic law of the state the process of derivation had been completed and its meaning in this connection had become plain and understood. It was not doubted then, nor has it ever really been doubted since, that it is a printed or written expression of the voter's choice upon some ma-

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terial capable of receiving or reasonably retaining it, prepared or adopted by each individual voter, and passed by the act of the voting from his exclusive control into that of the election officers, to be by them accepted as the expression of his choice. When the phrase was readopted in our present constitution, this meaning of the provision has been illustrated and made absolutely certain by repeated acts of legislation.

After this decision of the supreme court voting machines could no longer be used at elections in the state of Ohio for the reason that the law giving such power had been declared unconstitutional by the supreme court of our state. Hence, if we are to progress in matters relating to the casting and counting of our ballots by machinery it is necessary that there be some constitutional provision which will permit this.

It is needless for me to state that I am entirely in accord with the amendments made in committee as they eliminate some of the objectionable features to the original proposal.

Without referring to the original proposal I will read from amended Proposal No. 242, line 4: "All elections shall be either by ballot or mechanical device or both preserving the secrecy of the ballot."

This language is, perhaps, so plain that it may require no explanation, but should a member desire to ask me any questions upon this sentence, I will try to answer them. It will be observed that voting by machines is not herein made mandatory, but possible only.

The next sentence, "The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device," may possibly require some explanation.

In *Monroe vs. Collins*, 17 Ohio State, 665, the supreme court had under discussion article V, section 1, of the constitution, which is as follows:

Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

The court there said:

The legislatures have no power, directly or indirectly, to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise or prevent its abuse, must be reasonable, uniform and impartial.

This same query was made by our supreme court as to the use of the voting machine in *Karlinger vs. The Board* in language heretofore quoted as follows:

It would be interesting to apply this general view (*Monroe vs. Collins*) of the subject to the legislation in question.

In discussing this matter in committee it was thought that in a case, for instance, of the non-partisan ballot for judiciary or of the ballot upon which we were elected to this Convention, which required a rotation in position upon the ticket, or, if by machine, that a ques-

tion be raised as to whether such provisions were not an abridgement of the constitutional right to vote, and it was thought by the committee that such ballots and voting by machine should be made legal beyond question; and to give the broadest possible scope consistent with the secrecy and protection of the ballot this language was used.

I do not know that it would be necessary in this Convention to discuss the advisability of installing voting machines as an argument for the adoption of this proposal, but it seems to me that the reason why voting machines should eventually be adopted should be discussed at this time, in order that we may bring out the advisability of passing this proposal.

The voting machine can be and should be made available in registering votes, and can be and should be so constructed as to guard, under proper laws, against fraudulent manipulation either by the voter or the election officers, for after the polls are closed the counting and operating mechanism could be automatically locked against further manipulation. There would be no counting of ballots after the polls are closed, as votes for the candidate or upon propositions would be totaled upon a metal counter. They could be made to be economical in that they would avoid large expenditures of money for the printing of the ballots, both for elections and primary elections, and if properly constructed would save the expense of four election officers to each precinct and there would be fewer precincts to keep a machine busy.

We need not here discuss the question as to whether there are any such machines now in existence, but as to their probable or possible existence in the future. It does not require much imagination, and I am sure would not require the invention of any new principle of mechanics, to conceive of the time when voting will be done by machinery, and the vote of the individual be cast secretly and recorded correctly within a short time of the closing of the polls by means of electric appliances, honestly added and totaled in some central locality, so that the result in our larger cities and subdivisions and even in the state and nation could be learned within a few hours.

However, the fact that the adoption of this proposal would make possible an honest ballot and an uncorrupted suffrage is, after all, the big reason for its adoption.

We have been pleased in the United States to boast of our political freedom and the right of the individual in his ambition to be elected to any office in the land, even to the presidency, if he is born an American citizen. Any of us who has had any active part in politics, not only in recent years, but in years gone by, if we have been well informed, knows that it has not always been true in our political scheme that there is equal right of candidates who desire election to various offices. I remember when I was a law student and began to take an active part in political matters—the old days of the mass convention—when the political boss, who was able to name the temporary presiding officer of the convention, had absolute control of the doings of the convention, no matter whether the opponents to him in that convention outnumbered his force three to one, and thus perpetuated himself in power, often against the will of the

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people. I remember when they used to haul to primary elections large picnic wagonloads of men from one voting booth to another, each casting his vote according to the dictates of the bosses at each voting booth, thus insuring the election of the candidates whom the bosses desired, for the reason that others would not attempt the same kind of frauds. And if this was not found sufficient the ballot box was stuffed; entirely disabusing the mind of the illusion that the will of the people ruled in such matters.

These frauds in election matters seemed doomed to an end upon the adoption of the so-called Australian ballot and of a system of electing candidates at primaries under the provision of the state law, but in this we were again mistaken, for the reason that fraud and manipulation, while a little more difficult and not quite so wholesale, became even more effective and less likely to be detected. Even on election day the Australian ballot is not proof against corrupt voting. One of the methods is to obtain a ballot, which can be easily done if you know how, mark it in the manner you desire to be voted, instruct the person whose vote is being purchased or supervised to receive the blank ballot from the election officers and retire to his booth, exchange the blank ballot for a marked one in his pocket, vote the marked ballot and return the blank ballot to the person in charge on the outside and receive his reward. A blank ballot is sometimes obtained by perpetrating a fraud upon the election officers. A clever person is procured to vote a sample ballot instead of the official ballot and in this manner obtains a regular blank ballot.

By another method, the person whose vote is influenced is made to exhibit (upon the ground that he is unable to properly fold the ballot) to some one in the election booth his ballot after he has marked it in a certain specified manner. If it is seen that he has marked his ballot in the agreed-upon manner the signal is given to the person on the outside and the voter goes out and receives his reward. But fraud at party primaries has been even more bold—such as stuffing the boxes with ballots marked in a particular manner and extracting in their stead other ballots, and such as election officers under the corrupt influence of election boards placing in a ballot box a number of ballots marked in a particular manner and registering the names of a number of the voters of that precinct who did not happen to go to the polls on that day.

A common method of working for certain candidates is for the clerk who is recording the votes to place the marks in the wrong column as the ballot is being called. I have known one case where one candidate had received a hundred and fifty votes while his opponent had received about fifteen or eighteen, and the names on the ballots had been called off properly, but when the results were announced after the ballots were destroyed it was found that the opponent had been credited with one hundred and forty-nine votes and he had received but eighteen. In that instance the judge who called off the ballots raised a kick, but it did not avail for the reason that the ballots had been destroyed.

Another favorite method of working for a particular candidate at regular elections is by the use of a small lead pencil palmed in the hand or hidden in the fingers by one assisting in counting the ballots. By means of

the use of this pencil such person can deftly place a mark in front of the name of the candidate he is boosting though the person voting this ballot had intended to vote a straight party ticket of other political faith than this candidate. In this manner I have heard of twenty-five or thirty votes being changed in one precinct,

These are not all the methods of fraud by any means that have been used. A bunch of ballots can be in counting dropped on the floor and another bunch substituted.

All these frauds have been committed hundreds of times since 1892, when the so-called Australian ballot was put into operation in the state of Ohio, to the certain knowledge of all persons who have been cognizant with our political methods. After the counting of the ballots, of course, under our law they are destroyed and the traces of fraud destroyed therewith.

There is still another and by far the most evil method of defrauding the will of the voter, both at elections and primaries, by holding back certain election precincts in which election officers are known and understood to be ready to stand committed to any fraud. In these precincts sufficient changes are made in the tally sheets thereof up to a certain number to decide the election or nomination of the candidate. This method is frequently used in the state of Ohio. Many a man who has really had a plurality of the votes of the electors did not, when the tally sheets were changed and footed up, have sufficient to make him the nominee or the duly elected official.

Thus it will be seen that I do not believe that a certain county in this state stands alone by any means in the matter of election frauds, and I do not believe that the fraud committed in that county, bad though it may have been, is as demoralizing as the fraud committed upon a candidate who was really nominated or elected but counted out, for the latter is a blow at the very foundation of our institutions.

I have enumerated a few methods of fraud under our present system. There may be many others, with which I am not familiar. If you ask me for proof I will tell you that the only proof I need is that it is a matter of common knowledge to the politicians generally in the state of Ohio that these methods of fraud have been used and are being used in elections to this day.

I am quite sure that the people of Montgomery county have heard something of frauds of this kind, and I am equally sure that Montgomery county is no worse in this respect than the average county in the state of Ohio, and for that reason I believe that these frauds have been committed everywhere in the state of Ohio, particularly in the larger cities.

I have sufficient patriotism as an Ohio-born citizen to believe that the state of Ohio is no worse than the average state in the Union in this respect, and for that reason am forced to the conclusion that the elections throughout the United States have not always been the reflection of the will of the people. I know that since the beginning of our government the people have never been sure that their ballots would be counted as they have been voted.

By means of those frauds it is far easier to defeat the will of the people when they are voting upon propositions submitted to them, such as bond referendums. I have

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heard that by far the biggest majority of the bond referendums that have been declared carried in various localities in the state of Ohio had really been defeated by the votes of the people.

Further, in all referendum votes, as well as in voting nonpartisan and separate ballots, the blanks actually voted, if counted for or against a certain proposition or candidate (and unless strictly watched it could be easily done), would, in most instances, be sufficient to decide the referendum or the election.

We have just passed a proposal to submit to the people the question whether they want the initiative and referendum. Upon the floor of this Convention during the debates upon that proposal it was said that the people had been deprived of their power by the corruption of the legislature and that the purpose of the proposal was to give back to the people the power they had delegated to their representatives and of which they had been deprived by corruption. There was much said in this debate about the big interests corrupting the legislature and thus thwarting the will of the people. If this be true, and if the initiative and referendum should be adopted, then if the people be not given the power to prevent corrupt suffrage you have merely taken this corrupt influence from the legislature and directed its work on the election machinery of the state. What good can come of this attempt to deprive a corrupt set of men of their power with the legislature by means of any proposal when you have no assurance that the referendum will be properly recorded?

I ask you to take away, not only from the politician, but from the thousands of men who act as election officers throughout the state, the temptation that you have tried to take away from the legislators. Everything that was so ably and eloquently said on the floor of this Convention as to the temptations to which legislators have been subjected could be equally said as to the temptation to which election officers and politicians would be subjected.

I believe I have given sufficient reason to show that this proposal is deserving of the consideration of this Convention and should not be defeated merely to put up a short program to the people.

All I ask of you is to pass this proposal in some form so that the people may say whether or not they desire to make it possible that they may sometime, be it ever so distant in the future, have honest elections.

Mr. HARBARGER: Has there been a decision of the courts against the use of machines?

Mr. ROEHM: If the member from Franklin [Mr. HARBARGER] had listened to the early part of my argument he would have seen that the supreme court in *Karlinger vs. The Board* had decided that the voting machine could not be used in our elections, that the act legalizing them was null and void.

Mr. HARBARGER: Where are the machines made? Mr. ROEHM: I do not know. I suppose there are a dozen of them.

Mr. HARBARGER: Are any of them made in Dayton?

Mr. ROEHM: I knew there was one being worked on down there. I did not know there was a machine made in Dayton until after I had introduced this proposal and

it was on the calendar. I don't know whether that is made in Dayton, but a Dayton man is interested in it.

Mr. CUNNINGHAM: During the progress of the voting what is the danger that the machine may get out of order and refuse to work at all or work badly?

Mr. ROEHM: I do not know and I do not think that is a question that the Convention need concern itself about, because there is a possibility of making a machine that will not get out of order easily. Take almost any recording machine, it may get out of order once in a while, but it is almost a perfect piece of mechanism. It is not for the purpose of permitting any of the present machines to be used, but simply to make it possible that a perfectly secret and correct counting of ballots can be had.

Mr. CUNNINGHAM: That is the pertinency of my question, to know whether that machine will produce perfectly accurate results.

Mr. ROEHM: It has been done. Other states have satisfactory machines, but not perfect machines in my opinion.

Mr. PECK: I heard it worked to the great satisfaction of the people of New York.

Mr. ULMER: There is no great principle involved in this proposal. It simply will permit any community that desires and that can find a perfect voting machine to buy it and install it. It is optional with the people. There is no reason why we should lose much time over it. People don't have to use it if they don't want to, and they can investigate it before they buy it. Therefore, as a few of the gentlemen here are compelled to leave soon to catch their trains and we expect to vote, I move the previous question.

Mr. ROEHM: I demand a call of the Convention.

The PRESIDENT PRO TEM: The call of the Convention is demanded. The sergeant at arms will close the door and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Beyer,	Farnsworth,	Mauck,
Brown, Highland,	Farrell,	Miller, Ottawa,
Cassidy,	Fess,	Norris,
Cody,	Harris, Ashtabula,	Nye,
Crosser,	Harter, Stark,	Okev,
DeFrees,	Henderson,	Peters,
Donahay,	Hoskins,	Price,
Doty,	Kerr,	Redington,
Dunlap,	Kilpatrick,	Stalter,
Dunn,	King,	Stamm,
Dwyer,	Leete,	Tallman,
Earnhart,	Malin,	Wagner,
Eby,	Marriott,	Weybrecht,
Elson,	Marshall,	Worthington.
Evans,	Matthews,	

The president announced that seventy-five members had answered to their names.

Mr. ROEHM: I move that all further proceedings under the call be dispensed with.

The motion was carried.

The PRESIDENT PRO TEM: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 69, nays 10, as follows:

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Those who voted in the affirmative are:

Anderson,	Holtz,	Read,
Antrim,	Hursh,	Riley,
Baum,	Johnson, Madison,	Rockel,
Beatty, Morrow,	Johnson, Williams,	Roehm,
Bowdle,	Jones,	Shaffer,
Brown, Lucas,	Kehoe,	Shaw,
Campbell,	Keller,	Smith, Geauga,
Colton,	Knight,	Solether,
Cordes,	Kramer,	Stevens,
Crites,	Kunkel,	Stewart,
Cunningham,	Lambert,	Stilwell,
Doty,	Lampson,	Stokes,
Elson,	Longstreth,	Taggart,
Fackler,	Ludey,	Tannehill,
Farrell,	McClelland,	Tetlow,
Fluke,	Miller, Crawford,	Thomas,
Hahn,	Miller, Fairfield,	Ulmer,
Halenkamp,	Moore,	Walker,
Halfhill,	Partington,	Watson,
Harris, Ashtabula,	Peck,	Winn,
Harris, Hamilton,	Peters,	Wise,
Harter, Huron,	Pettit,	Woods,
Hoffman,	Pierce,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Davio,	Fox,
Brattain,	FitzSimons,	Leslie,
Brown, Pike,	Harbarger,	Smith, Hamilton.
Collett,		

So the proposal passed as follows:

Proposal No. 242—Mr. Roehm. To submit an amendment to article V, section 2, of the constitution.—Relative to elective franchise.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

All elections shall be either by ballot or mechanical device or both preserving the secrecy of the ballot. The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. RILEY: On the seventeenth day of January Proposal No. 15 was presented by myself to the Convention and two days later was referred to the Judiciary committee, which has made no report. Under the rule, I call for the return of that proposal to the Convention.

The PRESIDENT PRO TEM: Proposal No. 15 is called up under the rule.

Mr. PECK: I want to say in justification of the Judiciary committee that it is not due to want of consideration that the proposal has not been reported. There was a good deal of discussion in the committee on the proposal, but we never were able to agree upon a report.

Mr. RILEY: I have not called this up this afternoon with the idea of compelling the grips to stay in the cloak room. I have an amendment to offer to this proposal myself which is intended to modify it somewhat and I think I can have the amendment ready in proper shape by the time we meet again.

The PRESIDENT PRO TEM: The gentleman moves that the proposal be engrossed and placed on the calendar in its regular order.

The motion was carried.

Indefinite leave of absence was granted to Mr. Dunn and Mr. Marriott.

Leave of absence for next week was granted to Mr. Tallman and Mr. Nye.

Leave of absence for Monday and Tuesday was granted to Mr. Keller.

Leave of absence for Monday was granted to Mr. Kramer, Mr. Stamm and Mr. Johnson, of Madison.

Leave of absence for the remainder of the week was granted to Mr. DeFrees.

Mr. FARRELL: I move that the Convention adjourn.

The motion was carried.

SIXTIETH DAY

MORNING SESSION.

MONDAY, April 22, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Geo. W. Burns, of Columbus, Ohio.

The journal of yesterday was read.

Mr. Crosser here took the chair as president pro tem.

Mr. HARBARGER: I wish to correct the minutes. I am not recorded as voting on the Roehm proposal.

The SECRETARY: It is correct in the record. The printing is wrong.

Mr. LUDEY: I notice that I am marked as voting in the affirmative and also in the negative on the Roehm proposal. I voted in the affirmative.

Mr. FARRELL: On April 8 I am marked as having failed to answer to my name on the roll call. I was present when the roll was called and I answered to my name.

The SECRETARY: It is not so recorded.

Mr. FARRELL: I was present and it was a call of the Convention by Mr. Roehm.

The SECRETARY: The record does not show you as having answered.

Mr. FARRELL: Well, I did.

Mr. HARBARGER: My name is not recorded on that either and I answered.

The PRESIDENT PRO TEM: The secretary will make the corrections as indicated, and the journal will stand approved.

Indefinite leave of absence was granted to Mr. Matthews and Mr. Shaffer.

Leave of absence for the remainder of the week was granted to Mr. Marriott.

Leave of absence for Monday and Tuesday was granted to Mr. Anderson.

Leave of absence for Monday was granted to Mr. Miller, of Fairfield.

MOTIONS AND RESOLUTIONS.

Mr. CASSIDY: I desire to offer a resolution.

The resolution was read as follows:

Resolution No. 107:

WHEREAS, On the first day of April, 1912, the president of the Convention and the chairman of the committee on Claims Against the Convention were authorized and directed to enter into a contract with the F. J. Heer Printing Company for the printing and publication of the debates of this Convention, but no provision was made therein for printing the index to the volumes of such debates; therefore,

Be it resolved, That the president and chairman of said committee are hereby authorized and directed to make a contract for the printing of said index at a price of not to exceed \$3.50 per page.

Mr. CASSIDY: I move that the rules be suspended and the resolution be considered at once.

Mr. STILWELL: I would like to make an inquiry as to the price at which the index is to be printed. Is that the price at which the rest of the debates is to be printed?

Mr. CASSIDY: No, sir; the rest of the debates is a lump figure based on the rate of \$2.50 per page. The index has to be printed in different type and Mr. Heer charges \$1 per page additional for the index.

Mr. STILWELL: Well, I object to the suspension of the rules. In my judgment it is not worth \$1 per page extra, simply to set the type up and I know it is not worth \$1 extra for the whole thing.

The PRESIDENT PRO TEM: The delegate from Logan moves to suspend the rules and consider the resolution at once.

Mr. DOTY: This is the contract for the index and tabular type setting?

Mr. CASSIDY: Yes.

Mr. DOTY: Printing tabular work always costs more.

Mr. STILWELL: I said it is not worth \$1 per page, because it is not worth \$1 to set up by hand.

Mr. DOTY: You are mistaken about that. I have set type by hand myself. I do happen to know it is worth more than \$1 per page to set by hand and the pages of these debates are larger than the pages I have in mind.

Mr. STILWELL: A very little bit larger.

Mr. DOTY: It is not worth \$1 per page to set it by hand, I understood you to say?

Mr. STILWELL: Not a dollar more.

Mr. DOTY: Your first proposition was that it was not worth \$1 per page. I do not pretend to say what it is worth, but it strikes me if the ordinary page we are getting is \$2.50 the extra tabular work is more.

Mr. LAMPSON: Is not the usual rule for tabular work fifty per cent more?

Mr. DOTY: From fifty to one hundred per cent, according to how many columns or justifications there are, and where there are two justifications on a page it is a price and a half or two prices. That is the union labor rate in Cleveland, if you want to know it.

Mr. CASSIDY: The committee that had this matter in charge overlooked any provision whatever for printing the index.

Mr. STALTER: I would ask the gentleman from Logan [Mr. CASSIDY] if he has examined the record which was kept by the committee on Printing and Publication?

Mr. CASSIDY: I have only got before me the proposition of Mr. Heer and the resolution of this Convention. I am not governed by any record of the committee on Printing and Publication.

Mr. LAMPSON: This is the price per page for twenty-five hundred copies?

Mr. CASSIDY: yes.

Mr. STALTER: Is the gentleman aware that the Printing committee received bids and kept a record of the bids they received, and does he know what the bids were?

Motions and Resolutions.

Mr. CASSIDY: Yes; I have the bid in my possession and I have examined it. It does not include any price for printing the index. If you want the index to those volumes, some provision must be made for printing it.

The PRESIDENT PRO TEM: The question is on the suspension of the rules.

Mr. LAMPSON: Have you made any estimate as to how many pages of index there will be?

Mr. CASSIDY: No; that will depend considerably on the work we do.

The yeas and nays were regularly demanded; taken, and resulted—yeas 75, nays 20, as follows:

Those who voted in the affirmative are:

Antrim,	Hahn,	Norris,
Baum,	Halenkamp,	Nye,
Beatty, Morrow,	Halfhill,	Okey,
Beyer,	Harris, Ashtabula,	Peck,
Bowdle,	Harter, Huron,	Peters,
Brown, Lucas,	Harter, Stark,	Pierce,
Cassidy,	Henderson,	Read,
Cody,	Hoffman,	Redington,
Collett,	Hoskins,	Riley,
Colton,	Hursh,	Rockel,
Cordes,	Kehoe,	Roehm,
Crosser,	Kerr,	Shaw,
Cunningham,	King,	Smith, Geauga,
Davio,	Knight,	Smith, Hamilton,
DeFrees,	Lambert,	Solether,
Doty,	Lampson,	Stamm,
Dunlap,	Leete,	Stevens,
Dwyer,	Leslie,	Stewart,
Earnhart,	Longstreth,	Stokes,
Elson,	Ludey,	Tannehill,
Fackler,	Marshall,	Thomas,
Farrell,	Mauck,	Ulmer,
FitzSimons,	McClelland,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Moore,	Woods.

Those who voted in the negative are:

Beatty, Wood,	Holtz,	Stilwell,
Brown, Pike,	Johnson, Williams,	Tasart,
Crites,	Kunkel,	Tetlow,
Donahay,	Malin,	Watson,
Dunn,	Pettit,	Weybrecht,
Evans,	Rorick,	Wise.
Harbarger,	Stalter,	

So the motion to suspend the rules was carried.

The PRESIDENT PRO TEM: The question now is on the adoption of the resolution.

Mr. DAVIO: I would like to move to refer that motion to the Printing committee.

Mr. LAMPSON: The Convention has just ordered consideration of this resolution under the suspension of the rules.

Mr. DAVIO: I think the motion to refer is in order.

Mr. DOTY: There is no question but that the motion to refer is in order, but I hope it will not be carried.

Mr. CASSIDY: As chairman of the Claims committee I have no further interest than to write the contract according to the resolution passed by this Convention, but this contract has been held up for two weeks waiting for opportunity to get authority given us to sign the contract, and a postponement of this matter means further delay in the printing. If you want it, all right. It is only delaying the matter out of all reason.

Mr. DAVIO: Some of the committee and I also understood that this contract included everything, and I voted thinking that way. I don't think it would have been acted on if the Printing committee hadn't had that idea.

Mr. DOTY: I think it is evident from the address of my colleague that his motion ought not to prevail. He indicates, after we voted 75 to 25, that he doesn't want the Convention to consider the resolution, but wants to get it into the Printing committee and keep it there.

Mr. DAVIO: That is not so.

Mr. ANTRIM: I am not a very good guesser, but I don't think the number of pages will exceed fifty and the additional expense will not be over \$50. The Convention is costing \$200,000, and every hour we spend is costing the state of Ohio two or three hundred dollars. Is it right that we should stand here debating this when this matter we are discussing only means an outlay of \$50? I think we should pass the resolution and go on to something more important.

The motion to refer was lost.

The PRESIDENT PRO TEM: The question is on the adoption of the resolution of the delegate from Logan, and the yeas and nays being regularly demanded the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 71, nays 23, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Norris,
Baum,	Harris, Hamilton,	Nye,
Beatty, Morrow,	Harter, Huron,	Okey,
Beyer,	Harter, Stark,	Partington,
Brown, Lucas,	Henderson,	Peck,
Cassidy,	Hoffman,	Peters,
Cody,	Holtz,	Pettit,
Collett,	Hoskins,	Pierce,
Colton,	Hursh,	Read,
Crites,	Johnson, Williams,	Redington,
Crosser,	Kehoe,	Riley,
Cunningham,	Kerr,	Rockel,
Doty,	King,	Roehm,
Dunlap,	Knight,	Shaw,
Dwyer,	Lampson,	Smith, Hamilton,
Earnhart,	Leete,	Solether,
Elson,	Leslie,	Stevens,
Fackler,	Longstreth,	Stewart,
FitzSimons,	Ludey,	Stokes,
Fluke,	Marshall,	Tannehill,
Fox,	Mauck,	Thomas,
Hahn,	McClelland,	Ulmer,
Halenkamp,	Miller, Crawford,	Woods.
Halfhill,	Moore,	

Those who voted in the negative are:

Beatty, Wood,	Farrell,	Taggart,
Bowdle,	Harbarger,	Tetlow,
Brown, Pike,	Kunkel,	Wagner,
Davio,	Malin,	Walker,
DeFrees,	Rorick,	Watson,
Donahay,	Stalter,	Weybrecht,
Dunn,	Stamm,	Wise.
Evans,	Stilwell,	

The resolution was adopted.

The president here resumed the chair.

The PRESIDENT: Motions and resolutions are in order.

Mr. DOTY: I move that the secretary be instructed in making up the calendar tomorrow to place Proposal No. 304 by Mr. Halfhill, No. 272 by Mr. FitzSimons and

Motions and Resolutions.

No. 170 by Judge Worthington, when reported, upon tomorrow's calendar right after Proposal 261.

Mr. STILWELL: Proposal No. 170?

Mr. DOTY: Yes, when reported. I will report it tonight.

Mr. STILWELL: I object.

Mr. DOTY: I will withdraw the motion then—no, I won't. I will make it anyhow, but make it a little differently. This is the situation. There are three or four labor proposals that are at the head of the calendar. I desire to place next after the consideration of the labor program the proposal by Mr. Halfhill, No. 304, which, provides for at least one judge of the common pleas court in each county, and after that Proposal No. 272 by Mr. FitzSimons, the home rule for municipalities, and then Proposal No. 170 by Judge Worthington, which will be reported tonight, and I desire to place them upon the calendar in such place that they will come as soon as the labor program is out of the way.

Mr. WOODS: What is the object of doing this?

Mr. DOTY: I have stated it, but I will state it again. The calendar as it stands has the labor program at the top. Next in importance is the Proposal No. 304, by Mr. Halfhill, and then the so-called home rule proposal by Mr. FitzSimons, No. 272, and then No. 170, by Judge Worthington. My desire is to bring the attention of the Convention to the matter so the important things may be placed as near the head of our work as is possible. It is a matter of the utmost indifference to me.

Mr. WOODS: Is it not intended that everything on this calendar is to be acted upon?

Mr. DOTY: Yes; so far as I am concerned.

Mr. WOODS: Then what is to be gained by changing the order?

Mr. DOTY: This is to be gained: It is very much wiser to use more time in the discussion of home rule for cities and taxation than some of these proposals here. I am only talking about the time of debate, not the relative importance. Therefore, if we use the time we have—one, two, or five weeks—upon the important matters and leave the remainder of the time to consider the less important matters, it will be much wiser than to use up the time in endless discussion on the small matters, leaving the big ones to the end.

Mr. SMITH, of Hamilton: Don't you consider Proposal No. 309, which deals with the method of amending the constitution, as one of the most important matters we have before us?

Mr. DOTY: Yes, but that comes right close after these.

Mr. SMITH, of Hamilton: You gentlemen have no objections to putting these matters just after that, have you?

Mr. DOTY: Yes, I would; but I wouldn't have any objection to having that moved up after these.

Mr. STOKES: Since these other proposals on the calendar will take such a short time, why not consider them and get them out of the way?

Mr. DOTY: They won't take a short time. They will take a short time if you put the bulk of the time on the important work. That is the way we do in our ordinary business, put the big jobs first and let the little ones come after.

Mr. STOKES: That may be the way you do—

Mr. DOTY: And that is the way you do.

Mr. WOODS: I desire to call the yeas and nays on this proposition.

Mr. TAGGART: Proposal No. 309, which the gentleman from Hamilton [Mr. SMITH] has charge of provides for the method of amending the constitution. It ought to have precedence over almost any other matter before the Convention. It ought not to be sidetracked. It ought not to be put back on the calendar for any other questions. For myself, I am opposed to giving precedence to any other of these matters that have been mentioned. These matters are on the calendar before them and they should stay before them.

Mr. DOTY: I want to change my motion and move to place Nos. 309, 304, 272 and 170 right after No. 261.

Mr. KNIGHT: I want to call attention to the fact that by motion last Thursday No. 309 was ordered to be placed on the calendar immediately after No. 272. Wherever the latter is placed the former goes along with it.

Mr. HARBARGER: I do not think there is any justification for a change in the calendar. It will take just as long at one time to discuss a little question as at another time and there is nothing saved. There must be some ulterior motive behind it. Why should not the calendar go as it is?

Mr. PIERCE: I am opposed to placing the proposals Mr. Doty speaks of ahead of the other proposals. I think every proposal should take its turn and be discussed and disposed of. There was an attempt made some weeks ago to do this same thing and the Convention overwhelmingly voted it down, and I hope they will vote this down. It is not a question of whether these are the most important questions or not. Every proposal should receive attention, and the people who have proposed them should have them discussed as they are reached. I hope the Convention will overwhelmingly vote this proposition down.

Mr. HALFHILL: There is certainly no ulterior purpose and I am satisfied the motion ought to prevail. One reason why it ought to prevail is that Proposal No. 304, which is a proposal relating to the judiciary, is supplemental to Proposal No. 184, which has been acted upon by the Convention. It ought to be gotten out of the way at an early time so that we shall be sure to have those two ready for their proper place. I think there will be scarcely any objection to No. 304. I believe it will take only a very brief time of the Convention to dispose of it.

Mr. WOODS: Will it take any longer to act on No. 304 at the end of the calendar than if you push it up ahead?

Mr. HALFHILL: I presume that is a fair question. It would not take any more time provided you were sure a reasonable amount of time would be given to a proposal of that kind, which affects every county in the state of Ohio and every individual in the state of Ohio. Some proposals possibly do not affect every county and every individual in the state of Ohio to such a full extent, but the proposals relative to municipal government and taxation certainly require consideration and a full extent of fair and free discussion. I believe they require more consideration than some of the other proposals.

Motions and Resolutions—Introduction of Proposals.

We are drawing near the end and we ought not to have some of these very great propositions at the very last; but we should dispose of them first, so that if we have to limit the time of debate we will not do it upon some three or four of the very most important questions that the Convention has yet to consider, and I hope the motion will prevail.

Mr. READ: The members who have spoken in favor of this motion seem to assume that toward the end of the Convention the proposals are not to receive much attention. If that is the case, I am very much opposed to it, and if it is not the case I do not see any necessity for the change. I think we should go according to the calendar. Every man who brings up a proposal of this kind has a right to have that proposal given due attention in this Convention, no matter when it comes up, whether now, today, tomorrow or four weeks from now. Why should we not go according to the calendar, and why make any change or give any preference to one over another?

Mr. STOKES: We may as well look this matter right in the face and right in the eye. Here is an evident undertaking and an evident desire to dispose of two or three or four important matters, as they consider them, and shove all the rest aside by shoving these ahead. There are amendments on this calendar just as important as those they have named that others are undertaking to put at the foot of the calendar. I have an amendment in relation to investment companies that is of equal importance. Why, it has been estimated that the people of Ohio are sold worthless stocks amounting to \$5,000,000 annually, and my proposal will prevent that, should it receive favorable action, and they are wanting to throw it down to the foot of the calendar. Every one who has observed the course of legislation knows that there is always a rush toward the end of every legislative session. It is so in congress, it is so in all legislatures, and I have no doubt it will be more or less so in this Convention, that there will be a great rush and an attempt to do a great amount of work in a very short space of time as the Convention draws near the end, and it would be a shame to have a proposition as important as the one I have referred to be crowded into a discussion of fifteen or twenty minutes or defeated for want of time.

Mr. PETTIT: When I was a boy I went to the mill a number of times. That was before the day of bartering your grist for flour or meal, and when we got there we were numbered in the order in which we arrived and our grist was ground the same way. If I had only two bushels and some man came with twenty or thirty, he didn't get his before mine if I got there first. I think the same rule ought to obtain here. I am opposed to this motion. If I had my way I would want Proposal No. 17 considered before anything else. That affects county officers all over the state. It is just as important as the other matters we have talked about. It is a mere assumption to say that an important matter will be given only half an hour. I say, take them up in regular order and give them proper consideration.

Mr. HARRIS, of Ashtabula: I presume the attention of the Convention is sufficiently called to the intention of this motion. It is clear it is an attempt to discriminate in favor of some proposals against others. That is, it has been suggested that some of the reports

are to come in and they are to be provided for before they come in. If that is just and fair I don't understand justice and fairness.

Mr. ROEHM: I believe the very fact that these are important proposals is the one reason why we should keep them until the last in order to keep the members here.

A ye and nay vote was regularly demanded on the passage of the motion.

The yeas and nays were taken, and resulted—yeas 36, nays 57, as follows:

Those who voted in the affirmative are:

Antrim,	FitzSimons,	Marshall,
Baum,	Fox,	Mauck,
Beatty, Wood,	Hahn,	Moore,
Bowdle,	Halfhill,	Okey,
Brown, Pike,	Harris, Hamilton,	Peck,
Cassidy,	Harter, Huron,	Redington,
Crosser,	Harter, Stark,	Rockel,
Davio,	Hoskins,	Stamm,
Doty,	Hursh,	Stilwell,
Dunlap,	King,	Ulmer,
Fackler,	Leete,	Weybrecht,
Farrell,	Leslie,	Mr. President.

Those who voted in the negative are:

Beatty, Morrow,	Holtz,	Riley,
Brown, Lucas,	Kehoe,	Roehm,
Collett,	Kerr,	Rorick,
Colton,	Knight,	Shaw,
Cordes,	Kunkel,	Smith, Hamilton,
Crites,	Lambert,	Solether,
DeFrees,	Lampson,	Stalter,
Donahey,	Longstreth,	Stevens,
Dunn,	Ludey,	Stewart,
Dwyer,	Malin,	Stokes,
Earnhart,	McClelland,	Taggart,
Elson,	Miller, Crawford,	Tannehill,
Evans,	Norris,	Tetlow,
Fluke,	Nye,	Thomas,
Halenkamp,	Partington,	Wagner,
Harbarger,	Peters,	Walker,
Harris, Ashtabula,	Pettit,	Watson,
Henderson,	Pierce,	Wise,
Hoffman,	Read,	Woods.

So the motion was lost.

Mr. WATSON: Proposal No. 291 is on the calendar as a special order for 10:30 tomorrow morning. We have amended Proposal No. 17, relating to the terms of county officials and as there seems to be considerable sentiment in the Convention to limit the term of county officials it seems to me Proposal No. 17 should be acted upon before Proposal No. 291. I move that Proposal No. 17 be made a special order for 10:00 o'clock a. m. tomorrow.

Mr. DOTY: I want to call attention to the fact that Proposal No. 291 has not been engrossed. In fact, it is very far from engrossment and it is altogether likely, if you will let the calendar alone, we will get to Proposal No. 17 before we engross No. 291. I hope you will follow the rule.

The motion of the delegate from Guernsey was lost.

Mr. LAMPSON: I demand the regular order.

The PRESIDENT PRO TEM: The next business in order is introduction of proposals. Unless there is objection we will omit the call of the counties and if anyone has a proposal to introduce he can introduce it.

Introduction of Proposals—Reference of Proposals—Reports of Standing Committees.

INTRODUCTION OF PROPOSALS.

The following proposals were introduced and read the first time:

Proposal No. 332.—Mr. Dunlap. To submit an amendment to article IX, section 1, of the constitution.—Relative to who shall perform military duty.

Mr. MAUCK: The proposal is to strike from the clause in the constitution relating to the militia the word "white." We may save time, therefore, by passing it now. I move that the rules be suspended and the proposal be submitted to its second reading.

The motion was lost.

Proposal No. 333.—Mr. Peck. To submit an amendment to article XV, section 10, of the constitution.—Relative to the use of property for display advertising.

The PRESIDENT PRO TEM: The next order of business is reference to committees of proposals introduced on the preceding day.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposal was read by its title and referred as follows:

Proposal No. 331.—Mr. Walker. To the committee on Public Works.

The PRESIDENT: The next business is reports from standing committees in their order.

REPORTS OF STANDING COMMITTEES.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 134—Mr. Halenkamp, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all after line 3 and in lieu thereof insert the following:

"Laws may be passed prescribing rules and regulations, for the conduct of cases and business in the supreme court and other courts of the state, and for the regulations of proceedings in contempt, and the limitation of the power to punish persons adjudged guilty of contempt, and any person charged with contempt, not committed in the presence of the court, shall, upon demand, be granted a trial by jury. Orders of injunction or other orders of a like character or similar effect shall not be made or issued in any case involving the employment of labor or in any controversy between employer and employee."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended, was ordered printed.

Mr. COLTON: I submit the following report.

The standing committee on Education, to which was referred Proposal No. 329—Mr. Knight, having had the same under consideration, reports it back and recommends its passage.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. HARRIS, of Ashtabula: I submit the following report:

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 227—Mr. Harris, of Ashtabula, having had the same under consideration, reports it back without recommendation.

The report was received.

Mr. HARRIS, of Ashtabula: I wish to offer an amendment to that and then I move that it be recommitted with the amendment.

The amendment was read as follows:

In line 7, after the word "of" strike out all down to the word "the" in line 9 and insert "March, 1913, also during the month of March, 1921, and each decennial period thereafter."

In line 11, after the word "electors" insert "not members of the general assembly."

In line 21, strike out the words "or in such manner as the general assembly shall direct."

In line 23, strike out "ten years succeeding such apportionment" and insert "remainder of this decennial period and each decennial period thereafter."

In line 44, strike out the words "three-fourths and insert "one-half."

In line 27, strike out the words "three times such" and insert "two and one-half."

In line 44, strike out the words "three fourths of."

In line 52, after the word "appointment" strike out the remaining words of the line and add the words "and the general assembly shall provide by law for publishing said appointments and otherwise carrying into effect the foregoing provisions of this article."

The PRESIDENT: The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HARRIS, of Ashtabula: I move that the proposal be printed as amended.

The PRESIDENT: If there is no objection the proposal will be engrossed and placed on the calendar for second reading.

The motion to engross was carried.

Mr. DOTY: I desire to make a report.

The report was read as follows:

The standing committee on Taxation, to which was referred Proposal No. 170—Mr. Worthington, having the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title after "sections" in the first line insert "1."

After line 3 insert:

"Section 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value."

Reports of Standing Committees.

In line 4 after "revenue" insert "for each year."

In line 5 strike out "and."

In lines 5 and 6 strike out "for each year."

In line 5 after "debt" insert: "the state common school fund of not less than two dollars per capita of the school enumeration and the university fund of not less than seven hundred and fifty thousand dollars to be distributed between the state supported universities as may be provided by law."

In line 6 strike out "and" and insert "or incomes or."

In line 7 after the second "and" insert "also".

In line 24 change "three" to "four."

In line 37 change "appeal" to "repeal."

In lines 43 and 48 change "three" to "four."

E. W. DOTY,	GEO. W. HARRIS,
H. G. REDINGTON,	WM. P. HALENKAMP,
H. K. SMITH,	A. ROSS READ,
JOHN C. RORICK,	ROBERT CROSSER,
WILLIAM WORTHINGTON,	S. A. HOSKINS,
SOLOMON JOHNSON.	

Mr. COLTON: I desire to offer a minority report. The report was read as follows:

The undersigned members of the Taxation committee present the following minority report:

"SECTION 1. The general assembly shall never levy a poll tax.

SECTION 2. Property shall never be so classified as to permit taxes to be levied at different rates for different classes, but all real and personal property, tangible and intangible, shall be taxed by a uniform rule according to its true value in money; but burying grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, personal property to an amount not exceeding two hundred dollars for each individual, and deductions of bona fide debts from credits, may, by general laws, be exempted from taxation; but all laws providing for such exemptions shall be subject to alteration or repeal.

SECTION 3. All property employed in banking, shall always bear a burden of taxation equal to that imposed on the property of individuals.

SECTION 4. The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt.

SECTION 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of same, to which only, it shall be applied.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purpose of internal improvement.

SECTION 7. The maximum rate of taxes that may be levied for all purposes shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school dis-

trict, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all purposes, on each dollar of the total value of all the property therein, as listed and assessed for taxation, in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose; but in no case shall the combined maximum rate of taxes for all purposes, levied in any year in any township, city, village, school district, or other taxing district exceed fifteen mills on each dollar of the total value of all the property, as listed and assessed for taxation in such district. No county, city, village, school district, township, or other taxing district shall ever create or incur a net indebtedness in excess of one per cent. for county purposes, four per cent. for city or village purposes, one per cent. for school purposes and one per cent. for township or other taxing district purposes, of the total value of all the property, as listed and assessed for taxation in such county, city, village, school district, township, or other taxing district. No indebtedness not payable out of current receipts shall hereafter be created, incurred, refunded, renewed, or extended without at the same time a co-incidental tax being levied, which shall be maintained sufficient to pay principal and interest at maturity.

SECTION 8. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value. A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax.

SECTION 9. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to incomes derived from investments not directly taxed in this state, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 10. Taxes may be imposed upon the production of coal, oil, gas and other minerals.

SECTION 11. Revenues for the payment of the expenses of the state may be provided by assessment upon the counties, but every such assessment shall be apportioned among all the counties ratably in proportion to the aggregate amount expended during the preceding year in each county by the county and all political subdivisions thereof."

GEO. H. COLTON,
JAMES M. FLUKE,
A. V. DONAHEY,
A. BEYER,
PERCY TETLOW

D. CUNNINGHAM,
HARVEY WATSON,
DAVID PIERCE,
H. M. CRITES,

The question being "Shall the minority report be agreed to?"

Mr. Doty moved that further consideration of the proposal be postponed until tomorrow.

The motion was carried.

Resolution Relative to Printing—Welfare of Employees.

Mr. DOTY: I move that Proposal No. 170 be reprinted as it would appear if the majority report were adopted.

The motion was carried.

Mr. DOTY: I move that Proposal No. 170 be reprinted as it would appear if the minority report would be adopted.

The motion was carried.

RESOLUTIONS LAID OVER.

Resolution 103—Mr. Colton:

Resolved, That the committee on Arrangement and Phraseology be authorized to print such of its reports on the various proposals as it may deem necessary before presenting them to the Convention.

Mr. COLTON: That resolution was presented as the result of a motion passed by the members of the committee. It seems to me the Convention can readily see the necessity for doing this thing. Of course none of the proposals can be changed until it is reported to the Convention and the Convention agrees to it, but to facilitate the action of the Convention when the reports are made we thought best that the reports of the committee should be printed and in the hands of the Convention so the Convention could see the changes proposed.

The resolution was adopted.

The SECRETARY: The next thing in order is Resolution No. 105.

Mr. DOTY: Mr. Tallman is not here—

Mr. LAMPSON: I move that that resolution be indefinitely postponed.

The motion was carried.

SECOND READING OF PROPOSALS.

The PRESIDENT PRO TEM: The question now before the Convention is the adoption of Proposal No. 122—Mr. Farrell, which the secretary will read.

The proposal was read the second time.

Mr. FARRELL. Mr. President and Gentlemen of the Convention: Having read several interpretations of "ideal government," the one which made the lasting impression upon me was one which read thus: "An injury done to the meanest subject, is an insult upon the whole constitution."

Evidently the committee having this proposal under consideration was imbued with the spirit of that interpretation. Since this proposal has been on the calendar I have heard some little objection to it, especially with reference to the clause which would permit the legislature to pass minimum wage legislation, and to that clause I intend to direct my remarks exclusively.

Of course we are not here to pass minimum wage laws, but we should so write our constitution that minimum wage legislation will be permissible under it. But no matter how we may try, we cannot avoid discussing the merits or demerits of the principle involved.

I am not in a position today to tell you just how badly such legislation is needed in this commonwealth. I am not a prophet nor the son of a prophet, but I am convinced in my own mind that if an investigation were had it would reveal conditions in some of the industries, par-

ticularly those where women and children are employed within the borders of this state, which would demand legislation of this character. But whether my statement is founded upon fact or not, we are building this constitution for the future as well as for the present, and the great industrial state of Ohio should have some provision in its constitution providing for such legislation. We are all compelled to admit that there is something radically wrong with our present wage system, and there ought to be some regulation by the state of the evils existing.

I have not always been an advocate of a statutory minimum wage. On the contrary, I have been an ardent advocate of the minimum wage established by the trade union and an advocate of the trade union methods of securing the same, viz., through the system of trade agreements, the principle of collective bargaining and the voluntary arbitration of all questions of dispute.

But, gentlemen of the Convention, I have been compelled to change my position on this question in the last few years. When one considers the relentless war that has been waged against the trade union movement in this country, and the war of extermination that is now going on, and, in some instances, meeting with success, in putting some unions out of business, and the general application of "black list", all for no other reason than the piling up of capitalistic profits without any regard for justice in the premises, when we see the attempts making to build up industries on a foundation of wages too low to admit of decent standards of family life, and hours of labor too long to admit of sufficient rest and relaxation for even moderate health, we are driven to the knowledge that it is time that a decent humane effort should be made to remedy this un-American condition.

The appalling state of affairs disclosed by the investigation of the labor conditions in the steel industry of this country seems to me to be sufficiently repulsive to the average man to make him see the necessity of such a provision in our constitution. The recent revolt of the textile workers of Massachusetts against the wage-slave conditions prevalent in that industry when 25,000 men, women and children, without a semblance of an organization, went out on strike against a reduction in their wages, already so low that their condition was next to starvation, must give all thinking men pause.

Gentlemen, in the light of these events and many others too numerous to mention or to encumber the record with, can you vote against this measure of justice? No. You must believe with such writers as Sidney and Beatrice Webb that the state ought to enforce a national minimum of wages which will provide the laborer with "the food, clothing and shelter physiologically necessary, according to national habit and custom, to prevent bodily deterioration." By this means the community would rid itself of the industrial evil called "parasitism," that is, the existence of trades or business in which the wages paid are too low to maintain the workers in industrial efficiency, and to enable them to reproduce and rear a sufficient number to take their places. These industries take from the nation's capital stock of character, intelligence and energy more than they give back, and, therefore, steadily degrade the character and industrial efficiency of the whole people. Hence, as a matter of simple pro-

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tection to the national life, both present and future, this practice ought to be prohibited and all workers ought to be given, through appropriate legal measures, sufficient remuneration to maintain their productive power.

I don't mean to say, nor do I want you to understand me as saying, that if this clause should be inserted in our constitution there should be any wild and rampant era of minimum wage legislation. The greatest thing to my mind to keep wage conditions near a living standard is the light of publicity. To date we have no official method of publicity. Under such a provision the legislative authorities of our state would have ample jurisdiction in the premises. In other words, wouldn't the "shotgun over the door" theory apply here, as was well said in the initiative and referendum debate?

Such a system of legislation has been in operation in the state of Victoria, Australia, since 1896, and in Great Britain since January, 1910. Some form of fixing legal minimum wages is also in operation in the other Australian states and in New Zealand. In Victoria and England the minimum wages are determined by wage boards created for considering the special requirements of the respective industries or trades. No accurate statement can be made as to the effect of this legislation upon wages, and the difference in social and economic conditions renders comparisons of less value. Their experiences, while interesting and important, are not conclusive.

In Victoria, at the instance of either employers or employes or of the minister of labor, the legislature may authorize the creation of a special board, which is empowered to fix a minimum wage for a given trade. Employers and employes are equally represented upon such a board, and a non-partisan chairman is selected by the two parties at interest, or, if they fail to agree, is appointed by the minister of labor. The chairman has a casting vote. "Determinations," as the decisions of the special boards are called, if accepted by the minister of labor, are published in the Government Gazette and become law for that trade; but if the minister of labor considers that a determination may cause injury to the trade, he may suspend it for a period of six months and then send it back to the board for reconsideration. There is also the court of industrial appeals, to which determinations may be referred, and this court has the power to amend or annul a determination. The decision of the court is final, but it may review its own decisions. Moreover, the court of appeals is specifically instructed to consider whether a determination has been or may be injurious to a trade or may limit employment, "and of opinion that it has had or may have such effect, the court shall make such alterations as in its opinion may be necessary to remove such or prevent such effect, and at the same time secure a living wage to employes" (Factory and Shop Act, 1905, No. 1975). The law ignores the possibility of cases in which the maintenance of the trade and the payment of a living wage to the employes may be incompatible. These special boards, although authorized to secure a "living wage," in practice have served rather to formulate common rules for a trade, to bring employes and employers into readjustment of wages and other matters to changing economic conditions. Their flexibility in dealing with complex situations

is obvious. Few appeals have been made from their decisions to the court of industrial appeals. The claim that the system is not considered antagonistic by propertied interests is borne out by a great weight of testimony. On this point Victor Clark, who visited Victoria in 1903 and 1904 as a representative of the United States department of labor, states:

Propertied interests were not opposed to a statutory minimum wage. The better employers rather courted some provision that freed them from the competition of the less scrupulous men of their own class.

He further states that all of the three special boards then in operation were established upon application of employers.

In England the industries in which the system may be applied are named by parliament, but the board of trade may provisionally extend the application of the act to other industries, subject to subsequent continuation of parliament. The wage boards, known as trade boards, are composed of representatives of employers and of workers in equal numbers, elected by their respective organizations, and of other members, including the chairman, appointed by the board of trade. The determinations of these trade boards are made obligatory by an order of the board of trade, but the board of trade may suspend the operation of the order. If the order is suspended the trade board may, after six months, again renew its recommendation, and the board of trade may then issue an obligatory order or further suspend it. Minimum wage orders determined in this manner apply to both men and women, and they may apply universally to the trades, or apply to any special process in the work of the trade, or to any special class of workers in the trade or to any special case.

The act (9 Edward VII, chapter 22) went into effect January 1, 1910, and applied immediately to the trades of wholesale tailoring, box making, lace making and chain making. The act has not been in operation long enough to judge of its ultimate success, but it was adopted after mature consideration by a select committee whose laborious investigations included a field study by Ernest Aves, commissioner of the home office, into the workings of minimum wage regulations both in Australia and New Zealand. In the passage of the bill through parliament it was not made a party or a class measure, and it does not seem to have met any particular opposition from any quarter. In one industry at least it has been gladly accepted by employers, who even contributed money to enable their employes to organize for the purpose of taking advantage of the act.

So much for the old country. Now let us see what is happening right here in our own country. Under the auspices of the National Consumers' League a bill drawn up by Prof. Jno. R. Commons, of the University of Wisconsin, was presented to the legislature of that state last year. It authorized the state industrial commission to fix living wages for all persons in industrial employment. While it did not pass, it had many warm and urgent defenders in each house.

In March, 1911, a bill embodying the wage-board principle and applying only to women and children was introduced in the Minnesota legislature, and at once re-

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ported favorably by the committee having the same in charge, but never came up for final passage. Why, right down here in old conservative Massachusetts, a state where I had the good fortune at one time to reside, the legislature passed a resolution creating a commission to report on the advisability of establishing minimum wage boards with the power to fix the wages of women and minors. That commission reported to the legislature last January favorably a bill authorizing minimum wage boards with power to fix the rate of wages, and in speaking of its necessity, the Massachusetts commission had this to say:

The need of it is great, and the possibilities of its successful administration in the compact population and well-established industrial and mercantile employments are promising. The fact that there is a large number of women who must maintain themselves, many of whom are called upon to contribute also to the support of others, and that there is a large army of women upon whose assistance the welfare of their family groups depend in part, presents a social question of great importance. The need of work is so great and the workers so numerous that the employers may dictate their own terms, limited only by their sense of social responsibility and by the restricted competition of other employment opportunities. The constant and ever increasing tide of immigration is an important element in the situation. The wage value of most of the labor of women is not fixed by any other economic law than that of supply and demand. Even with women who have no other assistance the wages may be forced below the minimum cost of living, without provisions for the assurance of health, for unemployment or for old age, and this deficit must inevitably come ultimately as a charge on society.

The proposed legislation is, therefore, recommended for the following reasons:

1. It would promote the general welfare of the state, because it would tend to protect the women workers, and particularly the younger women workers from the economic distress that leads to impaired health and inefficiency.

2. It would bring employers to a realization of their public responsibilities and would result in the best adjustment of the interests of the employment and of the women employees.

3. It would furnish to the women employes a means of obtaining the best minimum wages that are consistent with the ongoing of the industry without recourse to strikes or industrial disturbances. It would be the best means of insuring industrial peace so far as this class of employes is concerned.

4. It would tend to prevent exploitation of helpless women, and, so far as they are concerned, to do away with "sweating" in our industries.

5. It would diminish the parasitic character of some industries and lessen the burden now resting on other employments.

6. It would enable the employers in any occupation to prevent the undercutting of wages by less humane and considerate competitors.

7. It would stimulate employers to develop the capacity and efficiency of the less competent workers in order that the wages might not be incommensurate with the services rendered.

8. It would accordingly tend to induce employers to keep together their trained workers and to avoid so far as possible seasonal fluctuations.

9. It would tend to heal the sense of grievance in employes, who would become in this manner better informed as to the exigencies of their trade, and it would enable them to interpret more intelligently the meaning of the payroll.

10. It would give the public assurance that these industrial abuses have an effective and available remedy.

Bear with me, gentlemen, for a few moments until I read to you from an address on this subject delivered by Rev. Jno. A. Ryan, professor of ethics and economies in the St. Paul Seminary, a Catholic institution in St. Paul, Minnesota. This address was delivered at the annual conference of the National Consumers League held in Milwaukee, in 1910, of which I read in part:

Why should we hesitate to prevent by legislation the hardship, injustice and social waste due to freedom of contract in the matter of wages? Instead of opposing, historical precedent favors the method. Down to the latter part of the eighteenth century wages in commercial and industrial employment has been in most cases fixed either by formal statutes and edicts, by the ordinances of quasi-legal corporations, such as mediaeval guild, or by custom, which was as effective as law, and as little subject to the influences of free contract. Speaking generally we may say that it is the present system and not the method of regulating wages by law that is an innovation. Nor does the legal determination of wages differ in principle from the other industrial legislation that we have already enacted. Every argument for the latter can be urged with at least equal force in favor of the former. In both instances the law is designed to protect one section of the community against exploitation by another section. A wage that will enable the worker to live decently is as important and as necessary as protection to life, limb and vitality in the factory or the safeguarding of his income from the extortion of monopoly. All legislation is ultimately for the benefit of concrete human beings and every law is justified which, without doing injustice to any class, brings a wider measure of justice to some class or classes of the community.

Experience has shown that the injurious results predicted by the opponents of labor legislation and labor organizations have not taken place. There has been no general increase in prices, nor any increase in any case that equaled the increase in wages or the expected increase in other items of the cost of production. In the majority of instances the greater part of the cost has been met by an increased efficiency in the productive process, that is, in labor, in machinery, and in the combination of these two factors.

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Concerning the constitutionality of this legislation the American Economic Review has an article by Prof. A. N. Holcombe, in the March number, which very ably points out the basic legality of the same. From this I read in part:

The doctrines of the judicial review of the exercise of legislative authority owes its present importance in the United States to two circumstances. One is the interpretation placed upon a certain clause of the fourteenth amendment to the federal constitution by the federal supreme court. The other is the manning of our courts with a set of judges whose economic training was received mainly from the so-called classical school of political economists. Since 1868 no person may be deprived of life, liberty or property, without due process of law, as interpreted by the federal courts. There has been much controversy over the meaning of the terms "deprived of liberty" and "property," and this controversy directly concerns the status of the proposal to regulate wages in private employment by law. Is constitutional liberty simply freedom from physical restraint, or does the term mean freedom from control in any manner except in so far as may be necessary to assure a like freedom to others? If the former, a statute regulating wages in private employments will not work a deprivation of liberty since it carries with it no restraint of the body, but merely of the legal capacity to enter into a contract. If the latter, such a statute will work a deprivation of liberty since it will restrict the freedom of the individual employer to buy labor in the cheapest market, and of the individual wage-earner to sell his labor for what it will fetch. Again, is constitutional property simply things of value the possession of which is recognized by law, or does the term include also things of value which may be acquired, provided the individual's legal privileges at the moment are preserved unaltered. If the former, a statute regulating wages will not work a deprivation of property since it will not of itself diminish the quantity of a person's possessions. If the latter, such a statute, by imposing a new limitation upon the privilege of making lawful contracts, may deprive a person of an opportunity to enter into a supposedly advantageous agreement to buy or sell labor. The federal supreme court has interpreted the fundamental law in each of the pair of alternatives in the latter sense. The effect of such judicial interpretation has been to read into the constitution a doctrine that is nowhere expressed therein, namely, the doctrine of freedom of contract. The constitutionality of such legislation depends, therefore, upon the possession by some legislative body of authority to accomplish its enactment. Such authority may be found in the ordinary police power of the state to provide for the common defense and general welfare of its citizens. This power is restricted only by expressed limitations in the state constitutions, by the delegation of certain powers to the federal government and by the requirement that the legis-

lature in its exercise of the police power shall be guided by reason. The prevalent uncertainty concerning the constitutionality of the legal regulations of wages in private employment arises, not from the boldness and vigor of reviewing the reasonableness of legislation under the police power, but from their general acceptance of an economic theory now being discarded by the mass of the people.

The construction of the fourteenth amendment that threatens the capacity of the state legislation to regulate wages in private employment, if they deem it necessary and proper for the protection of the public, is not the work of the American people in 1869, but of the courts in subsequent years. Like all acts of government, constituting government by men and not by law, this novel interpretation of the fundamental law can be undone by a change in the men who interpret it. The principles of laissez faire, having been read into the constitution, can be read out again. There is no essential difference so far as constitutional status is concerned, between the legal regulation of the hours of labor and the legal regulation of wages. The constitutionality of both alike is solely a matter of producing a sufficient evidence showing the necessity and appropriateness of the proposed legislation.

Mr. Bryan in speaking to this Convention recently, if you remember, had this to say:

In the matter of hours of labor, the legislature should be authorized to prescribe what should be regarded as a working day, and the conditions under which longer hours may be compelled.

I submit, a statement emanating from such a student of social conditions, and to my mind embodying the very principle of the minimum wage, is worthy of the serious reflection and consideration of the Convention.

In conclusion, I want to say this as expressing my own convictions on this subject: The right of the worker to be guaranteed a living wage by his state or his government will soon take rank with such axioms as the right of trial by jury, the right to bear arms, the right of petition and the right of speech, and though you may not see the necessity of the adoption of this governmental right to establish a minimum wage, yet such a crisis may arise at any moment. It is my hope and the hope of the workers of Ohio that this principle may receive the sanction of this Convention.

Mr. CRITES: Mr. President and Gentlemen of the Convention: If you will consider Proposal No. 122 very carefully, I am quite sure you will plainly see that no such wording should ever go into our organic law. First, you will note that this proposal is for the sole purpose of limiting the number of hours of labor; second, to establish a minimum wage for the wageworker. Now without any question these two demands in our new constitution would soon be more detrimental to our commonwealth than any article we would have in our organic law. Should we pass this proposal and include the same in our constitution, at any time our legislature would be made up of members that would be controlled by labor unions, drastic laws would be passed at

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once, limiting the number of hours of work for each man, woman and child, and a compulsory law compelling every employer to pay a certain price per hour to every one of his employes. This kind of law would be very unjust to the employer as well as the employe. The employer of our manufacturing plants would be compelled to pay the man that would earn half the wages the same per day that he would for men that would earn full pay. This kind of law would also work a hardship on many of the employes for the reason that employers would only employ men that could earn the employer the most money. All afflicted employes would be idle on the streets, or have to be sent to the county alms house. It would also prohibit piece-work, which is very essential in many of our large industries. A law that would establish a wage scale would be inclined to lower or decrease the earning power of man and to regulate the number of hours would be depriving a man of his liberty, as well as putting a stop to the progressive welfare of our nation.

First, taking the employer's side, he would be compelled to advance the price on his manufactured goods, and all our manufacturing plants that are manufacturing perishable goods would be compelled to close out their business or move to a state which would not have any such arbitrary regulating laws. Short hours would increase the cost of living far beyond what it is today.

Take the employe's side. All good progressive people would be placed in a position where they could not work extra time to add to their present holdings. For instance, a laborer who has a mortgage on his property would be placed in a position where he could not work extra time and be able to pay off his mortgage in the given time as he could if he were to have his liberty.

We are asked the question, Why is the cost of living so high? I will answer, unless we can induce people to stay on the farms and produce the foods, our cost of living will gradually increase from year to year.

Now if we are going to offer any better inducement to labor in factories and city employment than we are paying today, how do you expect laboring people to stay on our farms and grow the necessary foods we must have? I do not think that it is the desire of the members of the Convention to put anything in our constitution that will injure our manufacturing interests in this state as well as benefit a few and work a hardship to others. Let us have a constitution that gives liberty to one and all. I thank you.

Mr. LAMPSON: This is a very important matter and a very interesting one. I do not think we ought to vote on it just yet, but I do not understand that the theory of this proposal is to authorize the legislature to pass laws by which arbitrary minimum wages can be determined upon by a board. I think some board will be authorized by general legislation to investigate each case and determine what is a just, fair and minimum wage in that particular factory or that particular sweatshop, if you please. I think one of the greatest evils in the industrial situation in this country today is what is known as sweatshop work. Women perforce of necessity and of their situation and environment are compelled to labor for wages far below what is necessary to give them a decent living, and in many instances far below what

the trades can well afford to pay. This is a pretty large question and reaches in a good many directions, but I can see, if there were some authority to investigate these cases such as I have suggested—and there are many others like them—and fix a minimum wage, it might work greatly to the advantage of all of the people, laborers as well as the public generally. It will have a tendency to prevent strikes, it will have a tendency to improve the morals of the community.

I don't think we should reach a conclusion hastily without discussion of this important matter, a somewhat new question, perhaps to us in Ohio, without giving it more consideration. I don't think the farmer needs to fear that this is intended to reach out to him. He is dealing with a few individuals. I don't think a proposition of this kind is intended to reach him at all, but there is a class of laborers, where some sort of intervention would be a good thing, not only for the laborers, but for the public generally. So far as I am concerned, I am inclined to favor this proposal.

Mr. DWYER: In the arts and sciences, in intellectual growth, in material wealth, in a knowledge of everything that should lead to individual and national happiness, this is the greatest age in the world's history. The prejudices of the past, in religion, in race, in nationality, are fast passing away. The comingling of all people, of all races and creeds, is bringing us closer together, as members of one great human family.

To me who have lived over eighty years through sunshine and storm, and who have observed its attendant growth and progress up to the present time, there is great cause to rejoice to see this day. The public schools of the United States are silent but potent factors in producing results that will bring us all to a common level. I do not mean by this that all will be equal physically or intellectually, for nature has not so ordained, but you cannot enslave intelligence; you may guide it in a moral way and along the lines of equal justice by appealing to its conscience, but to bend it down by fetters of class cannot be done. I therefore appeal to the men of wealth and power to remember the age in which they are living. You are needed, your ability, energy and wealth are needed, for great enterprises, but keep your ears to the ground to know what is going on around you. We want no Reign of Terror, no French Revolution. We want peace and progress to reign, and you to be potent factors in producing it. We want you to join with us in forcing down the willful waste and voluptuous extravagance of the idle rich, the miscellaneous marriages and the monkey dinners of the parvenues of Newport and other resorts of foolish fashion, which should be looked upon as no better than the underworld of the fallen race. We want no Belshazzar feasts. The handwriting is on the wall, the masses will rule the land, and you will be weighed in the balance. Let it be hoped you will not be found wanting.

Of those to whom much is given much is required. In other words, if the Lord has given physical strength, energy, vigorous intellect, and all the qualities for success in life, he wants you to use them, not bury them in the ground; and out of their use and results not to forget your less favored brother. Therefore, give your employes fair living wages, good sanitary surroundings during hours of labor, protection as far as possible

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against danger, a fair working day. Make his life as pleasant for him as you can consistent with his employment. We want no paupers among those willing to work. Their wages should be sufficient for them to live in reasonable comfort, to raise their children on nourishing food to build up their bodies, to procure sufficiently comfortable clothing for them in attending school, and to make provision for times of sickness and old age.

Perhaps some will say that the subject of employment is a matter of contract between employer and the employee with which the government has nothing to do. This is not so. Under its police powers, its sanitary authority, and the right to see that justice is done, it may regulate employment. The usurer who would like to loan money at exorbitant rates of interest may say that the rates of interest on money should be a matter of private contract with which the government has nothing to do. But government says not so. In the loaning of money the parties are not on an equality. One party needs it and must have it; the other party has it, but is not compelled to part with it. If then there were no law to regulate interest the party who needs the money urgently would be compelled in most cases to pay the usurer's price. Hence, in the interest of the borrower, and to save him from the greed of the loan shark, the law fixes the maximum rate of interest that can be charged.

On this question of private contract let me call attention to a step taken by the English government in reference to Irish landlords some twenty-five years ago. Up to that time the tenant class in Ireland were entirely at the mercy of the landlords. Some landlords would not grant any leases, but would treat their tenants as tenants at will, while perhaps they had occupied the same land for an indefinite period of time; others would grant short leases, but in either case the rents were excessive, and if the tenant improved the land, he not only got nothing for it, but his rent would be raised as a consequence. The conditions became intolerable, but there it was a question of private contract. The government took the bit in its teeth, and passed an act of parliament dealing with the subject by which a commission was appointed to fix the rents between the landlord and the tenants. There was much howling on the part of the landlords about the government's interference with the right of private contract, but the government went on all the same. The commission fixed the rents, in most cases cutting them in two, and the landlords had to submit. The government went still further, and allowed a tenant on leaving land the value of his improvements. And this was not all. It provided that tenants could purchase the lands they occupied by payment for same on the basis of a certain number of years' rental, the money for which the government furnished at a low rate of interest, taking the land as security. The consequence is that today Ireland is enjoying a degree of prosperity greater than it has ever before enjoyed.

England has also an employers' liability law, and is preparing an old-age pension. Germany is working along the same lines.

I say if the government can fix the maximum rate for the use of money, why could it not fix a minimum

rate for the hours of labor? Is there any reason or principle why they should not? One is because a man who is borrowing the money is not on an equality with the man who is lending. He is at a disadvantage. He needs some money and must have it. And if the government didn't fix the rate of interest he would be compelled to pay whatever rate the man who has the money demanded that he should pay, and that would be against the interest of society and against the struggling man. Hence the government says, "No, sir; you can't charge any rates of interest you please. It is not a matter of contract because you are not on an equality." I say the same as to laborers. The working man is not on an equality with the employer. The working man has to labor and he must keep his family from starvation. He must have labor. The other man can say, "I can find plenty of labor; I can get along without you." Then why should not this man who sells his labor be entitled to fair compensation and why should not the government have a right to fix a minimum to be paid him? On the railroads, engineers and conductors and the brakemen, because of their number and because of their organization, fix the rate of wages. They are able to command it. Today there is a strike of engineers threatened all over the country east of the Mississippi and north of the Ohio, because they can not get the wages they think they are entitled to, and the railroads will have to concede. If that is true of organized labor, why should it not be true of the other fellows who have not organized? When you go out you see these poor fellows working at all sorts of labor four and five miles apart; they have no organization. They are out working on their railroad for \$1.25 a day and some for less money than that. Is that fair in this country of ours, with our civilization and with our desire to build up good citizenship, that men should be compelled to work for \$1.25 a day, raise a family and pay house rent? I say it is not just and it is not fair, and if these men were able to have an organization they could have better pay, but they are not able to organize. They are helpless, and the railroad corporations have not the magnanimity to appreciate the helplessness of those men to give them enough to raise their families as American families should be raised. Talk about not being able to fix a minimum rate! Look at England and Ireland. For centuries the people who lived on the land were at the mercy of the landlords. Sometimes they would give them a lease, but generally they were tenants at will, notwithstanding their ancestors had lived on the land before them. If they planted a tree or a shrub they wouldn't dare to cut it down. They were perfectly helpless. What did the English government do? They passed an act of parliament fixing the rent between the landlord and the tenant, and they said to the landlord, "It is not a matter of private contract. These people are not on an equality with you in fixing the rent. You have the land and you can put them off, but we will fix the rent." And the government did. Parliament created a commission to fix the rent and took that matter out of the domain of private contract and in most cases cut the rent down one-half. Not only that, but up to that time if a man made any improvement on the land he couldn't touch it and if he left the land he couldn't take a penny's worth of his improve-

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ment with him. The government went forward and fixed the value of improvements that the tenant made, so when he left the land he got paid for his improvements. Not only that, but it has gone further, and has fixed the valuation on the land. When the tenant desires to buy the land he has lived on he is allowed to buy it and the government has issued bonds and lends the money to the people for this purpose. Now if in monarchical England that can be done and private contract can be set aside and the government step in, why can we not in this country? You may say we are bound down by a written constitution. You may have a written constitution now, but you won't be able to enforce it. You will not be able to control the conduct of the people. It is all moonshine and the sooner the capitalists and manufacturers realize this fact the sooner it will be improved for the benefit of posterity. It is coming some way. It will come peacefully or by revolution. You can not go much farther the way we have been going. If this man who is working on the railroad at \$1.25 a day could appeal to a tribunal appointed by the state to fix these wages that tribunal would say, "You are working ten hours a day, you ought to have \$2." They would not give the same wages to the common laborer as to the skilled mechanics, but they would fix the wages and then let every man, according to the ability and the intelligence God has given him, get more. Some men are worth a good deal more than others. Let the minimum wage be measured by the average man's ability. If we do not do something of that kind we are bound to have trouble. I think any of you can observe how things are going around us. I want to avoid trouble. I want to avoid things coming in the future that will upset the government, and therefore I am in favor of placing the people of this country on a basis that will enable them to live as American citizens should live. I have been for many years an advocate of a minimum rate of wages. For that reason I want to cut out the sweatshops, and this minimum wage will cut them out. They can not get children and girls to work in their sweatshops. Some of you, when you wear a suit of fine broadcloth don't know that it was made in a sweatshop where there were microbes of all kinds and character. You wear it as a fine suit of clothes given to you by your merchant tailor and it may have been made in a microbe-breeding sweatshop.

This does not apply to labor on a farm. You can not do that. It will not apply to domestic service. You cannot regulate that, but it will apply to a class of men I speak of working by the day.

Mr. CRITES: Do you think this wage scale should apply to farmers?

Mr. DWYER: No.

Mr. CRITES: Why not?

Mr. DWYER: I will explain it to you. In farming some days in the week the men on the farm don't do any work. When the weather is bad or when it is raining there is no work. Sometimes they have to work extra hours in cases of emergency. Suppose the wheat is ripe. A great many farmers even work on Sunday when the wheat is ripe and has to be cut. Then a great many of the farmers give their help a half day on Saturday. They get all their pay whether they are working or not, so that this would not apply to farming.

Mr. CRITES: If we passed this proposal what would keep it from applying to farmers as well as to railroads?

Mr. DWYER: The principle is different. On a farm you can not regulate it in that way.

Mr. LAMPSON: Are not the environment and surroundings of farm labor entirely different from the surroundings of the sweatshop and the railroad or any class of labor for large companies?

Mr. DWYER: Yes.

Mr. LAMPSON: And are not the farm laborers independent to hire out as they please?

Mr. RORICK: Isn't every other class too?

Mr. DWYER: I pay farm hands \$25 a month and board and washing. Some days they don't work and their pay goes on. Why should this apply the same to men of that kind as men working on the railroad?

Mr. HOSKINS: You are on this committee that reported this proposal?

Mr. DWYER: Yes.

Mr. HOSKINS: I wish you would tell this Convention, and I want to know for information, why is this necessary, and can not all of these things provided for in this proposal be done under the present constitution? If not, why not? What is there to prevent it? Where is the prohibition from doing these things in the present constitution?

Mr. DWYER: The question may be raised by the courts. It has been raised by the court. We want under the constitution to give power to the legislature to pass such a law.

Mr. HOSKINS: Has not the legislature passed such a law?

Mr. DWYER: No, sir.

Mr. HOSKINS: They regulate the hours of labor?

Mr. DWYER: They do as to public labor.

Mr. HOSKINS: Haven't they regulated the hours of labor in private enterprises?

Mr. DWYER: No, sir; they have fixed ten hours as a day's work. That is considered a day in all kinds of labor, but supposing they would fix a minimum wage, it is a question whether the legislature has the power, and to surely give them that power we want it put in the constitution that they can fix that minimum wage.

Mr. HOSKINS: What provision of the present constitution forbids them doing it?

Mr. DWYER: The power is not granted.

Mr. HOSKINS: No, but is not our constitution a constitution of prohibitions and can not the legislature do whatever it is not prohibited from doing in the constitution?

Mr. DWYER: I want the power given expressly so there will not be any question. You all recognize the necessity.

Mr. HOSKINS: I am agreeing with your speech on the labor question, but we are adopting a constitution and we don't want to adopt more than is necessary. I will ask you if, under this provision you have reported, the legislature would not pass a law fixing the wages upon farm labor and domestic labor about the house and all forms of labor?

Mr. DWYER: There is no way in which you can fix a minimum wage for farm labor. You know enough about farm labor to know it is spasmodic, done by fits

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and starts. In the shops and railroad yards it is a uniform thing all day and all the year round.

Mr. HOSKINS: Could not the legislature under this provision fix a wage scale for all forms of labor?

Mr. DWYER: No; we except some forms of labor.

DELEGATES: No, you don't.

Mr. DWYER: That could be done then.

Mr. HOSKINS: There are no exceptions in this.

Mr. DWYER: I think farm labor and domestic labor should be excepted. I am in favor of that myself. You can not enforce either of these.

Mr. HOSKINS: I wish to ask: Did your committee in its discussion find or conclude that there was anything in the constitution that would forbid the doing of everything provided for in this proposal?

Mr. DWYER: We were of the opinion that possibly the power is now in the legislature to do that, but we wanted to have the power expressly conferred, and my understanding was that we excepted farm labor and domestic labor.

Mr. LAMPSON: Did you investigate the question as to whether that provision in the constitution relating to the passage of laws violating the obligation of contract has any bearing on this proposal?

Mr. DWYER: The courts have been deciding cases. Take that bake-shop case in New York. The supreme court there decided it was a question of private contract about the hours of labor. Our courts are becoming more progressive. They are catching the spirit of the time and they are changing very much to be in accord with public sentiment, and we should enable them to do that and we should put a clause in the constitution that will give the courts an opportunity to more liberally construe these matters than they have done in the past.

A few weeks ago England was shaken from one side to another by the coal miners' strike. That coal strike could have done more than Germany could to cripple England. These strikes are coming, and the only way to control them is to give the government a chance to pass such laws as this.

Mr. HARRIS, of Ashtabula: I understand you to speak of railroad labor, meaning, I suppose, the labor of the section men on the railroad, as being a matter which might be adjusted by a commission.

Mr. DWYER: Yes.

Mr. HARRIS, of Ashtabula: If a commission should undertake to fix a minimum wage for section men on a railroad, what would be the effect on farm help in all that region?

Mr. DWYER: That would have to take care of itself.

Mr. HARRIS, of Ashtabula: I think it would.

Mr. DWYER: Do you believe that a railroad section man, because he is unable to take care of himself and unable to demand better wages, should be compelled to work for \$1.25 a day and try to rear his family as American citizens?

Mr. HARRIS, of Ashtabula: There is no law compelling him to work for the railroad company.

Mr. DWYER: No law except necessity. Necessity is the only law.

Mr. HARRIS, of Ashtabula: Suppose you raise his wages to \$2 a day. What would be the effect on all the other labor?

Mr. DWYER: The same effect as if you would raise wages of other people.

Mr. HARRIS, of Ashtabula: Then that would raise the price of farm labor and you would raise the price of farm produce, and that would have an additional effect on the high cost of living.

Mr. DWYER: Would you rather have that man rear his children not fit to be American citizens, unable to send them to school and be unable to properly care for them or give them nourishing food?

Mr. HARRIS, of Ashtabula: I think the people should have enough to eat, but if you make the price of living so high that he can't buy it, how is he going to get enough to eat?

Mr. DWYER: Why is it the English government was compelled to disregard private contracts in fixing the rent in Ireland between the landlord and tenant?

Mr. HARRIS, of Ashtabula: There were probably peculiar conditions there.

Mr. DWYER: And there are here, and unless you take time by the forelock to prevent these things we are going to have trouble.

Mr. HARRIS, of Ashtabula: Is there anything in this proposal that discriminates between one line of business and another?

Mr. DWYER: No, sir. I believe labor should be classified. Take skilled labor, the average labor and unskilled labor. Carpenters, say their average wage is \$2.50, and now you could fix that as the minimum wage of that class of labor and then they could get more than that according to their ability.

Mr. LAMPSON: I want to ask the gentleman if the legislature two years ago did not pass a law making a minimum wage for common school teachers \$40 per month and was not that law held unconstitutional?

Mr. DWYER: I can not answer that.

Mr. LAMPSON: I am speaking for information. A law was passed fixing a minimum wage for school teachers in the common schools that was \$40 per month.

Mr. DWYER: I regret that I can not answer that question. Now, Mr. President and gentlemen, I regret that I have been compelled to occupy the floor so long, but this is a very important matter. It is a matter to which I have given a good deal of attention through all my life. I have worked in shops, I have worked on the farm and worked at almost everything, and I know about this. I want to say one thing further. When I was a young man working in a shop there were no labor organizations. Every young man and every old man had to make the best of the labor he could find to do. In the town where I worked there were three different concerns of the same character of manufacturing. One of these was operated by a man, a close, narrowminded fellow who was all the time putting down prices so he could undersell his neighbors, and every time he cut down the prices he would cut down the men's wages. The man I worked for could not meet the competition. He would liked to have upheld prices. He was liberal, but he was compelled to cut and meet that other fellow who would cut. So it was that the miserable whelp was cutting down and the liberal man had to come down with him

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to keep in the market. It is not the liberal man who fixes wages; it is the man who desires to cut down all the time.

Now I say this is an important matter for the consideration of every delegate on this floor. If England were compelled to do what she did to prevent revolution, look out here, gentlemen; that is all I have to say. I present the proposal. It is for you to consider, and I say it is fair and just that a minimum wage should be fixed. It injures nobody. It will not be fixed at an extravagant figure, but only at a fair figure, so that a man can live and rear a family as American citizens should be reared.

Mr. STALTER: I move that we recess until 9:30 tomorrow morning.

Mr. LAMPSON: I think it is the desire to adjourn. I don't think the Convention should adjourn yet, though. The motion to recess was lost.

Mr. JOHNSON, of Williams: I am not very well prepared to say what I desire to say on this subject, but the subject is up and I will have to venture a few remarks. It is absolutely foolish to talk about fixing a minimum wage and say it will not apply to all classes of work. As a farmer in this Convention I want it to apply to farmers as well as to anyone else. The farmers do not ask any favors of the Convention. All we want is justice. I know that in countries where they have a minimum wage, it does apply to all industries, and from the best information I can get it is a detriment to the laboring men. I have in mind now a case in which the wages of the day laborer or the laborer working by the week or month were fixed and the capitalists owned all the houses. The wages of the men were raised and the capitalists owning the houses raised the rent to the full extent of the increase of the men's wages, and the government had to build houses for the laboring men. That occurred in South Australia. I know that a majority—if not a majority, a very large minority—of the laboring men in Australia claimed that after that was done they were in worse condition than they were twenty-five years ago. I know that they have an arbitration court in one of the states of Australia and I know a gentleman by the name of Peter Bowling—I know of him, at least—who would not stand by their own arbitration court and who raised a riot and was put into jail. Some of the laboring men's children had to eat bread and drink water for days. I know finally they had to let him out of prison to satisfy the labor party. I have talked with Attorney General Halman, and he said it was right to punish Bowling, but he had let him out of prison as he had been punished enough. There is a great reaction in Australia because of this. Don't think I am opposed to the laboring man. I have been a laboring man all my life. But the way to settle your labor question is to establish socialism or at least co-operation in the different industries. You have to get unselfish first, and then it will work all right. I want to say you will make a mistake if you adopt this proposal. I had some instructions to vote for the original and I see nothing in the original that I am opposed to, but I do not like this amended proposal. I do not like it because I don't think it will do any good. I do not suppose there is any occupation in Ohio or any trade in Ohio where the laboring men receive any more wages

than they do on the farm, but we can not get them there. They won't go on the farm. Give them high wages and yet they are not satisfied. The first thing you know we will have to form a combination of farmers, but I am opposed to all combinations for the purpose of raising prices.

Mr. NORRIS: You speak about having to form a combination of farmers. Don't you find it profitable in hiring farm labor to hire the best men you can find and pay them the best wages—give them a little more than they ask and not cut them down—doesn't it pay to so treat them that when your property is in danger of destruction they will go out and look after it? Don't you find by treating men right you are doing best for yourself?

Mr. JOHNSON, of Williams: I have always said "Go somewhere else and get better wages than I can afford to pay you if you can. If you can get better wages, go and get them." I had a gentleman I could trust, just as you say, and he went off and stayed two months and he was mighty glad to get back.

The theory is that any fool can be a farmer, but I don't subscribe to that. I thought once that I might be a merchant, a lawyer, a doctor or a minister, because I knew it took more brains to run a farm than be either of those.

Mr. NORRIS: Do you think you could have made a preacher of yourself?

Mr. JOHNSON, of Williams: I might have. I was not prepared to talk on this, but I thought I might throw out a few ideas as to why this proposal should not be adopted.

Mr. STAMM: Don't the dumbest farmers sometimes raise the biggest potatoes?

Mr. JOHNSON, of Williams: Not often. I am not opposed to the poor girls in the factories and stores and the poor laboring class getting more wages, and I don't want any farmer to vote against this because he thinks it will hit the farmer. There is no class of men in the world who has been robbed more often and who can stand it better than the American farmer, but he is not opposed to fair wages that the laboring man may enjoy the comforts of life.

Mr. ELSON: It seems to me that the kernel of this proposal is a minimum wage. Whenever I read of or hear contentions between capital and labor, other things being equal, my sympathies are on the side of labor. I think I am willing to vote for this proposal, but I wish to say that I question very much whether it will be effective. The wages of labor have always, as far as I have examined the subject, been regulated by the law of supply and demand. I think that is the general rule with very few exceptions indeed. I am aware that labor unions have a great deal to do with wages. I have been through the anthracite regions of Pennsylvania and have studied that question to some extent, and I am aware that the miners' union has had much to do with fixing the wages, and that the wages of the miners would be very much less than they are now if it had not been for the union, but the union must take into account supply and demand.

Mr. STILWELL: Do you realize that this is an effort upon the part of organized workers of the state to

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assist those who are not able to organize because of the poor conditions under which they labor?

Mr. ELSON: Yes, I think I do, but I question whether they can possibly be effective. Now our friend from Williams [Mr. JOHNSON] says he would welcome the application of this to the farmers, but I suppose he knows he can not possibly apply it to the farmers. That has been mentioned by Judge Dwyer, and I think we can all agree it can not be applied to the farmers because conditions on the farm are so different from conditions in the factories and mines. Now I have said that wages depend on supply and demand, but there is one strange thing in the case of labor that you find nowhere else, and that is that the supplies seem ordinarily to exceed the demand. It is nearly always so. Just why it is, I never could figure out. It is a sociological question and I believe it shows our system is wrong somewhere, and we should try and find out how to right that wrong, but as I have said, I am willing to vote for the proposal although I have not much hope of its efficacy. The reason I want to vote for it is that it leaves the matter almost entirely in the hands of the legislature. The legislature will experiment in the matter and the legislature will be regulated by public opinion. If the legislature makes a mistake public opinion will cause the succeeding legislature to correct the mistake. I do not see where the proposal can do any harm and therefore I am going to vote for it.

Mr. LAMPSON: When I was on the floor before I made some statement about the law fixing a forty-dollars-per-month minimum wage for common school teachers. I am informed that the supreme court held that the teachers could contract for less than \$40.

Mr. STILWELL: That is public employment.

Mr. LAMPSON: Yes.

Mr. STILWELL: But the supreme court recognized the principle of fixing a minimum wage.

Mr. HARRIS, of Hamilton: I regret to say that I cannot support the proposal in its present form. To my mind any attempt to fix a minimum wage for labor is nothing more nor less than a form of economical insanity. To establish by statute a minimum wage means, logically, that you can also establish by statute, in some degree at least, a minimum price for the products of labor, whether those products be food or anything else.

Where neither monopoly nor a combination in restraint of trade is involved, the determining factor in the price of labor, as well as in the products of labor, is "supply and demand"; therefore, to contend that you can establish a minimum wage by statute is to argue that you can lift yourself up by your boot-straps, the latter of which we know to be a physical impossibility. If you were to go to the trouble of investigating the insufficient wage question you would probably find that it is due to the fact that there is no "protective tariff" on labor, whilst there is a "protective tariff" on the products of labor. If you could diminish the supply of labor by cutting off immigration you would solve, to a very large extent, the question of insufficient wages. If the labor unions in their collective capacity are unable to raise the price of labor it is due to the fact that the number of workmen outside of the labor unions is sufficiently large to maintain labor at a lower level than that established by the unions. Nothing you do here, or can

do here, would raise the purchasing value of any "minimum wage" that is proposed to be established by arbitrary statutory laws; because labor enters so largely into the cost of the finished product; therefore, wages, no matter how established, whether by the illogical method of statute or by natural competition, would largely determine the cost of the finished product, excluding, of course, the artificial factor of a protective tariff. The cost of the finished product, whether it be food or anything else produced by labor, would in turn determine the purchasing power of the wage, minimum or otherwise. It is for these reasons that I cannot accept, in any form, the principle of establishing wages by statute. The remainder of the proposal is sound, and although it has been well said by the member from Auglaize, [Mr. HOSKINS] that there is nothing in the present constitution which prevents the other matters in the proposal from being established by the legislature, yet it is possibly wise to show, by a constitutional provision, that these other subjects in the proposal represent the wishes of the majority of the people of Ohio, and by incorporating them as part of our fundamental law we give notice to the legislature that we are in harmony with the sociological principles involved therein. I am very anxious to support the remainder of the proposal, and if the authors will strike out the words "minimum wage," the proposal will receive not merely the united support of this Convention but of the people of Ohio, and the authors will then have accomplished something practical and substantial, whereas, on the other hand, in merely giving the legislature the power to establish a minimum wage we are playing to the galleries and offering to labor a stone where we should give bread, not as charity, but as justice.

Mr. HAHN: Mr. President and Members of the Convention: We live in a civilization that is greater and grander than any other civilization on record. No matter what is said to the contrary, the civilization of ancient Rome and of Babylon did not come near ours. Modern civilization has not only eliminated a great many evils which ancient culture fostered, such as slavery and other forms of immorality, but it has in view entirely different plans and ideals. The great question is, Will our modern civilization continue on the road of progress, will it rise higher and higher or will it go backwards? Will it end in wreck and ruin?

We need not fear Huns and Vandals from Asia to destroy it, nor need we be afraid of wars to lay it waste, nor need we apprehend that political schemes will cause a relapse, but there is one thing of which we must be afraid and that is a revolution that might be brought about by a terrible conflict between capital and labor.

Gentlemen, I am no anarchist; I have never had any sympathy for anarchy. I am no socialist, and I am no propagator of any such ideas. I am merely a student of universal history and of every-day life. First of all I notice that one-half of the human race does not know how the other half lives. Those people that live in quiet rural districts have no idea of the deep agitation that is going on in the large cities. They have no idea of what sentiments there are expressed in the meetings of the laboring classes. They have no idea what a bitterness there is prevalent among the laboring classes when a strike in a large city takes place. Do not deceive yourself

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in thinking that all this is merely something on the surface of modern society and momentary. There is no doubt that if we do not take preventive measures we are drifting toward a revolution that will be greater and bloodier than any revolution mankind has ever seen. I am no alarmist. I express in a calm way my sentiment and my observation, but I think it is not too late to avert disaster. It is still within our power to prevent such a revolution. The day when the workmen should despair, the day when the working classes should give up hope, will be the darkest day in the history of our great country, and that must be prevented at all events and indeed it can be prevented. It is within our power to prevent it. The first step toward the prevention of such a great and fatal conflict between labor and capital was taken in this august assembly a few days ago by the adoption of the initiative and referendum to be submitted to the people of Ohio. It is often said "Our forefathers when they made the constitution of the United States built better than they knew," and I have not the slightest doubt that the time will come when the same judgment will be passed on the members of the Fourth Constitutional Convention in the state of Ohio. The initiative and referendum provision is to prevent unrest and revolutions. The next step for us to take is to give the laboring classes justice. Justice is what they want. They do not want charity nor "welfare work," but they demand justice. By justice to both the employe and capitalist everything can be settled.

Quite a number of proposals embodying demands of the working elements were introduced here. We must not be too hasty. We must examine them and give them full attention. We live in a time different from that of sixty years ago when our constitution was made. Take the constitution of 1851, look it through from beginning to end and you will not find the word "labor" or any provision for labor there. Now, would you, my friends, be willing to let the constitution of Ohio go out into the world without giving proper recognition to free labor, the brightest jewel in civilization? That would be wrong. We must not allow that. Whether it partakes of the legislative character or not, we must have certain regulations relative to labor inserted in our new constitution. Let us treat the labor class as friends, let us show them that we really are their friends and a great deal of the bitterness that is at the present time prevalent among them will vanish at once. The brightest day in the history of the people in the United States will be the day when there will disappear from the hearts of the laboring class the bitterness, hatred, envy, jealousy and animosity that exists now to such a great extent. Let us consider well what we are doing and let us act in the right spirit and let us feel the great responsibility we have for the men who toil.

Mr. STEVENS: I think the Convention has had all the light we can get on this subject and I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted — yeas 80, nays 13, as follows:

Those who voted in the affirmative are:

Antrim,	Harbarger,	Read,
Beatty, Morrow,	Harter, Huron,	Redington,
Beatty, Wood,	Henderson,	Riley,
Beyer,	Hoffman,	Rockel,
Bowdle,	Hoskins,	Roehm,
Brown, Lucas,	Hursh,	Shaw,
Cassidy,	Kerr,	Smith, Geauga,
Cody,	King,	Smith, Hamilton,
Cordes,	Knight,	Solether,
Crosser,	Kunkel,	Stalter,
Davio,	Lambert,	Stamm,
DeFrees,	Lampson,	Stevens,
Donahey,	Leete,	Stewart,
Doty,	Leslie,	Stilwell,
Dunlap,	Longstreth,	Stokes,
Dunn,	Marshall,	Taggart,
Dwyer,	Mauck,	Tannehill,
Earnhart,	McClelland,	Tetlow,
Elson,	Miller, Crawford,	Thomas,
Fackler,	Moore,	Ulmer,
Farrell,	Norris,	Walker,
FitzSimons,	Nye,	Watson,
Fluke,	Okey,	Winn,
Fox,	Partington,	Wise,
Hahn,	Peck,	Woods,
Halenkamp,	Pettit,	Mr. President.
Halfhill,	Pierce,	

Those who voted in the negative are:

Brattain,	Cunningham,	Ludey,
Brown, Pike,	Harris, Ashtabula,	Peters,
Collett,	Harris, Hamilton,	Rorick,
Colton,	Johnson, Williams,	Weybrecht.
Crites,		

So the proposal passed as follows:

Proposal No. 122 — Mr. Farrell. Relative to employment of women, children and persons engaged in hazardous employment.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. LAMPSON: I move that the Convention adjourn until tomorrow morning at 10 o'clock.

The motion was carried.

SIXTY-FIRST DAY

MORNING SESSION.

TUESDAY, April 23, 1912.

The Convention was called to order by the president, and opened with prayer by the Rev. Homer Alexander, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. KILPATRICK: As a question of privilege I would like to be allowed to vote on Proposal No. 122.

The member's name was called and he voted in the affirmative.

Mr. HOLTZ: I wish to vote on that same proposal.

The member's name was called and he voted in the negative.

Mr. JOHNSON, of Williams: I would like to have my vote recorded on the motion of Mr. Doty last night, as I voted, but apparently was not heard.

The member's name was called, and he voted in the negative.

SECOND READING OF PROPOSALS.

The PRESIDENT: The next business is Proposal No. 209 by Mr. Tetlow.

The proposal was read the second time.

Mr. TETLOW: Mr. President and Gentlemen of the Convention: In speaking upon this proposal, I desire to discuss to some extent the question of an eight-hour day as applied to public works.

This proposal provides for an eight-hour day on public works, and not to exceed forty-eight hours a week on the maintenance and operation of public works, applying to laborers, mechanics, etc. It is quite evident that we desire this proposition to become a constitutional provision to safeguard this right, and to circumvent the decisions rendered by courts of this state. Many of you will remember that in 1900 a state law was passed in this state providing for an eight-hour day on public works, and also an eight-hour day on all contracts and subcontracts for and in behalf of the state and its political subdivisions. That law was declared unconstitutional by the supreme court of this state in a case arising in Cleveland, the Clements Construction Company vs. The City of Cleveland. In that case the supreme court of Ohio decided as follows:

The act of April 16, 1900 (94 Ohio Laws, 357), entitled: "An act to provide for limiting the hours of daily service of laborers, workmen and mechanics employed upon public work, or of work done for the state of Ohio, or any political subdivision thereof, providing for the insertion of certain stipulations in contracts of public works; imposing penalties for violations of the provisions of this act, and providing for the enforcement thereof," is in conflict with sections 1 and 19 of article I of the constitution of Ohio; because it violates and abridges the right of parties to contract as to the number of hours of labor that shall constitute a day's work, and in-

vades and violates the right, both of liberty and property, in that it denies to municipalities and to contractors and subcontractors the right to agree with their employes upon the terms and conditions of their contracts. Said act is therefore unconstitutional and void.

The action of our supreme court in declaring this law null and void is not in conformity with the decisions rendered on the same subject in other states and by the federal court. We have at the present time an eight-hour law in Arizona, Oklahoma, New Mexico, California, Idaho, Wyoming, New York and Massachusetts. All of those states have enacted laws or constitutional provisions for an eight-hour law on all public works and contracts and subcontracts for such public works. A case arising in Kansas, where the subcontractor was not a resident of that state, allowed a case like the one we had in Ohio, the Clements Construction Company vs. The City of Cleveland, to go to the federal court, and the federal court held that the state had a right, under its police power, to regulate the hours of labor of workmen employed upon public works. The court held:

It is within the power of a state, as guardian and trustee for its people and having full control of its affairs, to prescribe the conditions upon which it will permit public work to be done on behalf of itself or its municipalities.

In the exercise of these powers it may by statute provide that eight hours shall constitute a day's work for all laborers employed by or on behalf of the state or any of its municipalities and making it unlawful for any one thereafter contracting to do any public work to require or permit any laborer to work longer than eight hours per day, except under certain specified conditions, and requiring such contractors to pay the current rate of daily wages.

This was a decision of the United States supreme court in a case arising in Kansas which embodied the same principles as those in the Clements Construction Company case, which was carried through our circuit court and to our supreme court and there declared unconstitutional.

It seems to me that we as a state certainly have a right to establish the hours of labor for men employed by the state and for the state. Certainly we have a right, as held by the federal court, and I do not see any reason why we as a state cannot incorporate this provision into our constitution, to protect this fundamental principle, which we as a people surely have a legal right and a lawful right to do.

Now let us consider the action of the national government on this question. This movement for an eight-hour day on public works began away back in 1868, when President Grant was in office. President Grant recommended in a message to congress the enactment of an eight-hour day for the protection of men employed on public works. That didn't become a law until 1892,

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but in 1892 a law was passed granting an eight-hour day on public works and upon contracts for such public work.

Recently congress has enacted a law making broader the application of the eight-hour day. It included in the original eight-hour day such amendments as provide that all fortification work, whether done in the United States or any of its territories, shall be done under the eight-hour day, and it seems to me that with the United States government recognizing this right, and with the great number of states recognizing the right, there is no reason why this great state of Ohio cannot fall in line with the other states and with the nation and adopt this principle.

I want to quote from President McKinley, before he was president of the United States, and while he was a member of congress, on this particular subject, when the matter was under consideration by congress. He said in part, and it is found in the Congressional Record of August 28, 1890:

And the government of the United States ought, finally and in good faith, to set this example of eight hours as constituting a day's work required of laboring men in the service of the United States. The tendency of the times the world over is for shorter hours in the interest of health, shorter hours in the interest of humanity, shorter hours in the interest of the home and the family; and the United States can do no better service to labor and to its own citizens than to set the example to states, to corporations and to individuals employing men than by declaring that, so far as the government is concerned, eight hours shall constitute a day's work and be all that is required of its laboring force.

Ex-President Roosevelt made favorable mention as to the enforcement of the eight-hour day in his annual message to the 57th congress, first session, when he said:

So far as practicable, under the conditions of government work, provisions should be made to render the enforcement of the eight-hour law easy and certain. In all industries carried on, directly or indirectly, for the United States government women and children should be protected from excessive hours of labor, from night work, and from work under insanitary conditions. The government should provide in its contracts that all work should be done under fair conditions, and in addition to setting a high standard, should uphold it by its proper inspection, extending if necessary to the subcontractors. The government should forbid all night work for women and children, as well as excessive overtime work.

During the last session of congress, President Taft in his message to congress recommended further amendment to the present eight-hour law to make it more mandatory, so that it could be enforced. This movement is recognized by all men who are students of economic questions.

I want to quote also some of the conditions existing in this country affecting some of our industries. In the industry with which I am familiar, and in which I have spent all my life, I have seen some changes. There

has been an evolution that formerly was believed could not be brought about. I quote the following:

Prior to 1898 the miners in Ohio worked nine, ten and, in many instances, twelve hours a day, and I can well remember those long tedious working days, on many of which we never saw daylight, and I can remember the hope of more time for home, study and recreation that came with the shorter workday in 1898. When the change was made to an eight-hour day the pessimist was in evidence. Many of the mine owners claimed that they could not operate their mines and meet the competition of other states where the longer workday prevailed, many miners contended they could not live with the reduced earning power that must eventually follow, but what did happen? Why, the mines continued to operate, the men continued to live, and, according to statistics, the per capita production was greater under an eight-hour day than under the nine or ten; consequently all concerned with the industry were benefited.

These are facts in that particular industry. Men working an eight-hour day produced more tonnage and earned more money than under the nine, ten or twelve hours, and those facts and statistics can not be denied, because they are absolutely true, and borne out by the records submitted to the mining department by the operators themselves.

It has long been apparent to every student of our economic problems that an eight-hour workday for workmen in our industrial affairs is a necessity.

Modern inventions, wrought by the skilled hand of the mechanic or the trained mind of the scientist, have invaded every industry. We see the process of the machine either eliminating the workman or aiding him in his productive capacity, and with the productive power making more rapid strides than the consuming power we have indeed an economic problem of grave concern. Under our patent laws the patentee is protected. A patent affecting any industry naturally comes into the control of the employer, and the only logical solution of this problem for the workers lies in the reduction of the hours of labor.

I believe that intelligence will be the barometer that will measure our standard as a people. We should, I believe, give our working men time for study. In the interest of future generations we should not overtax his physical ability; in the interest of the home we should give him time to enjoy its blessings, and in the interest of a higher type of civilization this Convention should adopt this proposal and make this commonwealth a leader in a higher, broader, more humane system of government in this enlightened, progressive age.

Mr. HALFHILL: Will you permit me to ask a question, prefacing my question with a statement? Last evening at our session we passed a proposal which reads: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of the employes; and no other provision of the constitution shall impair or limit this power." I voted for that. Why does not that provision which we have adopted here cover fully the proposal on which you have just addressed the Convention?

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Mr. TETLOW: I think the proposal does not cover the question at issue. The fact that the proposal passed last night gives the legislature or the people certain power to enact laws regulating the hours of labor, establishing a minimum wage, etc., and the fact that the legislature passed a law regulating the hours of employment, do not guarantee that the courts may not declare that law unconstitutional because it is an invasion of certain fundamental rights reserved and which can not be destroyed. We had the power under our old constitution to pass a law providing for the eight-hour day on our public work, but our courts of last resort declared it unconstitutional. I claim that we ought to pass this provision and we ought not to leave it to the legislature. In this case the state and its political subdivisions are the employers and we are the employees. This is for ourselves and I think we ought not to evade the issue; we ought to say here in the interest of our own employers, who are the citizens of the state—which is the employer—that we recognize the right to an eight-hour day to men on public work, and we should not leave it to the legislature.

Mr. WATSON: I desire at this time to call attention to the special order for 10:30 o'clock a. m.

Mr. HALFHILL: Was it stated by you that a few years ago the legislature did pass a law fixing the eight-hour law for labor that was held to be unconstitutional as in conflict with section 1 and section 19 of the bill of rights?

Mr. TETLOW: Correct.

Mr. HALFHILL: Now the proposal we adopted last night expressly said at the end of it that no other provision of the constitution should impair or limit this power (referring to the power of the forepart of that proposal). Why haven't you got the best grant of power there that can be secured under a constitutional provision, and why is this necessary?

Mr. TETLOW: The question is this—we have a question here now. It is a question of constitutional provision, and the question before this Convention at this time is the recognition of the right to an eight-hour day for public work. So, I say, why leave the question with the general assembly, which may never pass the law?

Mr. HALFHILL: Is it fair to assume, if they have already passed such a law and it was held invalid as being unconstitutional, that they will not now pass the law again when we have given them the power to do so? Is it necessary to legislate on that point when they are expressly granted the power?

Mr. TETLOW: The only reason why we are putting in this organic law a statutory provision is because of the fear that we can not obtain the things we are entitled to by legislative enactment. If our courts were not setting aside the express wishes of the people in so many instances the need for specific statutory legislation in organic law would not be here.

Mr. HALFHILL: This power is granted to the legislature. Now if the legislature could not be trusted we would have the initiative and referendum, if it is adopted. Is it not a farfetched assumption to say that the legislature can not be trusted to enact an eight-hour law when it did that a number of years ago?

Mr. TETLOW: I contend the matter ought to be settled here now. Ought not Ohio keep pace with the eleven or twelve other states which have established this principle, and with the nation, which has established the principle? In New York they passed a law providing for a certain work day and that law was declared unconstitutional. The state of New York amended its constitution giving the state the right to enact an eight-hour day on public work. They went through the same thing we are going through here. I can not see why we can not deal with the matter the same way. Our legislature passed such a law and it was declared unconstitutional by the supreme court, and I do not see any reason why, if there is merit in the proposition, that we shall not decide the question now.

Mr. HARRIS, of Hamilton: I want to preface my question by saying that I am in thorough sympathy with your proposal, but do you not think it is belittling the cause of labor and the work of this Convention to duplicate our work as your proposal undoubtedly does? The resolution last evening absolutely gives you, as you well know, the same constitutional right as is here embodied in Proposal No. 209. Therefore the supreme court could not possibly declare a law passed under it void—assuming that the proposal of Mr. Farrell, which we passed yesterday, is adopted by the people—the supreme court could not possibly set aside on the ground of unconstitutionality any measure along these lines, limiting the hours of labor, adopted by the legislature. Your proposal gives no greater constitutional power than that proposed yesterday afternoon. It will be a stain on the work of this Convention if we go before the state of Ohio with two proposals practically the same. If your position is correct, then the proposal adopted last evening is embodied in yours, and you should embrace in your proposal as amendments all the legislative and statutory enactments you wish covered by the proposal of Mr. Farrell.

Mr. TETLOW: That is not a question and I can not answer it. You have really answered it yourself. I want to say that we must distinguish the difference between the action of the Convention last night and this question under consideration. The action of the Convention last night simply gave the legislature certain powers. We know the condition in the state at present. The people have not advanced to the stage where they are going to establish a minimum wage in all classes of industry, but we have granted power to the lawmaking body to do certain things. Here is a question that is before us. It has been up before the people and it has been passed by the legislature, and the question to decide now is, Do we recognize that principle as right at this time, or are we going to evade it and leave it to some one else to decide, when we know the substance of it is right?

Mr. HALFHILL: You concede that the proposal last night as a grant of power—

Mr. TETLOW: Yes.

Mr. HALFHILL:—to do this thing?

Mr. TETLOW: No; I do not concede that.

Mr. HALFHILL: Do you not concede it was a grant of power and is it not your objection that the legislature will not act? Is not that your position exactly?

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Mr. TETLOW: To a certain extent, yes.

Mr. HALFHILL: Would it not be more logical to combine this proposal you have here this morning with the one you had last evening and attach this to it as the expression of the Convention? Would not that be the proper way?

Mr. TETLOW: That could be done that way.

Mr. HALFHILL: Then would it not be a grant of power in certain instances and an elaboration by way of legislation on that power?

Mr. TETLOW: That is correct. It could have been done that way, but we didn't do it that way.

Mr. HALFHILL: They ought to be combined.

Mr. TETLOW: As far as I am concerned I am perfectly willing for the two proposals to be combined by the committee on Arrangement and Phraseology.

Mr. HARRIS, of Hamilton: This proposal refers only to public works and I would support that as an amendment to the other, but I do object to two separate proposals on exactly the same principle.

Mr. ROEHM: Would not this question be largely settled by the manner in which we submit the constitution? If we change our present plan would not this be desirable. It would go into the body of the constitution, but if we are going to submit these matters separately, might not that one clause relating to the minimum wage endanger the entire proposition before the people?

Mr. TETLOW: It might.

Mr. ROEHM: Would not they have a right to vote upon both propositions?

Mr. TETLOW: I don't think so.

Mr. HARRIS, of Hamilton: I may be wrong on the parliamentary law — it seems I am generally — but could not the Convention now direct the committee on Phraseology to incorporate this as a part of the proposal adopted last night? That would overcome the objections, and I would be glad to support it if it could be incorporated in that form.

Mr. STILWELL: The Labor committee has had that very matter suggested by Mr. Harris under consideration. We have no objection to doing that when the Convention decides ultimately the manner in which our work is to be submitted, but on this proposal we do insist that the state ought to recognize the principle of an eight-hour day. The complaint is made, and perhaps justly so, that it is a matter purely within the function of the legislature, but many proposals already passed could have been taken care of by the legislature, and the mere fact that they have not done it is one of the reasons why this Convention has been called. There are perhaps two or three hundred thousand workmen in the state of Ohio who are watching three or four proposals. This is one of the matters the legislature has not taken care of in the past.

Mr. KNIGHT: Was it because they could not or because they didn't want to?

Mr. STILWELL: I have not been a member of the legislature and I could not really answer the question.

Mr. KNIGHT: Was it not because they did not have the constitutional power?

Mr. STILWELL: I think probably that is true in this particular instance.

Mr. SMITH, of Hamilton: I understood the gentleman from Columbiana to say that the legislature had passed the eight-hour law some years ago?

Mr. TETLOW: In 1900.

Mr. SMITH, of Hamilton: And the supreme court declared that law unconstitutional?

Mr. STILWELL: That is true.

Mr. SMITH, of Hamilton: If the proposal we passed last night says "nothing in the constitution shall limit the power" and if the legislature were to pass an eight-hour law, would not the supreme court hold that valid?

Mr. STILWELL: That is probably true. I am not a judge of the supreme court, but I presume that is so.

Mr. SMITH, of Hamilton: I wish the gentleman would make an explanation why, after establishing the broad constitutional provision, they deem it necessary to specify on this legislative matter?

Mr. STILWELL: I simply assume it is the right of the great mass of working people in this state to insist upon the recognition of this principle in the fundamental law of this state, and it is not necessary that this campaign should be made the second time before the legislature.

Mr. PECK: Did not that proposal last night recognize it?

Mr. STILWELL: Yes, but I do not see why in this particular matter there should be any unnecessary quibbling over the mere fact that there may be some legislative characteristics in this proposal, and I believe the Convention should approve it.

Mr. KING: It is true if Proposal No. 122, passed last night, is adopted by the people and becomes part of the constitution, it includes the legislative power intended to be conferred by this proposal but it is not true that the rule vice versa prevails. It is not true that this contains all of the legislative authority conferred by Proposal No. 122. There are some objections — I don't mean fancied objections, but real objections — to Proposal No. 122 adopted last night. It possibly might not carry in Ohio, and if it did not it would not become part of the constitution, nor would it in any wise affect the labor proposition intended to be covered either in the one way or the other by these two proposals. It does not seem to me there should be any conflict over it. If the proposition contained here is good, and I think it is, I think so far as the public is concerned, both the public and the laborer is entitled to a rule laid down here positively and actually. It ought to be satisfactory. In so far as this gives power that is conferred by the other, the whole matter should be adjusted in the submission by the simple statement in the schedule or at the end of the submitting clause that if Proposal No. 122 shall be adopted and become part of the constitution of the state of Ohio the adoption of this proposal shall be treated as of no avail — null and void; otherwise, if this is adopted, it shall be a part of the constitution. In the final outcome there is no actual conflict. If the other is defeated and this is carried, it becomes part of the constitution. If the other is carried and this too, or if it is not, either way, it does not become a part of the constitution, so there is not a double grant of power. That, of course, we ought to steer clear of if we can. We do not want to be granting these powers over and

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over again. They get tiresome. If we have one class of grant of power that is enough, but it may be that Proposal No. 122 is not popular.

Mr. PECK: This last clause, under consideration now, does not grant any power to the general assembly at all. It simply fixes the hours of labor. It is strictly operative.

Mr. KING: Still I would be opposed to this proposal if I knew the other would become a part of the constitution, because conferring legislative power is the duty and business of the constitution, and when they have covered it once I think once is enough. But they may not cover it even once, so I think this should be carried, and when submitted it can be taken care of in the form of submission.

Mr. McCLELLAND: As a working member of one of the largest classes of working people in the state—I am a farmer and member of a grange and so a member of one of the great labor unions of the state—and as a working man and a trade union man and as one who voted for the proposal last night, and a friend of the principle I assure you I am opposed to this proposal because it seems to me it imperils the other labor proposals, and if we go to loading up the constitution with a bunch of statutory provisions which are uncalled for, even according to the admission of their friends, we may endanger the proposal we adopted last night. The legislature has never shown an unwillingness to listen to the request of the working people. This would have passed at every session of the legislature in the last ten years if they had not been prevented from doing so by the constitution. It was thought futile for them to do it and they didn't do it, but the legislature will pass it at the next session of the general assembly if they have the chance. Don't load this constitution up. It will prejudice the whole thing in the eyes of the people of the state. It seems to me as friends of labor we ought to dispose of this proposal and as the author has asked an immediate disposition of it, I move that it be indefinitely postponed.

Mr. DOTY: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 25, nays 77, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Norris,
Beatty, Wood,	Harter, Stark,	Nye,
Brattain,	Holtz,	Partington,
Brown, Pike,	Knight,	Peters,
Collett,	Kramer,	Redington,
Colton,	Mauck,	Rorick,
Elson,	McClelland,	Solether,
Fluke,	Miller, Ottawa,	Wagner.
Fox,		

Those who voted in the negative are:

Baum,	Dunn,	Harter, Huron,
Beatty, Morrow,	Dwyer,	Henderson.
Beyer,	Earnhart,	Hoffman,
Bowdie,	Evans,	Hoskins,
Brown, Lucas,	Fackler,	Hursh,
Cassidy,	Farrell,	Johnson, Madison,
Cordes,	Fess,	Johnson, Williams,
Crosser,	FitzSimons,	Kehoe,
Cunningham,	Hahn,	Kerr,
Davio,	Halenkamp,	Kilpatrick,
Donahey,	Halfhill,	King,
Doty,	Harbarger,	Kunkel,
Dunlap,	Harris, Hamilton,	Lambert,

Lampson,	Price,	Taggart,
Leete,	Riley,	Tannehill,
Leslie,	Rockel,	Tetlow,
Longstreth,	Roehm,	Thomas,
Ludey,	Shaw,	Ulmer,
Malin,	Smith, Geauga,	Walker,
Marshall,	Smith, Hamilton,	Watson,
Miller, Crawford,	Stalter,	Weybrecht,
Moore,	Stamm,	Winn,
Okey,	Stevens,	Wise,
Peck,	Stewart,	Woods,
Pettit,	Stilwell,	Mr. President.
Pierce,	Stokes,	

So the motion to indefinitely postpone was lost.

Mr. DOTY: I now move the previous question.

Mr. SMITH, of Hamilton: I hope you won't insist on that.

Mr. DOTY: Oh, no; if anybody wants to talk I will withdraw it.

Mr. BROWN, of Lucas: I assume that the purpose of this proposal is to limit the number of hours during which one may lawfully be employed on the public work in the state of Ohio to eight hours out of twenty-four and the number of hours that one may work in a week to forty-eight. The question has been raised whether or not the grant under Proposal No. 122 is not sufficient. Clearly it is broad enough to justify the general assembly in passing any measure it sees fit regulating the hours of labor, but the bigger question involved is whether or not the state of Ohio shall declare in its fundamental law a definite policy in regard to the employment of labor on public works. That I think is the big question and I am in favor of declaring that policy in our constitution. I have, however, some misgiving as to whether the language employed in the proposal does it and I want to call attention to it particularly: "Not to exceed eight hours to constitute a day's work." That means, it seems to me, that if the laborer is employed by the day when he has worked eight hours he is entitled to his day's pay, if he was hired by the day. But I see nothing to prevent his being employed by the hour and working twenty-four hours. It seems to me that this does not prohibit a man from working more than eight hours a day or forty-eight hours a week, and I call the attention of the members to that.

Mr. FESS: I have listened with a great deal of interest to the objections owing to the duplication of this with the proposal of last night, and I believe if this Convention is in favor of the general principle of both we can obviate that seeming conflict by referring it to the committee ultimately with instructions to report it back and incorporate as a part of Proposal No. 122 the principle of the eight-hour law as defined here. I hope this Convention will put itself on record in giving its support to the eight-hour day proposition. If it meets the wishes of the members in interest, I would like to move that this proposal be referred to the committee on Arrangement and Phraseology with instructions to report back this particular part and to attach it to Proposal No. 122.

Mr. STILWELL: What is the purport of the motion? In the first place we should like to have a roll call on the proposal so that the proposal can pass. My understanding is that you can not in effect pass a proposal without a roll call and getting at least sixty delegates. It strikes me that the mere passage of this by

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a viva voce vote referring it to the Phraseology committee and instructing them to incorporate in Proposal No. 122 the principle of this proposal would be of little effect. I am agreeable to the motion of Dr. Fess, provided this proposal is first passed as the rules of the Convention require.

Mr. KNIGHT: The Convention has already adopted Proposal No. 122 and the only thing to do is to adopt this and then give instructions to the committee on Arrangement and Phraseology to combine the two.

Mr. FESS: My motion was not to include what Mr. Knight has said at all. The committee can bring back the two proposals as one without any instruction from the Convention, and then if the Convention will adopt their report all right, all well and good. Otherwise it will fail just as any other report. My motion was that this Convention perform its duty, its right, if it desires to instruct this particular committee what it wishes this committee to do. We can do that now if we want to do it. This Convention can instruct the Phraseology committee or the Labor committee to bring back a report in a certain order. I was trying to get rid of this conflict between the two proposals. This was an easy way to do it. It is favorable to both proposals, and if the Convention will adopt the motion and refer it to the Phraseology committee with these instructions that is perfectly legitimate and proper; but I would ask, as Mr. Stilwell did, that we take the yea and nay vote upon this proposal first.

Mr. HARRIS, of Ashtabula: I understood you to say that without instruction the committee on Arrangement and Phraseology might combine two proposals.

Mr. FESS: Yes.

Mr. HARRIS, of Ashtabula: I would like to know where the authority is derived from for the committee to combine two proposals that have been passed here separately?

Mr. FESS: Any matter referred to that committee can be reported back separately or reported back combined.

Mr. HARRIS, of Ashtabula: Pretty inclusive in its authority.

Mr. FESS: Yes; but it comes back to the Convention to be voted on by the Convention.

Mr. HALFHILL: The gentleman from Ashtabula [Mr. HARRIS] mentioned a question that is in my mind. We passed the other proposal and I believe a majority of the Convention is favorable to this proposal. It seems to me we are not proceeding the best way either by adopting the motion of the gentleman from Greene [Mr. Fess] or taking care of it in the schedule as suggested by the gentleman from Erie. I move as an amendment to that motion of the gentleman from Greene [Mr. Fess] that we reconsider the vote by which Proposal No. 122 was adopted last evening, so we can combine this particular proposal with that.

Mr. DOTY: A point of order.

The PRESIDENT: State the point.

Mr. DOTY: There is a matter pending before the Convention and a motion to reconsider something else is entirely out of order.

Mr. HALFHILL: You admit my heart is in the right place though?

Mr. DOTY: Your heart is right. I want to call the attention of the Convention to the fact that Dr. Fess has yielded the principle I enunciated with some vigor two or three days ago, and against the opinion of some of the members, about the power of the Convention to instruct its committees. Of course, there can be no question about the power of the Convention to instruct its committees. My notion about the present situation is that the best way to proceed is not by the present motion of the member from Greene [Mr. FESS] but by first finding out if the Convention is in favor of this particular proposal, and that can be done by calling the roll. As soon as it is passed it is referred to the committee on Phraseology, and then at any time after that we can give instructions to the committee on Arrangement and Phraseology. I will say for the information of the gentleman from Ashtabula [Mr. HARRIS] that the committee on Phraseology has the same power and only the same power that other committees of the Convention have, and the member from Greene [Mr. FEES] did not claim the committee on Phraseology has any additional power.

Mr. KNIGHT: I hope the motion in its present form will not prevail. The gentleman from Cuyahoga [Mr. DOTY] is right. Why should we not determine whether we desire to adopt this in the usual form and then we can direct the committee on Arrangement and Phraseology by definite instruction to combine the two?

Mr. WOODS: It seems to me the best way to get out of this is to take Proposal No. 122, that we adopted last night, inject it right into this proposal after line 3 and then adopt this proposal. That will take care of the whole proposition. Let it then go to the Phraseology committee, and I offer that amendment. Insert Proposal No. 122 after line 3 and change the word "not" in line 4 to "but", and then let it go to the Phraseology committee. If that motion is voted down I will offer an amendment.

The motion was lost.

Mr. WOODS: I offer an amendment.

Mr. DOTY: Let us find out whether we want this one first. We declared in favor of the other last night.

Mr. PECK: I rise to a question of order. What is before the Convention?

Mr. DOTY: The proposal—

Mr. PECK: Let the president tell me. I am not asking you.

The PRESIDENT: The member from Medina has offered an amendment to Proposal No. 209.

Mr. PECK: That is the matter before the Convention?

The PRESIDENT: Yes.

Mr. PECK: There are so many things discussed before the Convention that it is hard to tell what is before it. You rule people get to going and there is no way of telling what is going on.

The amendment offered by the member from Medina was reduced to writing and was read as follows:

After line 3 insert the following:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."

Eight-Hour Day on Public Work—Recall of Public Officials.

Mr. WOODS: My own idea in submitting this amendment is that this matter may be put together. I can not understand why anybody should be opposed to the state of Ohio's adopting the principle of an eight-hour-day on public work. I do not think anybody has any objection to that proposition. The only argument that can be made against it is that it is a statutory matter, but this Convention has gone on record that that is not an argument against anything that is offered. I am for this proposition. In defense of labor, however, I think it is a mistake to tie the two together, but I have no objection to voting on that separately, though I think they should be in one proposition.

Mr. DOTY: There are three propositions involved now. The first one we decided last night. The second one is pending here. The third one may or may not arise, and that is whether we shall combine these two or not. Let us decide the second one before we decide the third one. Let us find out whether we want the second one or not. If we decide in favor of the second one, which is altogether likely, then the other question will come by itself. There are some persons who would like to vote on this as it is. Then that leaves the Convention to act on the consolidation matter. I move to lay the amendment on the table.

The amendment of the delegate from Medina [Mr. Woods] was tabled.

The PRESIDENT: The question now is on the adoption of the proposal.

The yeas and nays were taken, and resulted — yeas 94, nays 10, as follows:

Those who voted in the affirmative are:

Antrim,	Harter, Huron,	Okey,
Baum,	Harter, Stark,	Partington,
Beatty, Morrow,	Henderson,	Peck,
Beatty, Wood,	Hoffman,	Pettit,
Beyer,	Holtz,	Pierce,
Bowdle,	Hoskins,	Read,
Brown, Lucas,	Hursh,	Redington,
Cassidy,	Johnson, Madison,	Riley,
Colton,	Johnson, Williams,	Rockel,
Cordes,	Kehoe,	Roehm,
Crosser,	Kerr,	Rorick,
Cunningham,	Kilpatrick,	Smith, Geauga,
Davio,	King,	Solther,
Donahey,	Knight,	Stalter,
Doty,	Kramer,	Stamm,
Dunlap,	Kunkel,	Stevens,
Dunn,	Lambert,	Stewart,
Dwyer,	Lampson,	Stilwell,
Earnhart,	Leete,	Stokes,
Elson,	Leslie,	Tannehill,
Evans,	Longstreth,	Tetlow,
Fackler,	Ludey,	Thomas,
Farrell,	Malin,	Ulmer,
Fess,	Marshall,	Wagner,
FitzSimons,	Mauck,	Walker,
Fluke,	Miller, Crawford,	Watson,
Fox,	Miller, Fairfield,	Weybrecht,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Norris,	Woods,
Harbarger,	Nye,	Mr. President.
Harris, Hamilton,		

Those who voted in the negative are:

Brattain,	Harris, Ashtabula,	Shaw,
Brown, Pike,	McClelland,	Smith, Hamilton,
Cody,	Peters,	Taggart.
Collett,		

So the proposal passed as follows:

Proposal No. 209 — Mr. Tetlow. To submit an amendment to article VIII, of the constitution, relative to protection and welfare of persons employed at public work.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Not to exceed eight hours shall constitute a day's work and not to exceed forty-eight hours a week's work, on the construction, replacement, alteration, repair, maintenance and operation of all public works, buildings, plants, machinery at which laborers, workmen and mechanics are employed, carried on or aided by the state or any political subdivision thereof, whether done by contract or otherwise, except in cases of extraordinary emergency.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: I now call attention at this particular time to Proposal No. 291 — Mr. Watson. There was a provision for an hour's debate. That made the debate end at 11:30. Therefore, I move that the debate on this question be limited to an hour from now.

The motion was carried.

Mr. KRAMER: As a matter of personal privilege I would like to have my vote recorded in favor of the proposal which passed last night.

The gentleman's name was called on the measure indicated (Proposal No. 122) and he answered in the affirmative.

Mr. Halfhill was here recognized.

The PRESIDENT: This is under the five-minute debate.

Mr. HALFHILL: I understood the matter was on the main argument of the report. I have not yet presented any argument on the report and I can not do it in anything like five minutes.

The PRESIDENT: The question before the house is the motion of the member from Erie [Mr. KING] to amend the minority report. The secretary will read it.

The secretary read the amendment as follows:

Resolved, That Proposal No. 291 and the report of the committee amending same be indefinitely postponed.

The PRESIDENT: The question is on agreeing to that amendment.

The yeas and nays were regularly demanded; taken, and resulted — yeas 57, nays 45, as follows:

Those who voted in the affirmative are:

Antrim,	Fess,	King,
Baum,	Fox,	Knight,
Beatty, Morrow,	Hahn,	Kramer,
Brattain,	Halfhill,	Lampson,
Brown, Pike,	Harbarger,	Leete,
Cody,	Harris, Ashtabula,	Leslie,
Collett,	Harris, Hamilton,	Longstreth,
Colton,	Harter, Stark,	Ludey,
Cunningham,	Holtz,	Malin,
Donahey,	Hoskins,	McClelland,
Dunlap,	Johnson, Madison,	Miller, Crawford,
Dwyer,	Johnson, Williams,	Miller, Fairfield,
Elson,	Kehoe,	Miller, Ottawa,
Evans,	Kerr,	Norris,

Recall of Public Officials—Workmen's Compensation.

Nye,	Riley,	Smith, Hamilton,
Partington,	Rockel,	Stalter,
Peck,	Rorick,	Stokes,
Peters,	Shaw,	Taggart,
Redington,	Smith, Geauga,	Weybrecht.

Those who voted in the negative are:

Beatty, Wood,	Halenkamp,	Stamm,
Beyer,	Harter, Huron,	Stevens,
Bowdle,	Henderson,	Stewart,
Brown, Lucas,	Hoffman,	Stilwell,
Cassidy,	Hursh,	Tannehill,
Cordes,	Kilpatrick,	Tetlow,
Crosser,	Kunkel,	Thomas,
Davio,	Lambert,	Ulmer,
Doty,	Marshall,	Wagner,
Dunn,	Moore,	Walker,
Earnhart,	Okey,	Watson,
Fackler,	Pettit,	Winn,
Farrell,	Pierce,	Wise,
FitzSimons,	Read,	Woods,
Fluke,	Solether,	Mr. President.

So the motion to indefinitely postpone was carried.

Mr. DOTY: In order to clear the way entirely I move that the proposal and the pending report be laid on the table.

The motion was carried.

The PRESIDENT: The next business is reading of Proposal No. 24—Mr. Cordes.

The proposal was read the second time.

Mr. TANNEHILL: What became of the special order for 11:40 o'clock?

The PRESIDENT: That time has not arrived yet. The chair recognizes the gentleman from Hamilton [Mr. CORDES].

Mr. CORDES: Mr. President and Gentlemen of the Convention: Proposal No. 24 undertakes to write into the constitution of Ohio a constitutional provision making secure the workmen's compensation law passed by the last legislature, and declared constitutional by the Ohio supreme court by a vote of 4 to 2. Labor asks that this proposal be adopted, because we believe that by writing it into the constitution it will make it possible to continue this beneficial measure without any further fear of a constitutional question being raised again on this matter. It will also give an opportunity to still further improve the law to meet modern conditions of employment as they may arise.

Ten states have passed workmen's compensation laws similar to that adopted in Ohio, and the federal congress has now under consideration a bill recommended by the federal commission appointed last year on this subject to apply to interstate employees. In nearly every other state in the Union where the legislatures are in session this winter the legislators are considering similar measures of this kind and the general tendency of the time is to do away with the old, worn-out methods of compelling the worker to sue for damages, and the long incidental delays that make it impossible for the cripple, the widow and the orphans to secure justice or adequate compensation for the loss of life and limb, and to replace it with a direct compensation system, to the end that those who suffer as the result of industrial injuries may be immediately relieved from suffering, due to the want of the necessities of life. I am of the opinion there has not been a subject before this Convention that affects real humanity as this does, and I hardly think it necessary to discuss the question at length at all, as I

am satisfied that most of the delegates are in accord with this proposal. If there are any doubts in the minds of any of the members as to the merits of the proposal as submitted, I would refer them to the unqualified indorsement given to workmen's compensation laws in nearly every address that has been made to this Convention by the distinguished visitors who have been invited to address you, and I call particular attention to the addresses of Judge Lindsey, ex-President Roosevelt and William Jennings Bryan. Workmen's compensation laws will go a long way to solve the differences now existing between labor and capital, as there is nothing that tends more to create a better fraternal feeling between man and man than the fact that those who are so unfortunate in industrial life as to meet with accidents, will in the future be properly taken care of; and there is certainly no time when assistance is more needed than when the head or support of the family is unable to provide for those who are near and dear to him.

Workmen's compensation laws also provide a definite and fixed liability on the employer, so that he knows that he will have to pay, and will prevent litigation on this subject which has proven detrimental to employer and employe and a matter of enormous and needless expense to both. The real object of all liability and compensation laws against industrial accidents, however, is not simply the matter of providing for the needs of the injured and the dependents of those killed, but to prevent accidents; hence the provision in the proposal that in case accidents are caused by the wilful act or violation of law by an employer an additional penalty is added by giving the worker the right to sue for additional damages. This provision has been made a part of every compensation law so far adopted in this country, as it is of every compensation law so far adopted by foreign countries, and is necessarily attached to compensation laws so that the employer may be compelled to provide every safeguard possible against accidents, and that he may be prevented from getting careless because of the fact that he has paid the premium into the state insurance fund that will provide for the needs of his employes in case they are injured or killed.

The statistics gathered by the United States government and the American association for labor legislation show that occupational diseases are killing off and incapacitating as many employes as are accidents. Nearly every foreign country that has adopted a compensation law applies it also to occupational diseases, and it is really essential that the industries that cause these diseases and loss of life should be made to bear the burden and cost of caring for the men afflicted by any of these dread diseases rather than make them and their families a burden on the community and objects of charity.

The federal congress, within this last week or two, in passing the Esch phosphorus bill has undertaken to remove one of the afflictions with which many Ohio workers have suffered during past years, that of "phossy jaw", and organized labor secured the passage of a law last winter providing for the investigation of this whole subject in Ohio, but the effectiveness of the law was nullified by the neglect of the legislature to provide an appropriation to do this work.

I believe that it is but just and humane in this age of progress and rapidity in industrial affairs that the in-

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dustrial workers should be protected against accidents and occupational diseases, and that more attention should be given to human rights rather than, as we have done in the past, devote all our attention to property rights. As this measure, above every other, writes into our constitution the question of human rights and the protection of human life and limb, I am satisfied that if it is adopted it will meet with the hearty approval of the voters and prove of great benefit and relief to both employer and employe.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted — yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Partington,
Baum,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Harter, Huron,	Peters,
Beatty, Wood,	Harter, Stark,	Pettit,
Beyer,	Henderson,	Pierce,
Bowdle,	Hoffman,	Read,
Brattain,	Holtz,	Redington,
Brown, Lucas,	Hursh,	Riley,
Cody,	Johnson, Madison,	Rockel,
Collett,	Johnson, Williams,	Roehm,
Colton,	Kehoe,	Rorick,
Cordes,	Kerr,	Shaw,
Crosser,	Kilpatrick,	Smith, Geauga,
Cunningham,	King,	Smith, Hamilton,
Davio,	Knight,	Solether,
DeFrees,	Kramer,	Stalter,
Donahay,	Kunkel,	Stamm,
Doty,	Lambert,	Stevens,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Longstreth,	Taggart,
Elson,	Ludey,	Tannehill,
Evans,	Malin,	Tetlow,
Fackler,	Marshall,	Thomas,
Farrell,	Mauck,	Ulmer,
Fess,	McClelland,	Wagner,
FitzSimons,	Miller, Crawford,	Walker,
Fluke,	Miller, Fairfield,	Watson,
Fox,	Miller, Ottawa,	Winn,
Hahn,	Moore,	Wise,
Halenkamp,	Norris,	Woods,
Halfhill,	Nye,	Worthington,
Harbarger,	Okey,	Mr. President.

So the proposal passed as follows:

Proposal No. 24 — Mr. Cordes. To submit an amendment to article II, section 33, of the constitution. — Relative to requiring the general assembly to pass laws relative to compensation of employes.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SECTION 33. For the purpose of providing compensation from a state fund, to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a fund to be created and administered by the state and by compulsory contribution thereto by employers; determining the terms and conditions upon which payment shall be made

therefrom and taking away any or all rights of action or defenses from employees and employers but no right of action shall be taken away from any employees when injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard; fix rates of contribution to such fund according to the general rule of classification and to collect, administer and distribute such fund and to determine all rights of claimants thereto.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. Roehm arose to a question of privilege and asked that his vote be recorded on the motion of Mr. King to amend the minority report to Proposal No. 291. His name being called, Mr. Roehm voted no.

Mr. DWYER: I desire to call attention to Proposal No. 241, the special order for 11:40 o'clock a. m.

The PRESIDENT: The question before the Convention is Proposal No. 241 and the secretary will read the pending amendment.

The SECRETARY: The pending amendment is the Fackler amendment as it will appear if the amendment by Judge Nye is agreed to. The question is on the adoption of the amendment of Judge Nye which would amend the Fackler amendment. The amendment of Mr. Fackler reads as follows:

Strike out lines 11 to 16 inclusive and in lieu thereof insert the following:

"Any judge of a court of record of this state, may be removed from office by the governor, whenever after due trial as may be provided by law, it shall be found that such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that such judge has been guilty of misconduct in office involving moral turpitude, the persistent violation of a clear mandate of the constitution, intoxication while attending to the business of the court, gross inattention to the duties of the office or conduct tending to bring the court into disrepute. Laws shall be passed providing for the creation of commissions having authority to hear and determine the truth of any such charges and prescribing the methods of procedure with reference to the same."

The Nye amendment reads as follows:

Strike out of the amendment offered by Mr. Fackler the following beginning with line 5: "such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that."

The PRESIDENT: The question is on the adoption of the amendment.

The amendment was not agreed to.

The PRESIDENT: The question is on the amendment of the member from Cuyahoga [Mr. FACKLER].

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Mr. RILEY: How does that apply to the original proposal?

The SECRETARY: It strikes out lines 11 to 16. It takes out the last paragraph of the proposal.

Mr. PECK: It substitutes impeachment by commission instead of by the supreme court.

The amendment was agreed to, sixty members, on division, voting in the affirmative.

The PRESIDENT: The question is on the proposal as amended.

Mr. BROWN, of Lucas: I desire to inquire of the author of the amendment which now stands as a second paragraph of the proposal whether or not he intends the second paragraph to embrace the judges of the supreme court? In my opinion it does.

Mr. FACKLER: It does include all the judges of courts of record; therefore it would include the judges of the supreme court.

Mr. PECK: Then does it not conflict with section 1? I think section 1 does conflict with the amendment just adopted. One provides for one method and the other for another.

Mr. FACKLER: Both may exist.

Mr. PECK: There can not be two remedies.

Mr. FACKLER: Are there not two remedies provided in the present constitution, one by impeachment and one by a joint resolution of the general assembly?

Mr. PECK: Look at your amendment. The first says it takes two-thirds.

Mr. FACKLER: The second is removal procedure.

Mr. PECK: It is all the same. I submit that as you have it now this proposal ought to be rewritten and made to harmonize. It is not in condition to be passed. It would bring ridicule on the Convention to pass it in its present state.

Mr. DWYER: I suggest that the original proposal could be read in connection with the amendment. You have not read that.

The SECRETARY: That has been stricken out.

Mr. STEVENS: I desire to offer an amendment the necessity for which seems to be apparent. In the Fackler amendment it says "intoxication while attending to the business of the court." I move that we strike out "while attending to the business of the court".

Mr. DOTY: The rule provides that all amendments shall be submitted in writing.

The PRESIDENT: The secretary will reduce that amendment to writing.

Mr. WINN: I offer an amendment.

The PRESIDENT: The member from Tuscarawas [Mr. STEVENS] has the floor.

Mr. STEVENS: I do not think it is necessary to do more than state the proposition. The Convention certainly should not recognize the right of any judge to go out at night and get loaded up. I think a judge should be removed if he is intoxicated, even if he is not sitting on the bench.

Mr. STILWELL: I move that the amendment be laid on the table.

Mr. STEVENS: And on that I demand the yeas and nays.

The amendment of the delegate from Tuscarawas was reduced to writing and read as follows:

Strike from the amendment "while attending to the business of the court."

The PRESIDENT: The motion was made to table that amendment and the yeas and nays were demanded. The question is on laying the amendment on the table.

Mr. DOTY: A point of order. There is no such a thing as a Fackler amendment.

The PRESIDENT: The question is on laying the amendment on the table.

Upon which the yeas and nays were taken, and resulted — yeas 15, nays 85, as follows:

Those who voted in the affirmative are:

Brattain,	FitzSimons,	Malin,
Davio,	Hahn,	Marshall,
DeFrees,	Holtz,	Partington,
Fackler,	Kunkel,	Peck,
Farrell,	Leslie,	Roehm,

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beatty, Morrow,	Harter, Stark,	Read,
Beatty, Wood,	Henderson,	Redington,
Beyer,	Hoffman,	Riley,
Bowdle,	Hoskins,	Rockel,
Brown, Pike,	Hursh,	Rorick,
Cassidy,	Johnson, Madison,	Shaw,
Cody,	Johnson, Williams,	Smith, Geauga,
Collett,	Kehee,	Smith, Hamilton,
Colton,	Kerr,	Solether,
Cordes,	Kilpatrick,	Stalter,
Crosser,	King,	Stamm,
Cunningham,	Knight,	Stevens,
Donahey,	Kramer,	Stewart,
Doty,	Lambert,	Stokes,
Dunlap,	Lampson,	Taggart,
Dunn,	Leete,	Tannehill,
Dwyer,	Longstreth,	Tetlow,
Earnhart,	Ludey,	Thomas,
Elson,	McClelland,	Ulmer,
Evans,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Norris,	Weybrecht,
Halenkamp,	Nye,	Winn,
Halfhill,	Okey,	Wise,
Harbarger,	Peters,	Woods,
Harris, Ashtabula,		

So the motion to table was lost.

The PRESIDENT: The question now is on the adoption of the amendment.

The amendment was agreed to.

Mr. ELSON: I offer an amendment.

The amendment was read as follows:

In line 11, after the word "state," strike out the word "may" and insert "shall."

Mr. HOSKINS: I have been sitting here trying to keep from exposing my ignorance, but I can not do it any longer.

VOICES: Agreed.

Mr. HOSKINS: And I think some of those crying "agreed" are just as ignorant as I am. I would like to know who is sponsor for this proposition and where do you find it? I do not know who is handling this thing.

The SECRETARY: This amendment you will find on page 2 of the journal of April 18, at the bottom of the page. The Crosser amendment has been put into

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the proposal and that refers to the first line of the proposal.

Mr. HOSKINS: Has this ever been printed any place other than on page 2 of the journal of April 18?

The SECRETARY: No.

Mr. HOSKINS: I hope before we get through some one who has had this bill in committee will get up and tell the Convention what they want to do and explain the purpose of it. Maybe others are smart enough to know what they are doing, but I do not. Some one ought to explain it. I have not gotten a sensible word out of the whole thing from start to finish.

Mr. STOKES: I wish to offer an amendment.

Mr. ELSON: Don't we get a vote on the last amendment?

The PRESIDENT: By consent of the member from Montgomery [Mr. STOKES] we will take a vote on the amendment of the delegate from Athens.

Mr. ELSON: This takes out of the hands of the governor all discretionary power. If a judge has been tried and convicted, according to this section, the governor will have no power to leave him in office. He must remove him. When a jury pronounces a man guilty the judge has no power to let him off.

Mr. FACKLER: As I originally drew a proposal which was to be introduced, but which I refrained from introducing on account of Judge Dwyer's proposal, the governor was given when charges were filed with him the right to appoint a commission whose duty it would be to try the judge and ascertain the truth or falsity of the accusations made against him. As I see it there should be some power reserved over such a commission which may be hereafter established by the legislature under the amendment now incorporated in the proposal. The legislature should provide some means of trying the truth or falsity of the charges filed according to law against any judge of a court of record. Now it is no harm to permit the governor to have a sort of supervisory discretion over the finding of that commission. The probabilities are, if the bill were drawn creating a commission with authority to try judges against whom charges have been made, there would be no review provided, and it would leave it discretionary with the governor whether he should be removed, but he would not remove a judge unless there would be good reasons for the finding of the commission.

Mr. ELSON: If a judge has been properly tried by such commission, is there any further doubt as to his guilt? Would it be the proper thing for the governor to have discretionary power to pronounce a man absolutely innocent? There is only one of two things to be done. He must be removed or not removed.

Mr. FACKLER: There might be extenuating circumstances. For instance, it might be found that the judge is incapacitated from performing his duties by mental or physical infirmity extending over six months and the commission would not have any discretion in their finding if that were true, but the governor would have discretion to say that the man is sick of a temporary disease and we will not remove him. You give the governor a chance to relax the rigor of the law.

Mr. BROWN, of Lucas: The question is, shall the word "may" be charged to "shall"? I call the attention to the next line of the amendment: "Whereas after due

trial as may be provided by law." If the trial is in the hands of the general assembly we know it can provide for the granting of a new trial. Therefore there may be abundant safeguards, but when after due trial he has been found guilty it seems to me there is no doubt that he should be removed, and I think there should not be any discretion or any tribunal after that. But in framing the law it is possible to provide for every contingency referred to by the member from Cuyahoga [Mr. DOTY] and I hope the change will be made and made mandatory.

Now, a word in answer to a suggestion to which someone ought to say a word in response. We have voted definitely to postpone any recall. That there is great criticism of the present method of removing judges there is no doubt. We are expected to do something. Our present constitution provides two ways for removing a judge, one by impeachment substantially as here, and the other is by joint resolution, two-thirds of the general assembly concurring. We know that the general assembly is in session not to exceed four months out of each twenty-four, so that both methods for the removal of judges not fit to hold office are of little value in practice. This proposal as it now stands, when it is made mandatory, will put within the power of the general assembly the task of providing summary means by due control to remove any judge of any court of record, from the supreme court of the state down to the probate court, by a quick proceeding and an impartial trial, not by other judges unless the general assembly sees fit to so provide, but by a commission to be provided by law, which will be in harmony with the prevailing opinion of the state. It seems to me when the amendment is adopted the proposal should pass.

Mr. WATSON: I move a recess until 1:30 o'clock p. m.

Mr. DOTY: Wait a minute.

Mr. WATSON: All right.

Mr. DWYER: I move that the proposal and pending amendment be referred to a select committee of five, to be appointed by the president, with leave to report at any time.

I move this because there is so much difference among the prominent lawyers as to the best plan. We want to agree on the plan and I make this suggestion.

The motion was carried.

Mr. WATSON: I move that we recess until 1:30 o'clock p. m.

The motion was carried.

AFTERNOON SESSION.

The Convention was called to order by the president.

The PRESIDENT: The subcommittee to which will be referred Proposal No. 241 will be constituted as follows: Mr. Dwyer, Mr. Brown, of Lucas, Mr. Hoskins, Mr. Peck and Mr. Fackler.

The next business in order is Proposal No. 7, by Mr. Nye.

The proposal was read the second time.

Mr. ANDERSON: Before we proceed, by unanimous consent I would like to vote on the proposals that were adopted last evening and this morning.

Limiting Power of General Assembly in Extra Sessions.

The unanimous consent was given, the member's name was called, and on each of the Proposals Nos. 122, 209 and 24 he voted in the affirmative.

The PRESIDENT: The gentleman from Lorain is recognized.

Mr. NYE: Gentlemen of the Convention: Section 8, article III, of the present constitution now provides for a special session of the legislature, to be called by the governor, and when the legislature is in session under such call there is no limit to the amount or kind of business it may transact during such special session. It has been my observation for a great many years that governors have hesitated about calling a special session of the legislature because of the fact that they might go into general legislation rather than perform the duties for which they were called together and then adjourn. The purpose of the amendment is to provide that the legislature, when called together in extraordinary session by the governor, shall transact only such business as the session is called for, unless as is provided in the proposal, the governor by special proclamation—a public proclamation—shall request some other work to be done. I read the proposal for the purpose of calling attention to the effect of these provisions:

The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in such proclamation the purpose for which said special session is called and no other business shall be transacted at said special session except that named in said proclamation, or in a subsequent public proclamation issued by the governor during said special session.

Of course, it is well known that when the legislature gets together in its regular session it performs such duties as it is supposed the state desires to have performed or that any member of the legislature can think of that ought to be done at that regular session. Many times, or frequently during the course of a year, when the legislature is not in session, the governor has some special matter that he thinks the legislature should enact, and he calls together the legislature for the purpose of performing those duties. Experience with legislatures heretofore has been that when they are called together in extraordinary session to perform that particular duty for which they are called together, they go forward and perform other duties and pass general laws. The object of this is to prevent that, so that the governor will not feel embarrassed by calling a special session of the legislature. It will be observed that there is a provision in this proposal that if other work is desired to be done by the legislature, and if the governor shall request it by proclamation, that work can be done. Therefore, if the legislature is called together by the governor a proclamation is issued for that purpose. After they have come together if any member of the general assembly or any citizen of the state, during the time the general assembly is in session, shall be able to convince the governor that other business ought to be transacted then this proposal is broad enough to provide for that, because in the last clause of the proposal it is provided that they may do such work as is named in that proclamation or in a subsequent proclamation issued by the governor during that special session. It

seems to me the governor should have the right to call the legislature together to perform a particular duty, and when they have done that duty they ought to adjourn unless the governor can be satisfied that there is something else for them to do. In other words, if a member of the legislature or a citizen of the state can satisfy the governor that other legislation ought to be done the governor can by a proclamation ask to have it done. That is the purpose of this amendment. I do not care to weary you with any further remarks. It seems to me this matter is one that should be passed and submitted to the people. It was submitted to the committee on Legislative and Executive Departments, and, as I understand, it was reported unanimously by the committee. I therefore ask your favorable consideration of that report.

Mr. PIERCE: I would like to inquire if the judgment of all the people of the state is not as good as the judgment of the governor?

Mr. NYE: Quite likely, but it is a question for the governor whether he will call a special session, and if the people of the state could convince the governor that a special session ought to be called he would call it for that purpose, but it ought to be left to the governor to say whether it should be called and to say what business should be done at that session.

Mr. THOMAS: As one of the members of the Legislative committee I opposed the proposal in the committee, and I am opposed to the proposal now that it has come before the Convention. It is simply another method of taking power away from the representatives of the people to legislate for their benefit and placing it in the hands of the executive department. It seems to me we need a check on the governor for calling special sessions just as much as we need a check on the legislature to prevent legislation when special sessions are called. There is not a member of the Convention here who will not admit that had it not been for the fact that the governor was afraid that by calling a special session to redistrict the congressional districts of Ohio during the last year that such a special session would have been called for that purpose. He was afraid some other legislation might be passed, and that check was a good one because it would have entailed a heavy expense on the citizens just to have a district for one more congressman from Ohio, and this can be taken care of later on. The legislature, so far as I have been able to ascertain, has never really abused the privilege of legislation when called together in special session. There has been only one time when their session extended to any great length, and that was when we adopted the new municipal code, when it was really necessary that a long session should be held. The last one held was held in 1909, and only a few bills, necessary for the welfare of the people, went through other than those which the governor called the special session to pass and I see no necessity for changing the constitution in that respect. I think the legislature should have authority in itself to determine what measures it should pass or not pass, when called together in special session, and it may be that the people through the initiative may petition for the passage of some needed legislation just at that time, and they have just as much reason and just as much right to ask for it as the governor has to call a special session

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for the things that he may want. I think this proposal ought to be defeated.

Mr. Hursh here took the chair as president pro tem.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

In line 11, after the word "proclamation" insert "or message to the general assembly."

Mr. WOODS: This proposal as it stands now provides that the governor may by proclamation call attention to something and ask the legislature to do it. The ordinary way of doing this is by message. It seems to me it would be foolish to issue a proclamation when a message would take the place of it.

Mr. ELSON: I think the amendment is all right, and I want to say a word upon the proposal as a whole. My friend from Cuyahoga [Mr. THOMAS] has made reference similar to references I have heard on various occasions to the effect that legislators are the representatives of the people, while the governor is referred to as if he were some higher power, entirely above the people and the legislature, and represented something else. I cannot quite imagine what he means. Does not the governor represent the people as well as the legislature represents the people? I think a little more so.

Mr. DOTY: Does the member undertake to say that the governor of the state was elected with any reference to his legislative power or ability, or was charged with any legislative function?

Mr. ELSON: I didn't say anything about that.

Mr. DOTY: That is what you were talking about.

Mr. ELSON: I am talking about his representing the people. Of course he has some legislative functions. The fact that he can make suggestions to the legislature in messages and proclamations and that he has the veto power shows that he has some legislative function.

Mr. DOTY: Outside of the veto power there is no such thing as legislative functions connected with the governor.

Mr. ELSON: He can suggest.

Mr. DOTY: If this proposal gave him legislative functions would it not be mixing the two departments?

Mr. ELSON: He can suggest—

Mr. DOTY: And that's all he can do. The legislature is not obliged to pass anything he suggests.

Mr. ELSON: But I want to refer for a moment to a subject I just mentioned, the representative feature as applied to the governor, or as applied to the legislature. Suppose the governor is elected by sixty per cent of the vote and his opponent gets forty per cent. The whole membership of the legislature may receive sixty per cent, while their defeated opponents receive forty per cent. Thus the governor represents the very same number of voters that the legislature represents. It is very seldom indeed that any measure in the legislature is passed by a unanimous vote in either house, and if a single member of either house votes against the measure, and the governor favors that measure, the governor represents more of the people than the members who voted for it. He represents the whole sixty per cent of the voters who voted for him. So you see the governor represents the people quite as fully as the legislature on the passage of any measure. Why should we speak of the legislature as being representative of the people, and

not use the same term with reference to the governor? I would like to see Judge Nye's proposal passed without any change except the amendment offered by the delegate from Medina [Mr. WOODS].

Mr. KNIGHT: It seems to me that this provision is one which should be passed. It is found in many of the constitutions of the different states, and in some of the most progressive states in the Union. It is a well-known fact that extraordinary sessions of the general assembly are called for extraordinary reasons to take care of extraordinary matters. I think it is the general opinion of the people of the state that the regular sessions of the general assembly are adequate to transact all the ordinary business of the state, but emergencies have arisen in times past when it would have been desirable, and it was generally so regarded, to call the general assembly in special session. The question, however, at once arose, Is there any way of stopping the legislators from going on indefinitely upon any and all subjects when once they are called for the purpose of legislating on the emergency measure? It seems to me that the measure should pass. There is, however, one amendment that commends itself to me, and it is one that I have drafted from the constitution of California. This proposal does not make any provision by which the general assembly can provide for the running expenses of such extraordinary session, and my amendment simply takes care of that.

The amendment was read as follows:

At the end of line 11 change the period to a comma and add, "but the general assembly may provide for the expenses of the session and other matters incidental thereto."

Mr. HARRIS, of Hamilton: I trust the proposal of Judge Nye will pass. It seems to me that the argument of the member from Cuyahoga is very wide of the mark and has no relevancy to the proposal, in so far as he seems to forget that the general assembly called in special session is for an emergency and the governor is given the power to determine when the emergency exists.

It has nothing at all to do with the functions of the general assembly in regular session. It is only when something occurs that we feel is of sufficient moment for the governor to take the great responsibility of calling a general assembly together, and there is no other power to convene the general assembly that this proposal provides for; and as the governor assumes that responsibility, and is wisely given that responsibility by the people, he ought further to determine, since the general assembly, within its power, at the regular sessions enacts all the legislation which in its judgment is proper, that that body could not at this special session, called to meet a great emergency, transact business other than that for which it was called. It seems to me that the gentleman from Cuyahoga [Mr. THOMAS] has confounded the functions of the general assembly when it is performing the routine work in regular session with the emergency session called by the governor.

Mr. THOMAS: Do you not think there should be just as great a check on the governor's calling a special session as there should be on the legislature when they are called into special session?

Mr. HARRIS, of Hamilton: Absolutely not. If a man is elected governor and is worthy to be governor,

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he is not an automaton or a stick. He is elected because he represents something, and that something is the great people of the great state of Ohio.

Mr. THOMAS: Is not that true also of the legislature?

Mr. HARRIS, of Hamilton: Yes, during their regular sessions.

Mr. DOTY: No, for the two years.

Mr. HARRIS, of Hamilton: Only during their regular sessions.

Mr. ELSON: Will not public opinion regulate the action of the governor above all things?

Mr. HARRIS, of Hamilton: There is no question about that.

Mr. DOTY: All of the members who are in favor of annual sessions vote for this. That is its chief merit. No general assembly would lay down its authority with any idea that it was going to turn it over to the governor, certainly not any further than it has been turned over to him up to date, namely, the mere power to call them together. Who is the governor of Ohio that he knows more what the people want than the legislature? He never was elected to legislate as the legislature was.

Mr. LAMPSON: Harmon was.

Mr. DOTY: Yes, perhaps he was; but he didn't legislate much. The governor never was elected to legislate. The only power he has is his veto, and that should be taken from him, and that is legislative in a large sense. Now you are undertaking to set the governor up to be a man who knows more about what ought to be passed in the way of laws than all of the legislature.

Mr. STOKES: Suppose that a great calamity happened in the state of Ohio, and relief was needed right then and there. Should not the power rest some place so that we could call the legislature together?

Mr. DOTY: We have that now. I don't contend that we have not.

Mr. STOKES: And should you not have the right to limit the action of the legislature?

Mr. DOTY: Not unless you want to do some safeguarding of the legislature. We have been here safeguarding things all winter. Now we are going to safeguard the legislature. We are going to put a brick wall around it, and put the governor on top of a cupola with a gun to safeguard the legislature.

Mr. STOKES: Because the governor has to safeguard the legislature in an emergency, do you want the door open so that all kinds of legislation can be entered upon?

Mr. DOTY: We have had that rule for sixty years and I defy you or any other man to show that the legislature ever abused that power.

Mr. STOKES: Don't you think this Convention ought to shut that off?

Mr. DOTY: Oh, yes; you ought to safeguard everything. All we have been doing here is to "safeguard."

Mr. LAMPSON: Please give us the definition of the word "safeguard."

Mr. DOTY: To safeguard is to let people think they are doing something, and not let them do it. Sometimes you put it in the shape of inhibitions on single tax, which doesn't amount to anything, and sometimes you limit the liquor—

Mr. LAMPSON: I thought it was an inhibition against the single tax.

Mr. DOTY: Oh, either way.

Mr. KNIGHT: Is it not true that since 1851 the governor has been clothed with the power to recommend to the legislature at its regular sessions such measures as he deems expedient, and for the last sixty-one years, whenever special sessions were called under the constitution, was it not the governor's special privilege and his duty to notify the legislature as to the purpose for which they were convened? Now the question is whether we add anything to him in that regard or not.

Mr. DOTY: He has about as much function under the constitution on legislation as those other executive officers have in making reports. All he can do is to recommend, and when he gets through with that, he is through.

Mr. KNIGHT: Have you forgotten that since you were in the legislature the governor has been given the veto power?

Mr. DOTY: Yes, and to that extent he has a legislative function; but you want to go ahead of that and have him say what the legislators shall pass. You want to set up the governor as the beginning and the end, and if the legislature gets a shot in the middle, they are lucky.

Mr. KNIGHT: It is strange how things change. A lot of us who awhile ago thought the legislature was worthless are now defending it for all it is worth, while some of us are still thinking of "safeguarding."

Mr. DOTY: There it is, "safeguarding."

Mr. KNIGHT: I am using your word.

Mr. DOTY: No, sir; you are using the word that one hundred and nineteen of us have been using all winter long.

Mr. KNIGHT: I am trying to ask a question—

Mr. DOTY: You have made an awful stab at it. I thought it was a statement, not a question.

Mr. KNIGHT: I have heard something said about men who answered questions before they were asked.

Mr. DOTY: I think I can answer yours before I hear it.

Mr. KNIGHT: Is not this in line with what we have been doing in the way of safeguarding?

Mr. DOTY: That is just the trouble with the member. He voted for the initiative and referendum because he thought he was checking somebody from doing something. I was for the initiative and referendum for opposite reasons. The trouble is that the legislature is now prohibited—prevented—from doing what it wants to. I have seen houses sit here wanting to do something and not allowed to do it, and the power that prevented it was not in this room either.

Mr. KNIGHT: Haven't we had the same difficulty here that some people have wanted to do something and somebody else has kept them from it?

Mr. DOTY: The member from Franklin has done his share, but I forgive him.

The delegate from Lucas, Mr. Ulmer, here sought recognition.

The PRESIDENT PRO TEM: Does the gentleman desire to ask a question?

Mr. ULMER: No; I want the floor.

The PRESIDENT PRO TEM: The gentleman from Cuyahoga [Mr. Doty] has the floor.

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Mr. ULMER: But his time is up.

The PRESIDENT PRO TEM: No; he has seven minutes.

Mr. HARRIS, of Hamilton: Your whole argument, Mr. Doty, against this Proposal No. 7, is that it gives legislative power to the governor. Is not that it?

Mr. DOTY: Yes; in a limited way. I thank the gentleman for calling what I have said an argument. I didn't know I had gotten to any argument.

Mr. HARRIS, of Hamilton: As a matter of fact, is there any merit in your argument that the power of the governor is legislative?

Mr. DOTY: It is greater than that of the legislature.

Mr. HARRIS, of Hamilton: Is the power of the governor to legislate in a special session—

Mr. DOTY: I object to you embodying—

Mr. HARRIS, of Hamilton: Wait until I state my question. Is the power of the governor to legislate in a special session any greater than his power to legislate in a general session? Can he do more than recommend?

Mr. DOTY: Not a thing, but you want to make it that way.

Mr. HARRIS, of Hamilton: How?

Mr. DOTY: You want to have the governor set up the pins as to what you can do and cannot do. It is not so much as to what you may do in the general assembly, but as to what you may not do. If you give the governor the power to say what you cannot do, you are giving him a tremendous power.

Mr. HARRIS, of Hamilton: That has nothing to do with the main question. In a special session has the governor any greater power to legislate than in a general session?

Mr. DOTY: Yes.

Mr. WINN: We are debating under a five-minute rule, and the member from Cuyahoga has had the floor for twelve minutes:

The PRESIDENT PRO TEM: I stand corrected. I thought the gentleman had twenty minutes.

Several delegates moved to extend the time of the delegate from Cuyahoga [Mr. Doty].

SEVERAL DELEGATES: No.

Mr. DOTY: I don't want it.

Mr. ULMER: Some one yesterday said that this Convention was costing \$300 a day.

A DELEGATE: \$600.

Mr. ULMER: That is still worse. If the general assembly is called together by the governor there is another set of gentlemen in the other room, and that makes expenses still higher, and I do not think after they have been called together by the governor, and have finished the work that they were called for, they should be given the privilege of fooling away their time as we have done, and spending the taxpayers' money.

Mr. THOMAS: Do you know the legislators get their salaries whether they meet or not?

Mr. ULMER: There are other expenses to be added.

The PRESIDENT PRO TEM: The question is on the adoption of the amendment of the delegate from Franklin.

Mr. HALFHILL: I believe this proposal ought to prevail. It is exceedingly strange to me how some members take positions against proposals here under cer-

tain conditions, and then under certain other conditions occupy an entirely different position. It seems as if the matter depends on what branch of government is before the Convention; that determines the particular denunciation. For two or three weeks we heard the legislature denounced as being unfit to be trusted with any of the rights and privileges of a legislative body. For two or three weeks we heard the courts denounced as being unfit to pass upon the rights and privileges and liberties of the citizens. Then later the gentleman from Cuyahoga appears as the champion of the short ballot in state affairs in which he desires to invest the governor with all the powers of all the present executive departments of the great state of Ohio, and put the governor up in the spotlight so that we may hold him responsible for all that occurs. In other words, put him up where he has all the power that could be conceived as being conferred upon a governor. That was the argument made at that time. Today we have the governor denounced as though there should be some other restraint or restriction extra constitutional put upon him, so that by observing the particular branch of the state government, and the particular occasion when it is up for consideration, we can find out who it is that is ready to denounce that department and for what purpose. Now, as an aphorism, this constant faultfinding is like sand in the sugar, it not only destroys the sweetness of life, but puts your teeth on edge. That is the way with these denunciations of the different departments of government. If it is right at one time to clothe the governor with all power, is it not right to dignify him with the right and privilege and prerogative in case of emergency to call the legislative branch of government together, and prescribe the limitation of what it shall do? That is all there is in it, and we know from our own past experience that often there have been times when it would have been to the advantage of the people of the state of Ohio if the chief executive could have called the legislature together to perform a particular thing, but the executive was afraid that the legislature would undertake for its own reasons to do something that was not to the advantage of the people of Ohio at that particular time. I submit, this proposal ought to prevail; and the argument made against it by the gentleman from Cuyahoga does not accord with the position which he took upon the short ballot, which combines all the executive departments in this state into the office of governor, and virtually places that official in "the fierce light that beats around a throne."

Mr. WINN: I want to say just a word in favor of this proposal, and at the same time I want to be consistent. A few days ago I was in favor of the referendum, while my friend from Allen [Mr. HALFHILL] was opposed to it. He was opposed to it because he had such unlimited confidence in the legislature. I was in favor of it because of my limited confidence in the legislature. I am still in favor of this proposition because of my limited confidence in the legislature. He is in favor of it because of his unlimited confidence in the legislature.

Mr. HALFHILL: I never was a member of that body.

Mr. WINN: Really, we are making "much ado about nothing."

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Section 8 of article III of the constitution reads as follows:

He [the governor] may on extraordinary occasions convene the general assembly by proclamation, and shall state to both houses when assembled the purpose for which they have been convened.

That is very simple. When he calls the legislative branch of the government together, he says to them, "I have called you together to do thus and so." Presumably when they have concluded the work for which they were convened, they will, like wise legislators, adjourn and go home. But it sometimes happens that members of the general assembly get it into their heads that after being convened in extraordinary session they will do what the governor wishes them to do, and then go ahead and do what they want to do, and the consequence has been that in almost all cases the governor has hesitated, even when the demands were strong, to convene the general assembly in extraordinary session. This proposal does nothing except to say that when they have been convened, and the governor has laid before both houses the business for which they have been called together, and they have concluded their work, they shall adjourn and go home. Pick up any newspaper in the state after the general assembly has been in session a short time and you will see them praying for the day to come when the legislature will adjourn.

Mr. ANDERSON: Was not the change providing that the general assembly meet every two years made because they were making too much law?

Mr. WINN: There is no question about that, and Mr. Doty was in the legislature at that time and supported it.

Mr. ANDERSON: And is not this proposal entirely consistent with that idea?

Mr. WINN: Altogether consistent with all the things we have been doing here. It simply means to add to this section 8 of article III a provision that when the general assembly is called the work for which it was convened shall be stated to them and it can only do the work for which it was called.

Mr. ANDERSON: The theory is that they should not be called together for making any law except in case of an emergency?

Mr. WINN: Except in some cases of emergency when the public interest demands it, and the demand is strong. Then the governor will call the general assembly together and tell the general assembly what is wanted, and if the general assembly agrees, it will simply pass the law and adjourn; otherwise, adjourn without passing it.

Mr. HARRIS, of Hamilton: Do you not think that the proposal is wise also for the reason that with the knowledge on the part of the people that the legislature can consider, when called in extraordinary session, only the things that the governor has mentioned, and there would be no outside special interest to harass the legislature, that that temptation would be removed?

Mr. WINN: That probably is true.

Mr. PECK: I think we have been spending a good deal of time about nothing. I rise to state what I recall about special sessions, and that is all. I remember but

one special session of the legislature. Ten or fifteen years ago—I think some of the gentlemen here were members—the general assembly was called in special session by proclamation of the governor to pass a law relating to the board of public works in the city of Cincinnati. They got together, and like good boys, they legislated the board of public works of the city of Cincinnati out and legislated another board in, which happened to be of different politics from the one they put out, and thereupon they adjourned; and thereupon the supreme court promptly decided that law to be unconstitutional. Mr. President I move the previous question.

The main question was ordered.

A further vote being taken, the amendment of the delegate from Franklin was carried.

A further vote being taken, the amendment of the delegate from Medina was carried.

The PRESIDENT PRO TEM: The question is on the passage of the proposal as amended.

Mr. PIERCE: On that I demand the yeas and nays.

The PRESIDENT PRO TEM: This is on the passage of a proposal and the roll would be called under rule.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 82, nays 24, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Okey,
Antrim,	Harbarger,	Partington,
Baum,	Harris, Ashtabula,	Peck,
Beatty, Morrow,	Harris, Hamilton,	Peters,
Beatty, Wood,	Harter, Huron,	Pettit,
Beyer,	Henderson,	Read,
Bowdle,	Hoffman,	Redington,
Brattain,	Holtz,	Riley,
Brown, Lucas,	Johnson, Madison,	Rockel,
Brown, Pike,	Johnson, Williams,	Roehm,
Cassidy,	Jones,	Rorick,
Cody,	Kehoe,	Shaw,
Collett,	Kerr,	Smith, Geauga,
Colton,	Knight,	Solether,
Cordes,	Kramer,	Stalter,
Cunningham,	Lambert,	Stamm,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stokes,
Dwyer,	Longstreth,	Taggart,
Elson,	Ludey,	Tannehill,
Evans,	Marshall,	Ulmer,
Fackler,	McClelland,	Wagner,
Farnsworth,	Miller, Crawford,	Walker,
Fess,	Miller, Fairfield,	Weybrecht,
FitzSimons,	Miller, Ottawa,	Winn,
Fluke,	Norris,	Wise,
Fox,	Nye,	Woods.
Hahn,		

Those who voted in the negative are:

Crosser,	Hoskins,	Pierce,
Davio,	Hursh,	Smith, Hamilton,
Donahay,	Kilpatrick,	Stevens,
Doty,	Kunkel,	Stilwell,
Earnhart,	Leslie,	Tetlow,
Farrell,	Malin,	Thomas,
Halenkamp,	Mauck,	Watson,
Harter, Stark,	Moore,	Mr. President.

So the proposal passed as follows:

Proposal No. 7—Mr. Nye. To submit an amendment to article 3, section 8, of the constitution.—Relative to calling extra sessions of the general assembly.

Limiting Power of General Assembly in Extra Sessions—Regulating State Printing.

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE III.

EXECUTIVE.

SECTION 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in said proclamation the purpose for which said special session is called and no other business shall be transacted at said special session except that named in said proclamation or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The president here resumed the chair.

The PRESIDENT: The next is Proposal No. 261, Mr. Halenkamp.

The proposal was read the second time.

Mr. HALENKAMP: The purpose of this proposal is to correct a seeming mistake in the old constitution. Article XV, section 2, of the constitution, reads as follows:

The printing of the laws, journals, bills, legislative documents and paper for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, by such executive officers, and in such manner, as shall be prescribed by law.

The intention of the first part of the proposal is to take out of the old constitution the word "executive officers." The reason for this is that another part of the constitution specifies that the executive officers of the state shall be the governor, secretary of state, treasurer of state, auditor of state and the attorney general. They are the executive officers. The legislature has created and established a department of public printing, and at the head of that department has put a supervisor of public printing. It is his duty to attend to all the printing of the state, to test the paper and attend to other details. After he gets the bid he is required by law to take it to the printing commission, which consists of the secretary of state, auditor of state and attorney general. Now it was necessary, in order to conform to the constitution, for the legislature to establish this printing commission of executive officers, and it did establish the printing commission consisting of the secretary of state, auditor and attorney general. When the supervisor of public printing, whose duty it is to take the bids, gets the bids, he takes them to the commission. The attorney general is always busy with his law, the secretary of state is busy with his duties, and the auditor of state has his work to do; not having had any connection with the bids before they were received from the supervisor of public printing, they don't know anything about the job at all, and they have to take his word. I have it from him and them that they usually say, "Well, we will accept

your word for it." But there have been times when he has not been able to get a majority of them together. The work of the department has been crowding. Letters have been sent asking when this report and that could be had, and it was impossible to get the printing commission together.

The same has been true of bills for printing. They would all come in to the supervisor, and he must refer them to the printing commission. About two years ago the printing commission decided to hold sessions on the first and fifteenth of each month and they went on for a month or two, and then found it was impossible to hold those meetings, and the result is when the bills are received they are put in their desks, and sometimes they stay there until the end of the month, when the time for discount has gone by. The state has by reason of that, lost a thousand or so dollars every year in discounts.

Mr. WINN: Is the supervisor of printing a constitutional officer?

Mr. HALENKAMP: No, sir; I have an amendment to take care of that. I realize it is going too far to specify the duties for that officer in the constitution. The amendment is to strike out of line 4 the word "papers," and insert "supplies," and in line 7 to strike out the words "by the state supervisor of public printing," and in line 8 strike out the word "departments." Then it would read:

The printing of the laws, journals, bills, legislative documents and supplies for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or may be done by the state in such manner as shall be prescribed by law.

The intention of the first part of the proposal was to get away from the red tape and facilitate the matter, and let the legislature say that the department of printing shall attend to this or adopt some other means. I do not believe the legislature should be required to enact laws requiring the executive officers to do this, because the executive officers have not the time to give it the attention it requires.

I do not think the second part of the proposal requires any explanation. The idea is, when the volume of printing reaches such proportions that the state thinks it should be in the business itself, it should be able to do so. Our national government does all of its own printing. It is done under its own supervision, and it owns the plants and the machinery. Big business houses that get out a big amount of printing have their own printing departments. All over the country big concerns that get out much printing establish their own printing departments. The idea is not to establish a printing department by the state now, but only to make it possible that when the time comes and the state wants to, it may be permitted to do so.

I now offer an amendment.

The amendment was read as follows:

In line 7 strike out "by the state supervisor of public printing."

In line 8 strike out "through the department of public printing."

Regulating State Printing.

Mr. DOTY: Will the gentleman from Hamilton yield to a question?

Mr. HALENKAMP: Yes.

Mr. DOTY: What have you in mind in substituting the word "supplies" for "papers"? What supplies are there that can be printed?

Mr. HALENKAMP: Mr. Knight has just called my attention to that. The reason I inserted the word "supplies" was that I didn't think the word "papers" there included "other supplies." I have no objection to leaving the word "supplies" out, and I withdraw that much of it.

Mr. BEATTY, of Wood: In an investigation four years ago we found that the graft was all committed in the furnishing of supplies. Mark Slater is over in the penitentiary now on that very word. As Mr. Halenkamp well said the printing commission is supposed to O. K. all bills, but they don't know anything about them.

Mr. DOTY: And I want to call attention to the fact that if the gentleman put the word "supplies" in, as he said he would, he won't do what he wants to do.

Mr. BEATTY, of Wood: I move to amend Mr. Halenkamp's amendment, as follows: After the word "papers," in line 4, add "and purchase of supplies." Strike out the word "and" in line 4, and insert a comma. This is a question of graft in the state house.

Mr. HARRIS, of Ashtabula: The last point referred to by Mr. Halenkamp had considerable weight with the committee, and that is the fact that probably the state would sooner or later, perhaps sooner, have its own printing outfit. It is possible to conceive that printers might combine and put up the price. It is not very likely that they will, but as there was no provision made for this, it was thought wise that this be inserted. It met with the full approval of the committee.

Mr. PETTIT: Are you the chairman of the committee?

Mr. HARRIS, of Ashtabula: I sit at the head of the table, yes.

Mr. PETTIT: Will you tell the Convention any reason why you chose Proposal No. 261 instead of Proposal No. 160?

Mr. HARRIS, of Ashtabula: I don't think we had Proposal No. 160 before us.

Mr. PETTIT: Oh, yes you did. What did you do with it?

Mr. HARRIS, of Ashtabula: I don't think we had it.

Mr. PETTIT: I appeared before you in reference to that proposal.

Mr. HARRIS, of Ashtabula: If I am not mistaken I think we deferred action on it at your suggestion.

Mr. PETTIT: You were to report further to me about it.

Mr. HARRIS, of Ashtabula: I have no recollection of considering a proposal of yours involving those points I have an indistinct recollection of your appearing before the committee with some proposal, and then finally asking that it be deferred, and it was deferred.

Mr. DOTY: Before I offer an amendment I would like to submit it informally to see if I have met the matter that the member from Wood [Mr. BEATTY] desires. In line 4 before the first "the" insert "the purchase of stationery and supplies and," and then it goes

on this way "the purchase of stationery and supplies, and the printing of the laws, journals, bills," etc.

Mr. BEATTY, of Wood: That will cover it. I withdraw my amendment.

The amendment offered by the delegate from Cuyahoga [Mr. DOTY] was read as follows:

In line 4 before the first "the" insert: "The purchase of stationery and supplies and."

Change the capital "T" to "t."

The amendment was agreed to.

The amendment offered by the delegate from Hamilton [Mr. HALENKAMP] was agreed to.

Mr. THOMAS: I think in line 5, the words "and supplies" ought to be added, after the word "printing."

The amendment was reduced to writing and read as follows:

Add after the word "printing" in line 5 words "and supplies."

The amendment was agreed to.

The PRESIDENT: The question is on the passage of the proposal as amended.

The yeas and nays were taken, and resulted — yeas 95, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Partington,
Antrim,	Harris, Hamilton,	Peck,
Baum,	Harter, Huron,	Peters,
Beatty, Morrow,	Henderson,	Pettit,
Beatty, Wood,	Hoffman,	Pierce,
Beyer,	Holtz,	Read,
Bowdle,	Hursh,	Redington,
Brattain,	Johnson, Madison,	Riley,
Brown, Lucas,	Johnson, Williams,	Rockel,
Brown, Pike,	Kehoe,	Roehm,
Cassidy,	Kerr,	Shaw,
Collett,	Kilpatrick,	Smith, Geauga,
Colton,	Knight,	Solether,
Cordes,	Kramer,	Stamm,
Crosser,	Kunkel,	Stevens,
Cunningham,	Lambert,	Stewart,
Davio,	Lampson,	Stilwell,
Donahey,	Leete,	Stokes,
Doty,	Leslie,	Taggart,
Dunlap,	Longstreth,	Tannehill,
Dunn,	Ludey,	Tetlow,
Earnhart,	Malin,	Thomas,
Evans,	Marshall,	Ulmer,
Farnsworth,	Mauck,	Wagner,
Farrell,	McClelland,	Walker,
Fess,	Miller, Crawford,	Watson,
FitzSimons,	Miller, Fairfield,	Weybrecht,
Fluke,	Miller, Ottawa,	Winn,
Fox,	Moore,	Wise,
Hahn,	Norris,	Woods,
Halenkamp,	Nye,	Mr. President.
Halfhill,	Okey,	

Mr. Harter, of Stark, and Mr. Stalter voted in the negative.

So the proposal passed as follows:

Proposal No. 261 — Mr. Halenkamp. To submit an amendment to article XV, section 11, of the constitution. — Relative to state printing.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Regulating State Printing—Limiting Terms of County Officials.

The purchase of stationery and the printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing and supplies required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or may be done direct by the state in such manner as shall be prescribed by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: This proposal has been amended considerably and I move that it be reprinted as passed.

The motion was carried.

The PRESIDENT: The next is Proposal No. 17—Mr. Baum.

The proposal was read the second time.

Mr. BAUM: The purpose of Proposal No. 17 is so plain that it needs but little explanation. The principles involved are so simple and elementary that every delegate has probably already decided where he stands in regard to it. On this proposal, then, argument can do but little good and my remarks shall be correspondingly brief.

Let us take the first section: "No person shall be eligible for re-election for any county office to succeed himself. The term of such officer shall be four years." The language used is perhaps ill chosen, as it might be construed to mean that a county official could not hold the same office at any future time, while my intention and I think that of the committee, was that he should be ineligible only for the next succeeding four years. I shall therefore offer an amendment at the proper time to remedy that defect. What is really intended in this part of the proposal is the elimination of the second-term nuisance with its long train of evils. Long-established custom invested the second-term idea with a character and position almost sacred. Touch not the bosses annointed. He, the boss, always insists on a second term. It is regular, it is good politics, the official is entitled to a second term; but the simple reason is the party boss could scarcely get along without the second-term principle. A large part of his revenue is derived from this source, and while it is not claimed that the prohibition of a second term will take away the avocation of the boss, yet it will cripple him.

The whole theory of a second term is vicious, even though it is as wide as the nation and as old as the government. Public officials have used the power and patronage of their position to perpetuate themselves in office. In this way they have built up machines that were absolutely unbreakable and have hung on to public offices long after the second term, and long after they have ceased to be useful.

The present secretary of agriculture at Washington is a good example. His duty is to aid agriculture in every way possible. His business, as he sees it, is to build a machine that even the president of the United States dares not oppose. So Wilson has held on through three administrations and the end is not yet.

A former state dairy and food commissioner built a machine so strong that he nominated himself for a third term in opposition to public opinion and it was only by an overwhelming public sentiment that he was defeated for a fourth nomination. Under the present

system the president of the United States must descend from his exalted position to make an unseemly scramble for renomination, and the machine he has constructed to accomplish this differs only in magnitude, not the least in principle, from that known as the "organization" in nearly every county in the state.

But I submit to you, gentlemen, that a custom or system that builds up organizations to thwart the will of the people, loot the county treasuries and debauch the electorate is vicious in the extreme.

What would the single term of four years accomplish? First of all, it would improve the administration of county offices. As it is now, the greater part of a county official's first term is used in trying to secure his renomination and re-election. He must be away from his office a large part of the time, actively engaged in the work of his campaign. When in his office a great part of his time is demanded by committees, ward politicians, grafters and deadbeats. His work must necessarily be attended to by others. He becomes a mere figurehead, and by the time he is re-elected, if he is so fortunate, he feels that his deputies are more competent to run the office than he is and he acts accordingly. I have in mind a certain county official who only visited his office once or twice a month. Of course, he had efficient help, and the public business did not materially suffer, but they were not responsible to the public, and besides the public are better satisfied when they see the official himself attending to business.

Then it would reduce misappropriation of public funds. Almost every county official is guilty of the misuse of public money, but perhaps the county commissioners offend oftenest in this respect. The county commissioner, candidate for a second term, is subjected to a pressure that is almost impossible for a mere man to withstand, because the demands come from persons he can hardly afford to ignore—party boss, contractors, prominent citizens. To protect his machine the party boss demands that jobs should be given to his followers and if there are no jobs they must be provided. In this way the superintendence of a small bridge or culvert sometimes costs as much as the labor and material. Contractors are all politicians; for contracts they deliver votes. I do not refer to contracts awarded after competitive bidding, although in this there has been much cause for scandal, but to the petty contracts awarded by favoritism and where they will do the most good. Sometimes, at least, another man might have been found who would have done the work for less money. In many instances contracts that should by law have been let by competitive bidding have been so divided as to make two or more contracts. You know why. And then the "prominent citizen" wants a bridge or a road, and he controls votes—perhaps a township. Thousands of dollars in many counties of the state have been appropriated ostensibly for public roads and bridges, but in reality to insure a second term. Remove the lure of the second term and the boss, the prominent citizen and the contractor will each have only his proper influence.

Again, this proposal furnishes the means of materially shortening the ballot. The schedule can be so arranged that only one-half of the county officials are elected at the same time, and instead of twelve county officers to be voted for there will be but six, and this in turn will

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improve the administration of some of the offices. The auditors' and treasurers' offices are intimately connected and these offices should never both be changed the same year. And one county commissioner should always be chosen at an election different from the other two; the reasons are obvious.

The elimination of a second term will also reduce the necessity for graft on the part of the county official. The candidate for county office is generally a young man with very little money to spare. The expenses incident to the first campaign are a severe drain on his financial resources. He naturally supposes that when he begins drawing his official salary he can soon pay his debts and accumulate a campaign fund for his second term. In this he is doomed to disappointment. Hardly has his first term begun, which in most cases is nearly a year after his election, when he is asked to contribute to the city campaign fund and he dares not refuse. The subscription list for every charity must contain the names of the county officials. He has to help build or repair the churches, make good the fire loss of the improvident, buy tickets for every kind of society, lodge or church entertainment, and look pleasant while he makes innumerable short loans to deadbeats.

Then comes the second campaign assessment. He thought, perhaps, the former assessment was outrageous, but he sees now that it was very reasonable. Like the railroads, the boss always puts on all the traffic will bear, and he never uses his conscience when he makes this second assessment. By the time the official's second campaign is ended he is hopelessly in debt and can see no way of breaking even except by converting to his own use every dollar he can draw from the public treasury upon any pretext whatever. The total amount of money thus illegally drawn by the county officials in this state for the nine years from 1903 to 1911, inclusive, was nearly two and one-quarter million dollars. Every county in the state contributed to this sum. Of this amount \$833,000 was recovered during the same time. Of course, it cannot be justly claimed that all this graft should be charged directly to the account of the second term, but a large part of it should. Had it not been for the immense expenditure of money made necessary because he was a candidate for a second term, the official being absolutely held up, as I have tried to show, much of this money never would have been drawn from the treasury.

Very few county officials profit financially from the salary or income from these offices. Among my personal acquaintances perhaps nine out of ten have retired from office in a worse financial condition than they were in at the beginning. The very fact that these officials are practically bankrupt at the end of their terms proves that the graft has not gone to enrich them, and we do know that a very large sum is usually given out by them on demand because they fear defeat for re-election.

A single term of four years will reduce the corruption fund by half. There will be only half the number of candidates from whom to collect this fund. Then, as I have asserted previously, the boss always assesses the second term more heavily than he does the beginner. Why an official should get anxious and scared about re-election I do not know, but it is a fact, nevertheless. Perhaps the criticisms, the desertions of former friends

and the activity of his opponent reach his ears oftener. Two things are always impressed on him by the organization (which means the boss): "Help provide a good big campaign fund and get to work." He is in office and can get hold of the money. Some of the other candidates cannot. These and other means, fair and unfair, are used to get his money and he "comes across." He has to. Were it not for the second-term campaign pickings would be rather meager. Just let the organization of a party with no representatives in the court house try to raise a campaign fund. It is discouraging work. We all condemn the political boss; we are looking for a club, any kind of club, to swat him. Reduce his power and revenue by eliminating the second term; that will, at least, furnish us with a pretty big stick.

There is one phase of this subject that may not affect us at all as taxpayers, but should concern us greatly as citizens. What effect does this effort to be re-elected have on the character of a candidate? His contributing money to buy votes? His loafing in saloons? Making and breaking promises? Associating with dead-beats and bums? Drawing money from the public treasury he is not entitled to? He generally goes into public office a clean and ambitious young fellow; is it not remarkable that so many retain a good character after being subjected to all these temptations?

Another thing, the ordeal to which a candidate for re-election is subjected is something to be dreaded by any man. Not only is the general conduct or policy of his office severely criticised, but every act of his is given the worst possible construction and his motives impugned. A few years ago I saw the auditor of our county die. As gentle, as refined, as honest a man as I ever knew. The criticism of his official acts and the demands made upon him because he was a candidate for re-election unbalanced his mind and he ended all by a bullet. Now, a certain amount of criticism of the right kind is wholesome and necessary, but if it were intended only for the benefit of the public and not for its effect on the official's chance for re-election, it would be better for all concerned.

One objection has been urged—four years is a long time to be cursed by a bad official. Let me say, in answer to that, the bad official in almost every case is re-elected under the present system; he looks out for that; the boss helps him and they are both unscrupulous. It is the conscientious official, who gets the ill will of a certain element, who is likely to suffer.

The second section is the proposal of the member from Erie county added to Proposal No. 17 as it originally was drawn. It certainly commends itself to every one; county officials should begin their terms as soon as possible after election, and with the exception of the county treasurer, on the same date. In that way it becomes a general housecleaning period for the county officers.

Several members have inquired as to the effect this proposal, if adopted, will have on officials who are now candidates for a second term. That can, and will, be taken care of in the schedule. Candidates will all have been nominated and it would be unjust to declare these nominations void; so, without doubt, the schedule will

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exempt all candidates nominated at the time this constitution is adopted.

I now offer an amendment.

The amendment was read as follows:

In lines 8 and 9 strike out the first sentence and insert the following:

"No county officer shall be eligible for re-election for the next succeeding term."

Mr. FACKLER: Do you include the judge of probate?

Mr. BAUM: That was called to my attention, and I am willing to accept an amendment excepting the judge of probate.

Mr. FACKLER: Do you think when a county officer has proven his efficiency with the people that they should not be allowed to re-elect him?

Mr. BAUM: There can never be a rule to fit every case. Sometimes they ought to be continued, but nine times out of ten it is the other way, and it is our experience that not one official has been elected more than two terms. Several times they have been candidates for the third term, but they have been defeated uniformly.

Mr. DOTY: Did I understand you to say that nine times out of ten officers in Ross county are incompetent to hold public offices?

Mr. BAUM: No; I didn't say that. I said the people wouldn't return them for a third time.

Mr. DOTY: I understood you to say nine out of ten were not competent.

Mr. BAUM: You didn't understand me correctly.

Mr. OKEY: I am in favor of this proposal. I would say by way of preface that there will be an amendment offered by the gentleman from Richland [Mr. KRAMER] directly, which I approve of, taking care of county officers who are candidates the present year—nominated this spring, and those who are also in office now—and after that amendment has been offered I think this proposal will be fairly complete.

We all know that the test for electing a man to a public office should be efficiency. Under our present system a man has to make four campaigns in order to hold two terms. I believe if a man were permitted to hold for a term of four years, and only be required to make one campaign, after he got in he would only look after the public business. We all know, as a matter of fact, and no man can deny that, that when a man is in office for the first time his time is taken up to a large extent entrenching himself for a second term. I do not blame anybody for that. That is human nature. And during his first term his mind is distracted from the immediate duties of his office, while if he had a term of four years without chance of re-election, after he was elected he would only have one thing to look after, namely, the public business. If we had fewer campaigns in this country we would have better officers. The more campaigns we have the more the people are stirred up, and the more demoralizing the effect upon the people. If we had fewer campaigns and longer terms we would have better service.

It has been said that in some counties we have had men renominated time after time. I do not deny that, but that condition of affairs does not prevail all over

the state of Ohio. Moreover, I am not in favor of perpetuating men in power forever, for I believe that men who are out of office are just as competent to perform the duties of the office as those in it. And, therefore, while this rule might in some instances affect some counties in a way not desired, as a whole it is the proper thing. And you cannot adopt a rule that will meet every condition or the desires of all persons. But in the long run we want to get the best thing for the people of the whole state, and we cannot let exceptions govern us in our actions here today. Therefore, I am in favor of the proposal.

Mr. ULMER: Mr. President and Gentlemen of the Convention: I am not in favor of the proposal. It may be justified from the standpoint of politics, but it cannot be justified from the standpoint of business principles. There is no wrong in allowing a man who has performed his duty honestly and intelligently and fairly to be continued in office. It is a simple matter of business. You never see a great corporation changing their superintendents or managers as long as they know that the men they have are capable and honest and are doing their duty. The same thing should be true in public affairs, and the same principle should be applied there.

Mr. Baum spoke about graft and such things as that. If a man is elected for one term, even if for four years, is not that incentive to him to make all out of the office that he can during that four years? Will we make a man more honest or more efficient? Not for a moment.

You may have good laws and bad men in office, and you may have bad laws and good men in office. The bad men with the good laws will hurt you, but the bad laws with the good men won't. We have come to the conclusion, and the people of this country must come to it, that if we have a good government we must keep good men in office as long as they are willing to serve. We know the men who do their duty, and we respect them, and when we retain them in office we will have good government, and not until then.

Mr. KERR: Are you in favor of a political machine?

Mr. ULMER: No; it is the duty of the citizen to do away with the machine, and the citizen who follows a machine is not a good citizen. I never followed a machine in all my life. I followed principles.

Mr. PETTIT: Are you in favor of keeping a man as long as you can keep him there without regard to the rights of others?

Mr. ULMER: I am in favor of keeping a man in office just as long as he is efficient and honest and is willing to serve.

Mr. PETTIT: You would keep him in for life?

Mr. ULMER: I don't care. We all agree that the people of Switzerland today have the best government on earth. Why? Because they keep their good men in office. They have a man today in the executive department who is eighty-two years old, and who has been in that office twenty-eight years. We had a man in another branch of the executive department forty years.

Mr. PETTIT: If that is your idea about the Swiss government, why didn't you remain there?

Mr. ULMER: That is an insult. I respect your age, but that is an insult.

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Mr. STAMM: May I ask a question? Don't you think that Proposal No. 169 by Judge Worthington will bring about better conditions and somewhat harmonize with your views —

Mr. ULMER: I think so.

Mr. STAMM: Civil service reform?

Mr. ULMER: That is true. We should have that.

Mr. STAMM: The appointment and promotion of officers in the state without reference to political conditions, but according to merit?

Mr. ULMER: I am in favor of that. Now, gentlemen, we have some counties with great populations. Look at Cuyahoga, Hamilton, Franklin and Lucas. There you have counties with an immense population, and if a man goes into office there as a commissioner, it takes him quite a while to get acquainted with the duties of his office and the details of his business, and then, after he knows all the ins and outs, along comes another election, and he steps out and another young fellow steps in — to learn. Do you think the people are benefited by such things as that? No. I say, if you have a good honest man, keep him in office, and protect him, and you will get good government. Don't constantly be changing. It is a foolish idea to talk of letting another man have a chance. No private corporation does that. They say, when they have a good man, "As long as it is to our benefit we will keep that good man." The people should apply the same principle. Therefore I am against the proposal. It is opposed to the principles of good government.

Mr. KNIGHT: I am very glad as a member of this Convention that we have with us two gentlemen from Switzerland who are able to come to us and tell us with some authority some of the good features of the Swiss government, and I am very glad that they didn't remain in Switzerland and allow us to get along here on the principle that rotation in office is a chance for the other fellow.

Mr. STAMM: Are you not glad that we didn't settle in Adams county?

Mr. KNIGHT: No; I am rather sorry, because I suspect if the gentlemen from Switzerland had gone down there, Adams county would be a little better than it now is.

On the matter of the pending proposal it seems to me we are in danger of depriving ourselves of that which makes in private business the best administration and has the best effect. The gentleman from Lucas [Mr. ULMER] has already delivered a large part of my speech. It seems to me that we are in danger, for fear that we shall occasionally get rascals in office, of taking steps to keep good men from retaining office when we get them there. The provision for direct primaries and the impetus which it is hoped this Convention will give to good citizenship in this state will tend to the election of good men to start with, and we will not re-elect men who do not make good officers.

But without reference to any danger of a political machine, I am strictly opposed to this proposal. It seems to me that we are running the risk of depriving ourselves of vast possibilities for improvement in the governmental life.

Mr. HURSH: I am in favor of this proposal. I am not sure that I am in favor of the amendment of

the gentleman from Ross [Mr. BAUM], but what I sought recognition for is that I would like to call the attention of the Convention to line 10, "except treasurer." If we are going to change the time for the public officials to take office, and if we are going to make their terms uniform, I am satisfied that the term of the treasurer, in connection with all the other officers, can be arranged to commence in December with the other county officers. I am not sure that the language in the latter part of line 10 "on the first Monday in January" is the happiest that we could get. It might be possible that they might commence at different times in January, but I think January would be definite enough for the change.

I have become somewhat familiar with the proposals along this line. There were two or three or four of them referred to the committee that has reported this proposal, and some were referred to the Legislative and Executive committee. For that reason I was appointed on a sub-committee of the Legislative and Executive committee to give this matter some investigation, and in this county and my own county, and from inquiries in other counties, we find that the idea of fixing a definite time for all county officers to begin their terms, and fixing it in January, pretty well satisfied the auditors and treasurers. Those of you who are familiar with county machinery know the auditor's and treasurer's offices are almost inseparable. The only objection that I can possibly see why the treasurer should not take office in January is that it comes during the collection of taxes. The collection of taxes ought to close on the 20th of December, but we know it does not. I do not see why the treasurer should not take office when the auditor does. I offer an amendment.

The amendment was read as follows:

In line 10 strike out "except treasurer" and the two commas in the same line.

Mr. TANNEHILL: I am very much in favor of this proposal, especially so with the amendment offered by the gentleman from Hardin. I see no reason why the treasurer should be excepted. As to continuing men in county offices year after year, we know as a matter of fact that is not done except in rare instances. With the possible exception of the office of probate judge, if a man has served two terms that is generally an end of him. A few years ago the law was changed as to length of terms, and I think that most of us agree that two years is rather too short a term. In most of these cases we re-elect them for a second term, and they serve four years, but it is a rare exception that they are re-elected for a third term. So under the proposal they serve as long as they do under our present system, and they are saved the expense of the second campaign. There is great complaint all over the state of Ohio, as to the misconduct in office of county officials — graft and other things — and when we look at what prevails in Ohio, you don't wonder that they do graft. You almost compel them to. Let us see what they are up against. In the state of Ohio within a few weeks we will have a primary, in May, and the man who is nominated in that primary will for six months long make a campaign. It means those men are out of business; they simply lay aside their business for six long months. They have to spend their time and money in

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this campaign. Then they are elected in November. The treasurer, auditor, commissioner, etc., have to wait almost a year before they get their offices. They have lost all of that time. They are out of business in nearly every case.

Do you wonder that men graft and try to get back some of that money? More than that, those men wait nearly a year, and get into office the next fall, and in six months they are in another campaign. I say to you it is not fair. It is not right to drive men to corruption. I have seen young men in my county come in from the country districts. We know young men and we know what happens to them. They hardly get into office until they see, six months ahead, the primary coming on, and they have to make themselves good fellows with the others around them, and in most counties of the state there are saloons in the county seat, and they have to take their friends into the saloons and treat them. The result is a great many of the young men who come in as officers are by this political system driven from the right path and are corrupted. They go out wrecks, and not one man in ten under the present system goes out of office one dollar ahead of what he had when he went into it. It is the short term and the second election that cost so much and cause the trouble.

What is the ideal system that we are working to in Ohio and that we will come to? Four-year terms without re-election in the counties, and four-year terms in the state without re-election, and we will then so adjust it that the election for state officers does not come the same year that the election of the county officers is held. It is wrong to inject a county election into a state election. It would be infinitely better if they were connected with the township and corporation elections rather than the state elections. We are gradually working to that. This is the first move in this direction. Let us make it.

The next move is the election of state officers for four years without re-election, and then the next is the recall. Possibly the Convention did wisely in not adopting the recall, so as not to injure the initiative and referendum. But, gentlemen, you will have the recall inside of four years. It is just as logical a conclusion as anything in the world, and if you make this arrangement of county officers and the other arrangement as to state officers and then get the recall, you will have an ideal system.

Mr. KRAMER: There are a few things connected with this proposal in which I am somewhat interested, but I would think that there were other members of the Convention just as much interested as I am. I notice that the proposal provides that no person shall be eligible for re-election for any county office to succeed himself. I believe that will prevent any officer this fall from being elected to succeed himself because if our constitution is adopted in September, and this provision is adopted, it would compel all the persons who are up for re-election to quit.

Mr. BAUM: Cannot that be taken care of in the schedule?

Mr. KRAMER: I will come to that later on. I think that is a matter that we should especially take care of. I do not like to do anything that will interfere with the men who will make their canvass for office this year. If we do, you will find that there will be from five to twenty people in every county of the state radi-

cally opposed to this constitution because of that fact. I would like to see inserted right after that the language "This provision, however, shall not apply to persons elected in November, 1912, to succeed themselves." In our county we have a sheriff, a treasurer, a probate judge and one county commissioner up for re-election. They are candidates to succeed themselves, and probably every other member of the Convention has more or less of these officers in his county who are trying to succeed themselves.

Mr. ELSON: If they are up for re-election this fall at the same time that this constitution is voted for, of course it won't apply to them.

Mr. KRAMER: No, but I don't have any idea from what I hear that this constitution will be up for ratification at the regular election. It won't be if my vote can prevent it. There would not be any question about it if the constitution is submitted for adoption at the same election, but the sentiment of the Convention is that the constitution should be submitted at a separate election, and possibly long before the regular election. Now, suppose we do submit it sometime before the regular election, and it is adopted by the people?

Mr. ELSON: It wouldn't go into effect the minute it is adopted.

Mr. KRAMER: I don't know about that. I know if there were no provisions made to make it become effective at some other time, it would be effective just as soon as approved by the people. That is the danger. For my part I am somewhat interested in this amendment, more so than I have been in almost any other amendment that has been offered, because I have been importuned by persons in Richland county to protect them, and I believe that every other member ought to feel it incumbent to protect his people back home.

Mr. ANDERSON: Does this include members of the general assembly?

Mr. KRAMER: I was going to make a suggestion in regard to that too. Now, if I have made myself plain on that, there is one other thing that I am interested in. If you make the officers elected this fall begin the coming January, it will take away from the term of office of at least three or four county officials from eight to nine months of their time.

Mr. BROWN, of Highland: If this proposal is adopted, is ratified at the election and becomes a part of the constitution, will it not be at variance with what will obtain when we raise the number of years to four, and would it not prohibit the re-election of common pleas judges? That is one question, and another question is, if a common pleas judge is as a man and an official trusted by the people is it not well to allow him to succeed himself?

Mr. KRAMER: I was not speaking of the merits of the proposal. I was just saying that if we adopted this proposal we should take care of those two sets of officers, those up for re-election this fall, and those whose terms of office will not expire for eight or nine months after January 1st.

Mr. HURSH: You are assuming that the man who would be running for the second term would be beaten out of six to nine months' time. If he is re-elected would not his term be extended two years?

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Mr. KRAMER: I did not make myself plain on that last proposition. The last proposition is that there are a good many county officers already on their second term, and their term of office does not expire until nine months after the first of the coming January. Take the county auditor, the county commissioner and the probate judge; they would not be affected, but it would affect the county clerk and several other officers, and cut off eight or nine months of their term. I believe when a man is elected on the theory that he is to have a two-year term the Constitutional Convention should not do anything to interfere with his right to hold the full term for which he is elected. Hence, I would like to see both sets of officers protected.

Mr. BEATTY, of Wood: Did I understand you to say this would affect the members of the legislature and give them four years?

Mr. KRAMER: I am coming to that.

Mr. BEATTY, of Wood: You stated that you have an amendment to offer so that the commissioners elected this fall can succeed themselves. Does that mean that in 1916 they can succeed themselves then?

Mr. KRAMER: That is not what I meant.

Mr. BEATTY, of Wood: Why not provide that this shall not take effect until 1914? That will fix everybody.

Mr. KRAMER: I would rather allow somebody else to do the amending. I am not much on offering amendments. I don't care how it is done so we can take care of the different situations. Here is the suggestion I made with reference to those who are now in office. "The several terms of such officers shall commence on the first Monday in January next following their election." That is the proposal that came in. Here is something to be added:

But county officers who are elected at the November election of 1912 shall assume the duties of the offices to which they have been elected, and on the expiration of the terms for which those persons are now holding office, their successors shall be elected and continue in office until the first Monday in January, 1917.

This will enable the men elected this fall to know that they are going to have a little taken off of their terms.

Now, a word on the merits of this proposition. I think this amendment ought to be adopted. I do not know whether it would be in order to state before the Convention that I am a Jacksonian democrat. It is more popular, I know, for people to say that they are Jeffersonian democrats, but I rather like Jackson. And I like his ideas applicable to the situation that we are now considering. I know it would work some hardships. There is only one exception to it, as I look at it, and that is Judge Smith, of Geauga. I have no objection to Judge Smith's holding the probate judgeship as long as he wants to, but outside of Judge Smith I am opposed to re-electing and re-electing the same men to office.

I offer a substitute.

The substitute was read as follows:

Strike out all after the resolving clause and insert:

"No person shall be eligible for re-election for any county office to succeed himself. This provision, however, shall not apply to those persons elected in November, 1912, to succeed themselves.

The term of such office shall be four years. The several terms of such officers, except treasurer, shall commence on the first Monday of January next following their election. But county officers who are elected at the November election, 1912, shall assume the duties of the office to which they have been elected on the expiration of the term for which those persons now holding office were elected and continue in office until the first Monday of January, 1917."

Mr. FOX: Why except the treasurer?

Mr. KRAMER: I am in favor of cutting that out, but it was in the original and I just put it in here.

Mr. BAUM: Just a word about the treasurer. The treasurer makes a settlement at the end of his term. He could not make a settlement in the meantime. The books could not be gotten in shape to do it.

Mr. LAMPSON: This proposal seems to me to proceed upon the theory that a county office is for the individual. It is a kind of sugarcoated plum to be handed around, and is not for the benefit of the county at all. Now, for a good many years there has been coming on this country a great reform which recognizes the idea that public office is a public trust, and that men who take office do it for the purpose of serving the public and not simply for feathering their own pockets. I do not see why, when all over this country, from one end to the other, what is known as civil service reform has been adopted and has taken such a hold upon the better class of the people, that this Constitutional Convention of Ohio should go deliberately in the opposite direction. This is retrogression gone mad. Why we should one day proceed to extend the powers of the people and the next day proceed to curtail them in this proposed manner is something I cannot understand. Because the people of one county have been unfortunate in the selection of their county officers and have elected through their own fault and negligence men to office who have not given the best service, why should the people of another county be deprived of electing efficient public servants to office for more than one term? Why, in my county I cannot remember the time when there were not men serving in the county offices in the court house who had been elected more than two terms, sometimes three, four, five and six terms, not because of any machine, but because they had rendered good public service, which the people of the county recognized; and in the adjoining county ever since I can remember the gentleman sitting in front of me (until the last two years) has been probate judge of that county of Geauga, having held office for a period of forty-two years, not because he was an adept politician, for he never was. He never had a political machine, but it was because of his honest, faithful, efficient service in the office of probate judge of that county of Geauga. In my own county we have re-elected time and time again auditors for two, three, four, five, six, and sometimes seven and eight terms.

Mr. TANNEHILL: Have you in your county ever elected any of the opposition party?

Mr. LAMPSON: We never have elected any of the opposition party, and we have never had any trouble because of inefficiency, and we don't want to be deprived of the right of electing efficient officers.

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Mr. TANNEHILL: Is not that the reason why you have been electing people term after term, because the opposition is not strong enough to stop it, and you have built up a machine?

Mr. LAMPSON: We have no machine, and we have no inefficiency. We have clean, honest, upright public servants, who can go before the people and secure votes in the primary, but we have the hottest kind of opposition in the primaries among the republicans themselves. Why, we renominate for office for county commissioner two years ago a man for a third term, and he went into the primary and got the renomination. There were a lot of people who wanted him for a fourth term. There is a primary going on right now, and men are running for their third terms, one for county commissioner. There is a man running there now for his third term for probate judge. Whether he will get the nomination or not, I don't know, but there will be a full vote in that county at the primary, and if he gets it he will get it because the people want him, and because they think he will render more efficient service than his opponent.

Mr. TANNEHILL: Was not there an investigation in your county a short time ago?

Mr. LAMPSON: Yes, and there have been investigations in all the counties.

Mr. TANNEHILL: Was not there some money paid back?

Mr. LAMPSON: I think some, but there were no prosecutions.

Mr. TANNEHILL: Your colleague says not.

Mr. HARRIS, of Ashtabula: I did not want to be quoted. I don't know about that. I am not certain.

Mr. LAMPSON: The investigations where the money was paid back were of those offices whose terms were limited under the constitution, the offices of sheriff and county treasurer. I want to add right along that line, that the deficiencies grew out of a difference of construction of the statutes, especially the Dow law. There was no serious contention that there was real malfeasance in office, with possibly one exception.

Mr. WATSON: Is it not a fact that the salary attached to a county office is greater than the average wage-earning capacity of the people of that county?

Mr. LAMPSON: I don't think so; not the class of men we elect.

Mr. WATSON: Your county differs then from most of the other counties in the state.

Mr. LAMPSON: I have no doubt it does differ from some of the counties, and that is what I am insisting upon, and we don't want to be deprived of the right to re-elect men to offices if we want to do so.

Mr. WATSON: If the offices are a good thing, why not pass them around?

Mr. LAMPSON: They were not made for the purpose of being passed around. A public office is a public trust. We elect a common pleas judge, and it is proposed to reduce that to a county office. We elect a common pleas judge in our district so long as he wants to be re-elected, and as long as he stands for re-election, if he is an efficient common pleas judge.

Mr. BROWN, of Highland: Under this proposal there is nothing to prevent a county officer from holding four years, and then if he will build up a machine in that

time is there anything to prevent him from simply running for some other office?

Mr. LAMPSON: Not at all. But take the office of probate judge. Why, as far back as I can remember in politics we have elected a probate judge at least three times — sometimes, more. That is an office that comes directly in contact with the people. Our probate judges have a habit of trying to serve the interests of the people; the widows and orphans and others go into the probate judge's office and consult with him and advise with him so far as he can legitimately advise them. I know also that that was the policy of Judge Smith, and it was the one thing that made him one of the most popular judges in all that part of the state, and one of the most efficient. I think also, if a man has made an especially efficient public servant, there should be some opportunity for recognition of that fact on the part of the public, and if you limit the service to a single term, then they are in the same class, the efficient and the inefficient; there is no opportunity for the voters to register a verdict of approval of a public servant.

Then I don't know what effect this will have upon representatives and senators in the general assembly. In our part of the state it has been the custom, if we get an efficient man and he is willing to continue representative for us, to elect him for more than two terms. That has been the habit of our people up in that congressional district. That is one reason why the nineteenth congressional district of Ohio achieved in years gone by a great reputation. One man, Joshua R. Giddings, represented us twenty-one years. James A. Garfield represented us sixteen or eighteen years — which was it, Judge Smith?

Mr. SMITH, of Geauga: Eighteen years.

Mr. LAMPSON: E. B. Taylor represented us thirty-two years. If these men had been cut off on the theory of this proposal they never would have achieved national reputation.

Mr. KRAMER: I was asked a question and I said I would come to it later, and I never did come to it. Would you consider a representative a county officer?

Mr. LAMPSON: That is a disputed question.

I have heard it a great many times. They are elected by the county, but I confess that I am not certain myself. Some people say that a representative is not a county officer, and perhaps in the sense that the auditor is a county officer he is not, and yet the representative is elected to represent a county. I don't think the people should be limited in their right to elect a representative to two or four years.

Mr. BROWN, of Highland: Were you not elected by a county?

Mr. LAMPSON: I was elected to the general assembly twenty-five years ago, and I was nominated a third time and I declined for reasons which transpired at the time.

Mr. OKEY: Is it not a fact that all the political machines that have ever existed were built up by continuation of men in office?

Mr. LAMPSON: We don't know anything about political machines in our county. We have men who give their attention to politics, but we have no corrupt political machine, as indicated on this floor. And we never have had. Simply because some counties have those

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machines. we don't want to be made to suffer because of it.

Mr. EVANS: This proposal assumes that the proper method of electing all county officers is by popular vote. I deny that. I say that is not the proper method in all cases. It is as to such officers as county commissioners. They ought to be elected, but when it comes to the administrative and executive officers, they should be appointed. If I were a democrat in this state of Ohio, which I do not ever expect to be, I would be in favor of Woodrow Wilson, because he is president of the short ballot organization.

Now the great mistake in the constitution of 1851 was the fact that the county officers were required to be elected for not more than three years. That has been the greatest curse that we have suffered from. The people complain of abuses and of corruption in office and with good cause, for we have been guilty of the most consummate folly in reducing some of the offices to two-year terms. The whole trouble is in the peremptory recall. You say any elector is fit for a county office, but only for two years, and in two years you make him get out even if he were an angel from heaven. I say that is all wrong. I do not wonder at the corruption in office in this country. The curse is perpetually with us, and I hope it will continue until the people of Ohio and of the other states will wake up and realize their situation. You take a corporation, and the stockholders are the voters. They elect a board of directors. What does the board of directors do? They select the employes of the corporation, and they keep them in office as long as they do their duty. I tell you until we get to that form of government in city and county affairs we will always have these troubles, and they will be greater and greater.

Look at my county! Forty men candidates for office for two-year terms! God made men to come to their efficiency, say, at about twenty-one years, and they remain efficient as long as they have their faculties, and then they go on the retired list. That is the way to do with county administrative offices — put a man into an executive or an administrative service and let him serve as long as he is efficient. What effect does that have? It crowds out all the chronic office-seekers and forces them to go into some other business where they can be useful to their communities.

Look at the various county seats! They are filled up with ex-county officers who want to get back into office. I would like to see those men go to work. I want them to be useful citizens, to go out and study expert farming and like subjects. I am in favor of some plan that will make the executive officers in a manner permanent and force these citizens who hang around the county seats and seek offices to go to work. I am tired of them. I am like that citizen of Athens when he came to mark his shell when the vote was on the expatriation of Aristides. When he came to mark his shell for or against Aristides he handed it to Aristides himself, and asked him to mark it. Aristides asked him how he wanted it marked. He said mark it for his banishment. Aristides asked him if he knew Aristides. He replied "No". Aristides then asked him why he so voted and he said, "Oh, I am just tired of hearing him called 'The Just'".

That is the way I feel; I am wearied with these office-seekers coming around soliciting men to vote for them.

I am tired of seeing citizens who have run the gamut of office in the county and want to get back by soliciting the people. If a man is fit for office let him stay in it and let the men who want his place go to work. If we are to elect county officers, which is supreme folly, except those who legislate, who make the tax levies and disburse the county money, I am in favor of the short ballot and I am opposed to the proposition to cut any one down to a single term. I say it is a falsehood to say if a man has served four years in office that that renders him unfit to serve any longer.

There are fifteen per cent of the people of the state who are interested directly and indirectly in office and the other eighty-five per cent are not, and I object to the eighty-five per cent having their lives ruined to help the fifteen per cent get office. I am like the citizen of Athens who wanted Aristides voted out. I am just tired of it. I have heard a lot of you talk in this body about the bosses and political corruption. How will we get rid of them and of the system? I have no sympathy for people who maintain the system and then complain of it. I shall vote against this proposal. I know that we cannot get a proposal such as I would like to have, but I can at least be consistent in voting against this proposal.

Mr. TANNEHILL: An amendment has been offered providing that the words "except treasurer" shall be stricken out. I have served as county auditor and I want to say to this Convention that in my opinion the words "except treasurer and auditor" should appear in the proposal. I can not see how in the world you can arrange the terms satisfactory unless you except those two officers.

Mr. MARSHALL: Mr. President and Gentlemen of the Convention: I believe I am in favor of the Baum proposal and I will support it if it is amended so it will take care of those officers now in the eighty-eight counties in the state of Ohio serving their first term. We have down in our county three commissioners, a probate judge, prosecuting attorney and clerk of courts who will be up this fall, and their names are now announced for a second term. I do not believe in having anything that will cut those men out of the second term, notwithstanding it would give them six years under the new proposition instead of four years under the old. I further presume there are between three and four hundred county officers in the state of Ohio that would come under this same provision and it is unfair and unjust to cut those men out of the two years. And if you do cut them out of their second term, there will be a power in the state of Ohio against us at the time we want everybody for us.

Mr. DOTY: Explain that power.

Mr. MARSHALL: Three or four hundred officials in the state of Ohio who will be working against us.

Mr. DOTY: Will they use money?

Mr. MARSHALL: No, but they will use their tongues.

Mr. MILLER, of Crawford: I am in favor of this proposal because we do not get the most efficient service under the present plan. Notwithstanding what was said by the gentleman from Ashtabula [Mr. LAMPSON], the custom does prevail over a great part of the state that we elect county officers for only two terms. In our county

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that is the prevailing custom, and scarcely any one is ever elected more than two terms.

Mr. LAMPSON: That being the custom and regulated by the people, why are you not content with it, and why do you want to force it on other counties where that custom does not exist?

Mr. MILLER, of Crawford: I was about to state, for the reason stated by the gentleman from Morgan, that the candidates now in the campaign for nomination are elected this fall and about six months afterwards they are in another campaign and the whole thought during all that time is to secure another nomination. For that reason I think this objection at least ought to be removed. There are some other county officers—for instance, I was a member of the board of review, and the complaint has been made by those in a position to know that we don't get the very best service from the officers on the board of review, and it seems that they want them to come under this provision too.

I think the amendment offered by the delegate from Richland should be carefully considered. I think we would be doing an injustice to the county officers who have served only two years to deprive them of a chance to be elected again.

I doubt very much the feasibility of taking the word "treasurer" from the proposal. I think, as Mr. Tannehill suggested, that the auditor should be included with the treasurer, because otherwise this would bring the change of those officers right at the time when the tax collection is on. We know that the law specifies that taxes shall be paid up by the 20th of December, but that is not followed over the state. Taxes are paid way up in January and February, and it seems to me it would be very embarrassing to make a change of those two officers at the time specified.

Mr. HARTER, of Huron: How does that affect anybody up for re-election—this does not go into effect in November?

Mr. MILLER, of Crawford: If the election on the constitution is before the regular election it might affect them.

Mr. HOSKINS: I would like just a word on this proposal. I am opposed to the whole proposition. I do not believe this is of sufficient importance to put up to the people of Ohio as an amendment to the constitution. I do not know that I have heard any complaint from our section of the state about the operation of the present law. Of course I have heard complaint that men were campaigning when they should have been attending to official duties, but you will never devise any system that is perfect. I believe the best safeguard to get service on the part of the officers is to let them return to the people with reasonable frequency for re-election and indorsement. The terms under the law now are about proper. I do not think we ought to pass this proposal or anything of its kind. I am content to let the present condition remain. Therefore, I am against the whole proposition, and I move that it be indefinitely postponed.

The PRESIDENT: The question is on the indefinite postponement of the whole matter.

The motion to indefinitely postpone was carried.

The PRESIDENT: The next is Proposal No. 180 by Mr. Moore, which the secretary will read.

The proposal was read the second time.

Mr. MOORE: My object in introducing this was to get the short ballot. I believe that public affairs should be reduced to a business system. I believe that a few officers properly organized might be able to form a board of scientific management. I believe in the future we will reach that condition in society, but at present I believe it is not acceptable to a majority of the people of the state of Ohio, or even to this Convention. While I am strongly in favor of the principle enunciated in the proposal and believe it will be put in practice sometime, I move now its indefinite postponement.

The motion to indefinitely postpone was carried.

The PRESIDENT: The next is Proposal No. 309, which the secretary will read.

The proposal was read the second time.

Mr. SMITH, of Hamilton: The committee on Method of Amending the Constitution had before it thirteen different proposals affecting this portion of the constitution known as article XVI, sections 1, 2 and 3. The committee, I think, heard every one who had offered anything to the Convention on this article. The committee met very frequently and I want to take this opportunity of calling attention to the fact that this committee served you very conscientiously and faithfully. The report as finally adopted was embodied in this Proposal No. 309 introduced by Mr. Taggart. After this proposal came before the committee, and after two meetings to consider it, the proposal was changed somewhat. I want to call attention to the fact that this committee on Method of Amending the Constitution was made up of many different kinds of men. There were men of totally different types of mind. At first the committee seemed hopelessly divided. Every member was of the opinion that on this committee rested the greatest work that this Convention was called upon to do; to provide a simple and easy method of amending the constitution, because if we do that it matters not so much what else we do; the people will have the machinery whereby they can, in a simple and businesslike way, get what they want. In the committee's report, in spite of the fact that we were at first divided, we practically agreed upon this proposal introduced by Judge Taggart. The committee's report was signed by Messrs. Stokes, Kunkel, Taggart, Stamm, Brat-tain, Wise, Woods, Stewart, Colton, Kerr, Kehoe, Pettit, Mauck, Harter and myself. There were only two gentlemen who did not sign the report, one of them being Mr. Price, who is in the hospital, and the other Mr. Stilwell, who did not feel that he could conscientiously sign because there was one part of the report to which he could not agree.

Now I will not compare the proposal recommended by the committee with the proposal of Judge Taggart, but I will compare the proposal we recommend with the present constitution. Take your book and look at amended Proposal No. 309 and you can see where we recommend changes in the present constitution. All the changes except one or two minor ones are indicated by the italicized words. The first change appears in line 8 where the word "in" is inserted. That is a mistake in Judge Taggart's proposal. He used the word "of" and we changed it to "in." In line 9 is a substantial change. Under the present constitution the advertisement of an amendment by the general assembly in the newspapers must be for six months preceding the election. We

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recommend that amendments shall be published in at least one newspaper in each county once a week for eight consecutive weeks. We recommend cutting down the number of months from six months to two months. When the constitution of 1851 was adopted railroads were very scarce and mail was distributed by riders on horseback. Newspapers were not nearly so numerous as they are today. The committee feels that six weeks publication today is fully equal to six months publication sixty years ago.

We provided another change in lines 9, 10 and 11. The old constitution provided that this constitutional amendment must be submitted at a regular fall election when senators and representatives were elected. The committee recommends that it leave to the legislature the fixing of the time of submission, so that they may submit it at a special or general election as they may prescribe.

We provide another change in this, that an amendment submitted to the people must be on a separate ballot without party designation of any kind. The old custom, as you will remember, from 1851 up to 1891, was for the political party machine to print a separate ballot and, if it saw fit, to print the constitutional amendment right on the ballot with the party ticket. The parties did this so that a man going in to cast his vote would vote for the constitutional amendment that his political party desired. Your committee suggests and recommends that all constitutional amendments be submitted on a separate ballot without party designation of any kind, so that constitutional questions will be decided on their merits.

In line 13 you will see the greatest fundamental change. We have changed absolutely the number of votes required to pass a constitutional amendment. The constitution now requires before a constitutional amendment shall become effective in Ohio, that it be voted upon favorably by a majority of all the electors voting at the election. Your committee recommends that a majority only of those voting on the question be required to carry it.

We have adopted some constitutional amendments in Ohio, but they have been adopted because the political parties wanted them.

In giving the figures that I am about to give I am using the tabulated list of elections on amendments prepared by the member from Fayette [Mr. JONES]. As I said, up to 1891 the party managers could print the amendments on their party ballot. In 1891 the Australian ballot law went into effect. It required that each ballot should be marked by the voters. There were two amendments submitted in that year, 1891, and one of them was in regard to the holding of a constitutional convention. It received only thirty-two per cent of the votes cast. The other was a taxation amendment, looking to enlarging the powers of the general assembly in taxation matters, and that amendment was lost because it received only forty-six per cent of the votes cast at that election, although four times as many people voted for the amendment as voted against it.

In 1893 a fundamental change was made. The people of Ohio realized that they could not get their will into the constitution, that they had no power to express themselves as to amendments that our gallant forbears of 1851 had legislated not only for themselves, but for all

time in Ohio, because they had made it practically impossible to carry any change into the organic law, even if the people wanted it. So in 1893 what was known as the Longworth law was passed which permitted the party convention to declare themselves in favor of or against constitutional amendments and print the words "yes" or "no" on the party ticket, so that the voter going up to the polls, intelligent or unintelligent, marked his ballot under the rooster or the eagle and thus cast his vote for a constitutional amendment. Under the Longworth act some changes were made in the constitution. I am not going into details of what those were, but I will call your attention to one provision, which was passed in 1903 and indorsed by both of the political parties. It received ninety-eight per cent of the votes at the election. Let me call your attention to the vote of 1893, providing for municipal classification. Neither party indorsed that change. It received only six per cent of the votes cast, whereas another amendment in the same year which was indorsed by the political parties received ninety per cent of the votes cast. The Longworth act, as it was known, was repealed in 1905—at least after 1905—and in 1908 there were three measures submitted to the people, one in regard to passing a bill over the governor's veto, another fixing the time when the general assembly should meet and another with regard to taxation.

The first proposal received only thirty-four per cent, the second only thirty-four per cent and the third only thirty-eight per cent of the votes cast at the election, although all three received an overwhelming majority of those voting on the question.

Now let me call the attention of the Convention to a provision in this regard in other states of the Union.

Twenty-seven states of the United States provide that a majority voting on the amendment shall make it a part of the constitution. Three other states provide that an amendment shall be submitted at a separate election, which amounts to the same thing. So that we have the constitutions of thirty out of forty-eight states of the Union providing the method of amendment which we recommend.

It is interesting to note that several of the states which had the same provision as our constitution of 1851, requiring for decision a majority of those voting at the election, when they held a convention came over to the plan we now suggest, requiring only a majority of those voting on the question to decide it.

The next change I ask you to note is in line 20 of section 2, which provides for the calling of a convention by the general assembly. We recommend that this question of whether or not there shall be a convention to revise, alter or amend the constitution of the state must be submitted on a separate ballot without party designation of any kind. We provide in line 22 that only a majority of those voting for and against the calling of the convention shall be required to call it.

In lines 24 to 27 we make another radical departure from the present constitution. We provide that the delegates to all future conventions to revise, alter or amend the constitution shall be nominated by nominating petitions only and "shall be voted for upon one independent and separate ballot without any emblem or party designation whatever." In other words, we are so pleased with the makeup of this body that we feel it is wise to require

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the next constitutional convention to be made up of men elected as we were elected.

In section 3, which deals with the question of periodic arbitrary submissions of the question whether or not there shall be a convention, your committee recommends that the question shall first be submitted to the people in 1932 and every twenty years thereafter. This is exactly the same provision we have at present except as to adjusting the date. We provide that the question of whether a convention shall be called shall be decided by a majority of those voting for and against the calling of the convention. Your committee has tried to steer as close to the present provision as it could so that there might be as little change as is consistent with real progress.

Mr. KNIGHT: Line 21, as printed, and I find the engrossed bill is the same, reads: "election for members to the general assembly, or against the Convention."

Mr. SMITH, of Hamilton: I have looked up the original proposal and find that is a misprint. I have an amendment which I will offer to cure the error.

Mr. KNIGHT: In line 28 the language is "who shall be chosen as provided by law." What is the intent of that phrase after having specifically provided a few lines above how they shall be nominated and elected?

Mr. SMITH, of Hamilton: The members of the committee thought it might be safer to leave that language in. So if there is any election machinery needed that is not covered in the constitutional provision the legislature may provide it.

Mr. KNIGHT: Is not this the danger in that, that by party machinations we might be brought back to the same condition we were in under the so-called Longworth act? Is not this language broad enough for that? I am a little afraid of that. It seems to me unnecessary to leave a loophole for uncertainty.

Mr. SMITH, of Hamilton: The committee did not consider it so, and they certainly do not want such a thing to happen as the gentleman speaks of, but it was deemed on the whole a little wiser to put these words in.

Mr. MARSHALL: This Proposal No. 309, lines 7 and 8, reads: "entered on the journal with the yeas and nays, and shall be published in at least one newspaper in each county of the state." Who will have the authority to select that one newspaper of each county of the state?

Mr. SMITH, of Hamilton: Whoever has the authority at present. I suppose the secretary of state attends to that.

Mr. MARSHALL: There are a good many journals in the state. Won't that cause some confusion?

Mr. SMITH, of Hamilton: If you recall the present constitution you will remember it has the same language, and while I do not think any very great injustice has been done by it, we were trying to cut down expenses and we have cut them down considerably.

Mr. PECK: I do not find anything in this proposal referring to amendments by the people by way of initiative. Did you consider that?

Mr. SMITH, of Hamilton: The committee was very careful not to take final action until the committee on initiative and referendum had fully completed its work, and we continued meetings from day to day until the committee on Initiative and Referendum reported. I hope you do not find anything in this provision which con-

flicts with the initiative and referendum proposal adopted some weeks ago. This provides the machinery when the general assembly acts.

Mr. PECK: You provide that amendments to the constitution shall be made so and so, and that would exclude all other methods.

Mr. SMITH, of Hamilton: I don't think that is a fair interpretation. We provide that constitutional amendments shall be made in this way and there is another part of the constitution which deals with amendments to be made another way. I do not believe there is any conflict here.

Mr. PECK: I am not sure there is, but I want to direct the attention of the committee to it. It might be well to have a saving clause at the end "that nothing herein shall be held to prevent the people," etc.

Mr. ROEHM: In lines 12, 20 and 26 you speak of separate ballots. We have just passed Proposal No. 242, which makes voting by machine possible. What effect would that have in case the people adopted Proposal No. 242. Would not that be provided for by making it "separately"?

Mr. SMITH, of Hamilton: You could possibly adjust the difficulty if there is one.

Mr. ROEHM: How could the machine be used if you use the word "ballot," in view of what the supreme court has said?

Mr. SMITH, of Hamilton: If you think there is any danger of our preventing that, I will be glad to have an amendment offered.

Mr. ROEHM: Why not cross out the "on the ballot" and say "separately" instead of using the word "ballot" in each one of those places?

Mr. KNIGHT: That would require a separate machine for each ballot.

The vice president here took the chair.

The VICE PRESIDENT: Mr. Smith, of Hamilton, has the floor.

Mr. SMITH, of Hamilton: I am very glad to have this discussion, because it is bringing light. The committee only wanted to do what is best to secure the end it seeks.

Mr. COLTON: In line 28 you have "as provided by law." Were not those words inserted to cover such things as a detail of petitions for nominations, etc., which are not specified in that proposal?

Mr. SMITH, of Hamilton: Yes; I think so.

Mr. COLTON: That was my recollection.

Mr. ULMER: I want to offer an amendment.

The VICE PRESIDENT: Does the gentleman from Hamilton [Mr. SMITH] yield the floor?

Mr. SMITH, of Hamilton: First I want to correct a misprint and I offer an amendment.

The amendment was read as follows:

In line 21 strike out all after the comma and insert in lieu thereof "for or against a convention."

The amendment was agreed to.

The VICE PRESIDENT: Now the amendment of the gentleman from Lucas [Mr. ULMER] can be read.

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The amendment was read as follows:

At the end of section 2 add the following: "No member of the general assembly shall be eligible to membership in the convention."

Mr. ULMER: There is no member in this Constitutional Convention who was a member of the last general assembly.

Mr. EVANS: What about Mr. Crosser?

Mr. ULMER: I had forgotten him. I do not think any member of the general assembly calling a constitutional convention should be eligible for membership of a constitutional convention. Members of the general assembly could agitate the calling of the convention in order to be members of the convention themselves and so do it for their own interest.

Mr. PETTIT: I move that the amendment of the member from Lucas [Mr. ULMER] be laid on the table.

The motion on a division was carried and the amendment was tabled.

Mr. DOTY: I offer an amendment.

The amendment was read as follows:

After line 21 insert: "provided, however, a convention to revise, amend or change this constitution shall be voted upon by the people whenever twelve per centum of the qualified electors of the state shall file a petition with the secretary of state calling for such a convention."

Mr. DOTY: The amendment at the desk is not exactly right, but this is what I am attempting to do: I am attempting to provide that there shall be another way of calling a convention besides through the legislature once in twenty years. I am attempting to provide by the initiative and referendum that the people themselves may call a convention at any time without consulting the legislature and without waiting for the twenty-year period. I think I have done it. I may be in error as to some of the wording of it, but that will not prevent our discussing the point that I am attempting to make.

Mr. SMITH, of Hamilton: I think we should take this matter up one point at a time. The committee was of opinion that we ought to have this legislative way of amending the constitution very distinctly separate from the initiative and referendum method, in case a majority of the people of Ohio are not in favor of the initiative and referendum. The very fact that such an amendment as Mr. Doty's has been introduced may defeat this. Therefore the committee was in favor of the proposal as reported. The question of putting some such provision as this in the constitution came up and was discussed and considered, but we thought it was best to leave this as it is and let the people through the general assembly submit their amendments.

Mr. KERR: I move to lay the amendment on the table.

Upon which the yeas and nays were regularly demanded; taken, and resulted—yeas 68, nays 29, as follows:

Those who voted in the affirmative are:

Anderson,	Bowdle,	Cordes,
Antrim,	Brown, Pike,	Cunningham,
Baum,	Campbell,	Dunlap,
Beatty, Morrow,	Collett,	Dunn,
Beyer,	Colton,	Dwyer,

Earnhart,	Keller,	Redington,
Fackler,	Kerr,	Riley,
Farnsworth,	King,	Rockel,
Fess,	Knight,	Roehm,
Fluke,	Kramer,	Rorick,
Fox,	Kunkel,	Shaw,
Halfhill,	Lampson,	Smith, Hamilton,
Harbarger,	Leete,	Stamm,
Harris, Ashtabula,	Ludey,	Stewart,
Harris, Hamilton,	Mauck,	Stokes,
Harter, Huron,	McClelland,	Taggart,
Henderson,	Miller, Crawford,	Tannehill,
Hoffman,	Miller, Fairfield,	Ulmer,
Holtz,	Miller, Ottawa,	Wagner,
Johnson, Madison,	Nye,	Walker,
Johnson, Williams,	Partington,	Weybrecht,
Jones,	Peters,	Wise.
Kehoe,	Pettit,	

Those who voted in the negative are:

Beatty, Wood,	FitzSimons,	Moore,
Brown, Lucas,	Hahn,	Okey,
Crosser,	Halenkamp,	Peck,
Davio,	Harter, Stark,	Pierce,
DeFrees,	Hoskins,	Stalter,
Donahay,	Hursh,	Stevens,
Doty,	Kilpatrick,	Stilwell,
Elson,	Lambert,	Thomas,
Evans,	Malin,	Watson.
Farrell,	Marshall,	

So the amendment was tabled.

Mr. RILEY: I think if there is anything we can agree on it is that this Convention is entirely too large to transact business satisfactorily and that a much smaller body would be better.

DELEGATES: Oh, no.

DELEGATES: Agreed.

Mr. RILEY: It may be there are several who do not agree with that, but I cannot help that. I expect to be around here, but not as a member of the next Convention.

I sat in the committee presided over so ably by the gentleman from Hamilton and I was impressed with the fact that the committee handled its work so well that I believe a convention of half the number could go over the whole constitution and amend it in one-fourth of the time and much more satisfactorily than we shall be able to do, and there were only fifteen or twenty members there.

Mr. WALKER: Was the report of that committee in better shape when reported from the committee than when it was finally acted upon?

Mr. RILEY: I am not disposed to go into that very much. Of course I did not agree with the conclusions of that committee, or I would not be here talking about a smaller body. I had a proposition before the committee that I desired the opinion of the Convention upon and they did report it. I think the deliberations of that committee were conducted properly, and while I differ with the conclusion I still think a committee of that size could write a better constitution and do it more speedily for the state and much more satisfactorily than a body of this size, and it would cost only one-third to one-fifth as much. My proposition is to have two men elected from each congressional district of the state. That would make the body just a little bit bigger than the senate, but I think that is large enough, and I therefore offer an amendment.

The amendment was read as follows:

After the word "of" in line 27 strike out the words "as many members as the house of repre-

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sentatives" and insert the words "two delegates from each congressional district in this state."

Mr. DOTY: I call the member's attention to the situation that might arise over which we might not have any control. It might come about that we would only have a constitutional convention of two people. There is no provision that compels the state to divide into congressional districts. A congressional district is like a ward in the city. They are not subdivisions of any kind except for temporary purposes, from time to time, to divide up our membership in the general assembly. At the present time we have twenty-one districts, but there have been members elected to congress from the state at large. It is not impossible that we might go back to that system. I think it will be very foolish to insert this in the constitution. It might result in having two men perform the functions of these one hundred and nineteen men.

Mr. RILEY: You are supposing something that never did happen.

Mr. DOTY: But I am not supposing anything that never can happen. The mere fact that it never has happened does not prove that it may not happen in Ohio. More than that, a congressional district is not a division of any kind and it has no business in the constitution. Whether the member is right in reducing the size of the body or not, certainly his manner and method of going about it is all wrong.

Mr. STOKES: I move to lay the amendment on the table.

Mr. RILEY: I am very much enlightened by the gentleman and I want to strike "congressional" out of that amendment and make it read "senatorial districts."

Mr. STOKES: Well, I move to lay that on the table. The motion was carried.

Mr. CROSSER: I offer an amendment.

The amendment was read as follows:

In line 4 strike out the words "either branch" and change "the" to "The."

Mr. CROSSER: Reading this proposal, it occurred to me that the words "either branch of the general assembly" makes an ambiguous phrase. Does that mean that either branch must act by a general vote—

Mr. TAGGART: May I call the gentleman's attention to the fact that that is exactly the language in the old constitution?

Mr. CROSSER: I am aware of that, but because it is in the old constitution is no reason for continuing it if it is not proper.

If it is wrong in the old constitution it is wrong here. It is perfectly clear that "either branch" might be construed to mean a unanimous report.

Mr. KNIGHT: Has there ever been any question on that in the sixty years that we have been under it?

Mr. CROSSER: I don't think there has been any construction of it.

Mr. KNIGHT: All you undertake to say is that any member of the general assembly ought to be privileged to offer amendments?

Mr. CROSSER: Yes.

Mr. DOTY: Does not this sentence refer to the method of proposing amendments to the people by somebody?

Mr. CROSSER: It cannot be so, because of the very next words. Just read:

Either branch of the general assembly may propose amendments to this constitution, and if the same should be agreed to by three-fifths of the members of each house, etc.

Mr. DOTY: To get the meaning you are contending for, ought not you strike out and say "the general assembly may propose amendments to the constitution"?

Mr. CROSSER: I don't object to that.

Mr. DOTY: If you strike out "either branch of" it would be clearer, according to your contention.

Mr. CROSSER: It ought to be possible for a member of the general assembly to propose amendments just as we do.

Mr. DOTY: The next line says, "if the same shall be agreed to by three-fifths, such proposition should be spread on the journal," etc., showing that before the general assembly does it, it shall be by three-fifths vote. Therefore, one branch cannot propose as in the sense in which you contend.

Mr. CROSSER: I think it would be just as well to say "Any member of the general assembly may propose amendments," and three-fifths must vote for it.

Mr. DOTY: Won't the fact be that any member can propose an amendment to the constitution? Won't that be the way it is done?

Mr. CROSSER: Yes. But either branch must pass on it by three-fifths. You say either branch may do it, and why not say any member can do it?

Mr. SMITH, of Hamilton: I am very much afraid the gentlemen are mixing up the question of the introduction of an amendment and the proposing of an amendment. Any member may introduce an amendment, but a house must propose it to the other house.

Mr. CROSSER: Is it not true that all we can do is to propose amendments to the constitution, and that is all that the general assembly can do? We propose them to the people.

Mr. TAGGART: The constitution of 1851, in respect to amending the constitution, read as follows:

Either branch of the general assembly may propose amendments to this constitution.

Now if you strike out "either branch of," you leave it simply, "The general assembly may propose amendments to this constitution." That would mean a joint action of both house and senate. You will have both houses troubled at all times with the proposal introduced by any member of the house, and you will have both houses voting on amendments introduced by one member.

Mr. CROSSER: That is exactly the trouble that I saw in the proposal as it now stands. You seem to realize the trouble there—namely, what shall constitute an amendment to the constitution. To say that one member can do it would be all right. How many do you think it takes to do it?

Mr. TAGGART: A majority of either house.

Mr. CROSSER: How does it come about?

Mr. TAGGART: Just as any other measure brought to the house. A member in the house or in committee proposes an amendment and the house or senate adopts it, and then that branch of the general assembly presents it or proposes that amendment to both houses, and if three-fifths concur it goes to the people. This language is clear and explicit, and is not subject to any trouble if

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you simply leave it as it is. If you adopt the amendment as proposed by the gentleman from Cuyahoga, then any member can propose an amendment to the constitution, and the two houses must act on it.

Mr. CROSSER: They do it that way now.

Mr. TAGGART: After one house acts on the amendment proposed by an individual member they do, but not until that house acts on it. This provides that either branch may propose an amendment, but the house must act upon the proposal as suggested, and then it goes to the other house.

Mr. ANDERSON: It is your idea that if the Crosser amendment prevails, then if any member of the house or senate proposes an amendment there must be a joint session to act on it?

Mr. TAGGART: Undoubtedly that would be so.

Mr. ANDERSON: And under the wording of your amendment either the senate or the house would have to act on it before you could have a joint session?

Mr. TAGGART: Certainly, and that is the reason the language is used in the present constitution.

Mr. KING: I think the disturbance arises from the use of the word "propose." Members do not propose amendments to the constitution. The member introduces the resolution. That is all. He simply introduces the resolution. If you would use the word "introduce" as to the action in getting the thing started, you would not have any trouble.

Mr. TAGGART: The member from Erie is undoubtedly right. The member in either the house or the senate introduces the resolution proposing an amendment to the constitution, and then the house or senate acts upon that, and the house or senate proposes the amendment to the two houses, and therefore either branch may propose an amendment, and the language of the present constitution is eminently correct.

Mr. CROSSER: How could the house propose it?

Mr. TAGGART: By its action as an entity. The house of representatives is an entity. It proposes an amendment to both houses.

Mr. CROSSER: Does not the language indicated by Judge King show that the member introduces it?

Mr. TAGGART: The member introduces the resolution—there is no trouble about that.

Mr. DOTY: After the resolution is introduced and acted upon by both houses it then becomes a proposal by the general assembly, does it not?

Mr. TAGGART: The proposal by the general assembly?

Mr. DOTY: Now, does not the language that I offer produce the very result that the member from Erie pointed out, that what the members of the general assembly may do is to propose an amendment to the constitution? What we have done here is in the old constitution, and it says that either branch may do it all alone and yet that has never been done. But it seems to me the language makes it possible.

Mr. KNIGHT: It seems to me the amendment of the delegate from Cuyahoga [Mr. Dory] striking out the first three words and leaving it "The general assembly may propose amendments" is one that ought to be adopted. It would be absurd to say that the members of the general assembly should have a right to introduce a resolution or a bill. They have that right anyhow as mem-

bers. It seems to me that the amendment of the gentleman from Cuyahoga [Mr. Dory] covers the entire ground and removes any doubt.

Mr. COLTON: It seems to me the language here is all right and should remain as it is. Either branch of the general assembly may propose amendments to the constitution. Of course the amendment would be introduced by resolution in that branch and would be acted upon. If it is carried in that branch by a vote of three-fifths that branch proposes it to the other branch and that other branch would have to carry it by three-fifths and then it would be proposed to the people.

Mr. KNIGHT: Would not that be the final action of the general assembly and not the act of one branch?

Mr. COLTON: The final conclusion is an act of the general assembly, but the act of either branch has first to have three-fifths vote in favor of the resolution.

Mr. DOTY: Is that any different from getting up and introducing the resolution? It is only part of the machinery.

Mr. COLTON: It has the three-fifths vote in that branch.

Mr. DOTY: That is the detail of how the act is done. When it is all through, does the general assembly propose something to the people as the member from Franklin has pointed out. It does not go through until acted upon by three-fifths of each body.

Mr. COLTON: Then it is the act of the general assembly.

Mr. DOTY: Proposed to whom? Are we caring whether the senate proposes something to the house or not? This says that either branch may propose amendments to the constitution.

Mr. COLTON: It does not say to the people.

Mr. DOTY: It does not say to the people?

Mr. COLTON: No.

Mr. DOTY: Why not make it clear?

Mr. COLTON: It is to be acted upon by three-fifths of one branch and proposed to the other branch, and when the other branch acts on it by three-fifths then it is proposed to the people.

Mr. ANDERSON: For sixty years this language has stood the test.

Mr. CROSSER: Will the gentleman yield to a question?

Mr. ANDERSON: Yes.

Mr. CROSSER: Did not the gentleman stand on the south side of this platform here and lambast everybody connected with the initiative and referendum for having adopted language which stood in the constitution of Oregon for fifteen years?

Mr. ANDERSON: Yes; and we had to take your Crosser proposal and straighten it out.

Mr. CROSSER: I claim it was not straightened out. I claim it was made crooked.

Mr. ANDERSON: I believe the people who made the constitution in 1851 knew more about what they were doing than the people of Oregon have shown provided this proposal of yours was copied from Oregon.

Now, Mr. President and Gentlemen, this language has stood the test for sixty years. I do not know of any time or place where it has been criticised or questioned. Therefore I move that the Crosser amendment

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be tabled—no, I move that both of the amendments be tabled.

The VICE PRESIDENT: There is only one. The gentleman from Cuyahoga [Mr. CROSSER] accepted the other.

The amendment was tabled.

Mr. CUNNINGHAM: I want to occupy the attention of the Convention for a moment. I think the important thing for this Convention to do, and I believe the proposal accomplishes that, is to make the constitution easily amended, not to make it easy to call a new convention, because I do not think the people of Ohio will be guilty of that offense in the next forty years. I think that is well settled in Ohio, but let us make it easy of amendment. That is my theory about it. It was a mistake in the framers of the constitution of 1851, that they made that constitution too difficult to amend, and we have had to resort to various devices to get it amended. The gentlemen who propose this amendment or this proposal I think have made it quite easy to amend the constitution, and I think if the constitution with this proposal in it is adopted by the people in a very short time they will regard it as the dearest right they have, the ease with which they can amend their constitution. Therefore I heartily agree with the proposal, because it makes it easy to get rid of a bad amendment that may be placed in the constitution. I shall heartily support the proposal as amended by the committee.

Mr. PETTIT: I demand the previous question.

The main question was ordered.

The VICE PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Miller, Fairfield,
Antrim,	Halenkamp,	Miller, Ottawa,
Baum,	Halfhill,	Moore,
Beatty, Morrow,	Harbarger,	Norris,
Beatty, Wood,	Harris, Ashtabula,	Nye,
Beyer,	Harris, Hamilton,	Okey,
Brattain,	Harter, Huron,	Peck,
Brown, Highland,	Harter, Stark,	Peters,
Brown, Lucas,	Henderson,	Pettit,
Brown, Pike,	Hoffman,	Pierce,
Campbell,	Holtz,	Read,
Cassidy,	Hoskins,	Riley,
Collett,	Hursh,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Rorick,
Crosser,	Jones,	Smith, Geauga,
Cunningham,	Kehoe,	Smith, Hamilton,
Davio,	Keller,	Solether,
DeFrees,	Kerr,	Stalter,
Donahey,	Kilpatrick,	Stamm,
Doty,	King,	Stevens,
Dunlap,	Knight,	Stewart,
Dunn,	Kramer,	Stilwell,
Dwyer,	Kunkel,	Stokes,
Earnhart,	Lambert,	Taggart,
Elson,	Lampson,	Tannehill,
Evans,	Leete,	Tetlow,
Fackler,	Leslie,	Thomas,
Farnsworth,	Ludey,	Ulmer,
Farrell,	Malin,	Wagner,
Fess,	Marshall,	Walker,
FitzSimons,	Mauck,	Watson,
Fluke,	McClelland,	Weybrecht,
Fox,	Miller, Crawford,	Wise.

The proposal passed as follows:

Proposal No. 309—Mr. Taggart. To submit an amendment to article XVI, sections 1, 2 and 3, of the constitution.—Relative to amendments to the constitution.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. Either branch of the general assembly may propose amendments to this constitution; and if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be published in at least one newspaper in each county of the state, where a newspaper is published, once a week for eight consecutive weeks preceding the election at which time the same shall be submitted to the electors at either a special or general election as the general assembly may prescribe, for their approval or rejection, on a separate ballot without party designation of any kind, and if the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

SECTION 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SECTION 3. At the general election, to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter or amend the constitution" shall be submitted to the electors of the state; and in case a majority of the electors voting for and against the calling of the convention shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates and the assembling of such convention

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as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect until the same shall have been submitted to the electors of the state and adopted by a majority of those voting thereon.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. BROWN, of Lucas: I move we adjourn until tomorrow morning at ten o'clock.

The motion was carried and the Convention adjourned.

SIXTY-SECOND DAY

MORNING SESSION.

WEDNESDAY, April 24, 1912.

The Convention met pursuant to adjournment, was called to order by the vice president and opened with prayer by the Rev. John Franklin Grimes, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. PARTINGTON: I was called away when the vote on Proposal No. 309 was taken, and I ask the privilege of voting on that proposal.

The member's name was called, and he voted in the affirmative.

Mr. BEATTY, of Wood: I want to introduce a resolution.

The resolution was read as follows:

Resolution No. 108:

Resolved, That Resolution No. 90, adopted April 9, 1912, be amended to read as follows:

Resolved, That this Convention, when it adjourns on Friday, May 3, 1912, shall adjourn to Monday, May 13, 1912, at 10 o'clock a. m. at which time the standing committee on Arrangement and Phraseology shall report upon such matters as shall have been referred to said committee.

Resolved, That the calendar of business for May 13, 1912, and thereafter, shall consist only of proposals for third reading and questions appertaining thereto, and no other business shall be considered except that which shall pertain to the concluding work of the Convention.

Resolved, That this Convention shall adjourn sine die, at 12 o'clock noon, Friday, May 17, 1912.

Resolved, That Resolution No. 90 is hereby rescinded.

Mr. BEATTY, of Wood: I want to say in connection that the other resolution in reference to adjournment was that we adjourn next Friday. We shall not be ready to adjourn next Friday. This fixes the adjournment a week later. I move that the rules be suspended and that the resolution be put on its passage at once.

The motion to suspend the rules was carried.

Mr. KING: I want to call attention to the fact that there was a session provided for on the 9th of May, and that ought to be changed if this resolution is to be adopted.

Mr. DOTY: It will be quite easy to make the arrangement after we have settled the main proposition. We ought to settle that first.

Mr. KING: I have the utmost confidence in the helmsman. I just wanted to remind him there is a rock ahead.

Mr. DOTY: I had already gotten that from the member from Ross [Mr. BAUM].

The VICE PRESIDENT: The Convention might desire to hear from Mr. Baum, of Ross.

Mr. BAUM: Any other day will be satisfactory, but we would like to have it established so that the people will know.

Mr. PETTIT: There will be an interim, and we will have the committee on Arrangement and Phraseology at work. I do not see why this Convention cannot be here as a body. We could save considerable time by going ahead during that entire period without adjournment at all.

Mr. ELSON: I do not see any need for this resolution. I do not see why we should resolve so long ahead when we will adjourn. I do not think we will get through a day or an hour sooner by resolving that we are going to do so and so. As to the ten days' recess for the committee on Phraseology, of course I cannot speak for that committee as a whole, but I do think that it is doing its work right along, and I don't think it will need anything like ten days. It seems to me that we should get rid of all these resolutions and go on and do our work the best we can, and get through with it as soon as we can.

Mr. READ: Adopting this resolution looks to me like child's play. We were elected for a purpose, and that was to revise the constitution of the state of Ohio. We are supposed to stay here until we get that done properly. This Convention ought to have sense enough to know when it is ready to adjourn, and it will not know until it gets all of its work done. This thing of setting a time ahead, and trying to work up to it is going to do an injustice to some of us here. It is unjust to the Convention and to the people. I feel that we do not fully comprehend the responsibility we have here in this place. Our duty is to stay here until we get our work done, and not to set any time, but as everything comes up to give it due consideration. I am bitterly opposed to resolutions setting that time. We know that we will not be through by that time. There are too many important questions to consider. We should stay here and attend to our duties, wait until we are through, and then decide when to adjourn.

Mr. HARBARGER: I join fully in the feeling expressed by Mr. Elson and Mr. Read. It seems to me it is a little premature. I do not like the idea. Repeated resolutions of this kind for adjournment don't settle the adjournment. There are just so many things coming up that we must take action upon and we have to attend to them. I do not see any sense in this resolution and I hope it will be voted down.

Mr. JONES: I agree with what has been said by the gentleman from Summit [Mr. READ] and the gentleman from Franklin [Mr. HARBARGER]. The primary purpose for which we are here is to do this work in the best possible manner. What can be gained by a resolution fixing the time that this work must end? Can anybody say that it is going to be completed in a proper manner in a given time? It looks to the outsider as though we were now getting very anxious to quit the job, that we have done enough work for the salary paid us, and that we ought to be getting away as rapidly as possible. Personally,

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there is nobody here who would like to be through any more than I. It interferes with my personal matters as much as it does with the personal affairs of any member of the Convention, but I do submit that no such considerations should be here involved. If it is being done, it is entirely out of place to be trifling with it. When the Convention gets through with its work it will adjourn, and we can not tell when that will be. Nobody can predict it. I hope this resolution and all others like it will be discountenanced in the future deliberations of this Convention.

Mr. BROWN, of Highland: I am not very particular about this resolution one way or the other. One such resolution has already been adopted, and now we have to change it. But I want to call the attention of the Convention to the acceptance of an invitation from Chillicothe, and this Convention owes it to Chillicothe, having accepted that invitation, to go down there. If the Convention expects to stand by its acceptance of that invitation, we should arrange for it. I have not any doubt that under proper presentation it might be shown to the people down there that it would be inconvenient, and we could rescind it.

Mr. DOTY: Did you know that the member from Ross [Mr. BAUM] had made that statement?

Mr. BROWN, of Highland: No; he didn't. He said it was all right if he knew the day.

Mr. STEVENS: I move to strike out all the resolution except the portion rescinding Resolution No. 90.

Mr. BROWN, of Lucas: This practically orders the previous question on every matter before us. I can understand when the general assembly is in session, and there are two bodies, why those two bodies should agree on a time to come to an end. I can understand why the governor, who has power to recommend things to the legislature, should have some notice that at a specified time the legislature will adjourn, but we have no such thing as that before us. We are here to work until the work is finished, when we can go home. I hope the resolution will not be adopted.

Mr. BOWDLE: Man may be roughly defined to be an animal which passes resolutions. I have personally in my life passed so many resolutions which I have broken, that I do not want to see this dignified assembly involved in that same specific sin, and I am opposed to this resolution.

Mr. PIERCE: I am opposed to this resolution. I think it is nonsensical. There are only two ways we can get away from here. One way is to put in more hours, and the other is to shorten debates. I believe every member of the Convention will agree with me that every proposal should receive respectful consideration at the hands of the Convention, and there is no use for us to try to adjourn sooner by passing a resolution in this Convention. If we want to get away we should either hold two or three sessions a day and put in more time, or we should limit debate. As a rule, I am not in favor of limiting debate. When we have important matters to dispose of it is essential that they be given proper consideration, but we can, if we will work, get through with all the matters before the Convention, and probably adjourn before a very great while. I would like to adjourn next week as far as I personally am concerned, but at the same time I feel that we owe

a duty to ourselves and to the people of the state, and that is to transact the business before us, and finish it in the right kind of a way, and not adjourn until we have done this.

Mr. WINN: We owe a great deal to the state of Ohio, and the greatest duty we owe is to pass two or three more important propositions, adjourn, go home, and leave the state at rest. If we should stay here and keep up this work from now until just one year from now, we would have just as big a calendar as we have now. There never was a session of the general assembly that didn't have more bills in its bill book and more measures framed for a hearing at the time of adjournment than at any other time during the session. It will always be so. There is just one way to get through and that is to agree to fix a time to adjourn, and adjourn at that time. I do not believe there is any occasion for the prolongation of the session another moment than that. I shall vote for the amendment, but I think it will be about as senseless as anything that could be if we would vote down these resolutions altogether, allow the work to go on and adjourn when we get ready. We will never reach that time. There is just one thing that will get us through and get us away from Columbus, and that is hot weather.

Mr. PETTIT: Do you see any necessity of an interim of ten days for the committee on Arrangement and Phraseology?

Mr. WINN: The committee on Arrangement and Phraseology say it is necessary for the committee to take that number of days. I do not like to dispute that assertion.

Mr. PETTIT: Don't you think the committee on Arrangement and Phraseology can be at work while the Convention is in session?

Mr. ELSON: I would like to know whether Mr. Stevens was recognized with his motion?

The VICE PRESIDENT: The motion before the Convention is the amendment offered by the delegate from Tuscarawas [Mr. STEVENS].

The amendment was read as follows:

Amend Resolution No. 108 by striking out all except the portion rescinding Resolution No. 90.

Mr. COLTON: Realizing the fact that men can resolve and re-resolve, I am in favor of this resolution. We may not be able to adjourn one week from next Friday, but if not we can adjust ourselves to the situation. All of us have seen that the fixing of the day for adjournment has had an effect on our work. We have done more work each day than we did at any time before. I do not think any measure was slighted either. We have not had any three-hour speeches since that resolution, and the men who have addressed us have confined themselves strictly to the matters before them. If we cannot get through with the work on the day fixed we will have to extend it, but if we pass this resolution to that end we shall accomplish far more than if we leave it indefinite.

As to the work of the committee on Arrangement and Phraseology, that committee will undoubtedly need some time after the Convention recesses. If the Convention adjourns Friday it will need some days, and we could not finish in time for the Convention to come back Mon-

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day night. Therefore there is no use in calling the Convention back that week. The period of the recess should be the whole week, and I hope the resolution will pass.

Mr. WOODS: It has been my experience, and the experience of everyone who has been in the legislature, that there must be a day set for adjournment. Every legislative body in which I have ever had experience has always fixed a day for adjournment, and has endeavored to work to that day, and it always tends to lessen the length of the session. I corroborate what has already been said, that just at adjournment there are just as many bills on the calendar as at any other time. I didn't introduce this for myself. I can stay here until next January, but there must be an end sometime to this Convention. The proposals have to be given the third reading. We want fully a week's time on third reading.

Mr. READ: I would like to ask the gentleman a question. Does he not know that after the calendar committee is appointed in the legislature, then is the time that the most vicious laws are passed in the history of legislation, in the last few days, when they are in a hurry to adjourn?

Mr. BEATTY, of Wood: I think you are mistaken. I remember that I have always moved that no work should be taken up except the bills on the calendar; that they alone can be considered.

Mr. READ: But the history of legislation is different from that.

Mr. BEATTY, of Wood: That is the gentleman's statement of the history of legislation. I have given my experience.

Mr. READ: Do you think this Convention knows when it wants to adjourn?

Mr. BEATTY, of Wood: I think it does, and it knows now.

Mr. READ: Does the Convention need some member to dictate to the Convention when it shall adjourn?

Mr. BEATTY, of Wood: No, sir; no one wants to dictate, and it doesn't want anyone to dictate how long it shall stay here.

Mr. JOHNSON, of Williams: I was opposed to the original resolution fixing May 11 for adjournment, because I never like to vote for anything that I think is buncombe. Since voting against that resolution I have done everything I could to try to carry it out, though I was opposed to the introduction of the resolution and voted against it. I voted against the suspension of the rules to introduce this resolution, but I will vote for this resolution if the gentlemen will help me to demand a yea and nay vote on the previous question hereafter. I am as anxious to get away as anybody, but I do not care to run away from duty. I do not agree with the member from Defiance [Mr. WINN] that if we stay here all summer, we will have just as much business as we have now, because some of us would be going and there wouldn't be as many to introduce business. If we fix a time to adjourn, I don't think it will help business much. A good deal has been said about the general assembly adjourning. I have had four years' experience — four different sessions — and when we reached the time to adjourn in the old time, when I was a member of the general assembly, we lived up to it and carried it out. There may be exceptions now, and it may

expedite business. I am in favor of the resolution fixing adjournment, as proposed by the gentleman from Wood [Mr. BEATTY], if he will join me and go on record and agree not to rescind it unless by a majority of all of the Convention.

Mr. JONES: I want to ask the gentleman, by reason of his experience in the legislature, if there is not a very marked difference between the deliberations of this body and of the ordinary legislative body, and a distinctive difference in the amount of work that may come before the bodies?

Mr. JOHNSON, of Williams: I will say I think this Convention has, or ought to have, more dignity, and it does seem to me we don't need to indulge in any boy's play to fix the time to adjourn. I don't think it makes such a wonderful difference to fix that time, but it may help a little, and for that reason at this stage of the game — if you are willing to allow me to use that term — I am willing to fix the time on the conditions that I have just stated. In answer to your question, I think there is a difference between this assembly and a legislative body, and there ought to be a difference. We ought to be a more deliberative body, and we ought to complete our work thoroughly, and then go home. I am just as anxious as anybody to go home. I have farming interests that demand my care, too.

Mr. ELSON: I rise to a point of order. The gentleman's time is up and he won't quit.

Mr. JOHNSON, of Williams: I am ready to quit and vote for the resolution.

Mr. PECK: I offer a substitute for the pending resolution and amendments which I think may furnish a solution to this question:

The substitute was read as follows:

Resolved, That no further proposals shall be received after Monday, April 29, but thereafter the Convention shall proceed to dispose of all pending proposals and adjourn as soon as that is done.

Mr. PECK: I think this is the way to get through with the business, to fix a limit. I don't care whether you fix the date that I have named or some other date, but to fix a limit beyond which no proposals shall be received, and then go to work and draw up everything, and then you are done. It seems to me that is a practicable and reasonable mode of getting along. This thing of fixing a date two or three weeks in the future to adjourn seems impracticable. It is derived from legislative practice. The legislature has no definite work. It can adjourn whenever it wants to. We are here for a definite job, and we have to do that. The general assembly has no definite job. It meets to make general laws on any and every subject under the sun.

It is true that proposals will continue to come in unless we limit the time when we receive them. I believe that all the proposals that are of real value, and that ought to be adopted to amend this constitution, are before the Convention. I do not anticipate that there will be any coming in later of much value, but I think if we fix a time when no more will be received and then go to work and clean up the calendar we are through.

Mr. LAMPSON: You mean by "received," reported to the Convention?

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Mr. PECK: No; I mean introduced in the Convention by the members.

Mr. NYE: Mr. President and Gentlemen of the Convention: It does seem to me that this amendment ought not to pass. There are some amendments which ought to be made to the constitution we now have to make it conform to the amendments that we have adopted and that will be proposed and submitted to the people. To illustrate, the terms of the different officers of the state have to be gone over and fixed and changed in the main body of the constitution. The names of the circuit courts, if the judiciary proposal is adopted, should be changed to the courts of appeals, and there is quite a number of formal matters that ought to be changed in the old constitution to make it conform to the new, and these proposals can not be presented until this Convention has passed upon them and we know what the amendments are to be that are to be submitted to the people. So I do not think we should pass the resolution that no other proposals should be introduced after a certain date, because it cannot be done until we know what they have to be.

Mr. ANDERSON: If you would put in a substitute "except by unanimous consent," would not that remedy what you suggest?

Mr. NYE: Hardly that. Somebody might object.

Mr. PECK: Everything of the kind will be provided for by the schedule of the constitution, and it will be provided for by provisions in the schedule.

Mr. NYE: I don't think they will. The words "circuit court" occur in a good many places in the constitution that have not been amended.

Mr. PECK: Well, can't the committee on Phraseology attend to that?

Mr. NYE: It is fixed in your proposal, but not in the other.

Mr. PECK: It is within the province of the committee on Arrangement and Phraseology to make the phraseology of the constitution consistent throughout.

Mr. DOTY: No.

Mr. NYE: As I understand, we have a right to fix the phraseology of any amendment that is passed by this Convention, but the committee on Arrangement and Phraseology has no right to fix the phraseology of other sections of the constitution, at least not before receiving instructions from this Convention.

Mr. PECK: I submit that their jurisdiction is not so limited as you think. Their jurisdiction extends to the whole constitution, to make it all consistent.

Mr. NYE: If that is understood, all right.

Mr. PECK: Then it comes back for final adoption to this body. The committee on Arrangement and Phraseology has not the final say. This body has the final say.

Mr. NYE: If the gentleman will bear with me a moment, he will see by going through the judiciary proposal that there are a number of sections where the circuit court is spoken of. It seems to me that if we are to have a constitution that is uniform that these sections ought to be changed so as to have it read "the courts of appeals," as provided for by the Judiciary committee. There are other places where the terms of the various judges of the courts are fixed, and they are fixed at different numbers of years from those fixed in the

judiciary proposal, and this ought to be changed. I do not want to have any resolution that goes into the merits of the constitution after a certain date, but we should be open to offer amendments of this character.

Mr. STEVENS: The Convention is at the present time considering Resolution No. 90, which provides for temporary adjournment on the 26th, and a sine die adjournment on some other day. The objection I have to the substitute of the member from Cincinnati [Mr. PECK] is that it does not get away from Resolution No. 90, and even if his substitute is adopted we are still under Resolution No. 90. The only sensible thing is to pass my amendment. That will then clear the slate. Then I would be in favor of some such proposition as the member from Cincinnati suggests to stop incoming business. But I think we should rescind Resolution No. 90. My amendment is simply to strike out everything of this present resolution except the rescinding clause.

Mr. KNIGHT: Provision should be made for the introduction of proposals made necessary when the work of the committee on Arrangement and Phraseology is brought in. I do not agree that that committee has a right to change a single word in a single section of the constitution outside of what has been adopted in this Convention. It is fairly apparent from an investigation by some of us already that it will be necessary when we bring in our report to suggest to the Convention the necessity of some modifications in other parts of the constitution, because it is clear that in one or two instances there are inconsistencies between what we have done and other parts of the constitution. If the gentleman from Hamilton [Mr. PECK] would modify his resolution to allow the work suggested by the report of the committee on Arrangement and Phraseology to come in, that would cover it and be satisfactory.

Mr. PECK: What is the use of a Phraseology committee if you can't change a verbal mistake?

Mr. KNIGHT: I am not talking about any verbal mistakes in what we have done, but in other parts of the constitution, made necessary by what we have done, and I do not think we have a right to change a single word or a single line in any other part of the constitution, except what has been passed by this Convention and submitted to us.

Mr. DWYER: Do you not on final ratification adopt those changes, and why can't you make the changes to cover things that are necessary because of what we have done?

Mr. KNIGHT: We simply haven't any authority.

Mr. PECK: You report back here, and the Convention will authorize it.

Mr. HARRIS, of Hamilton: I just want to call the attention of the Convention to the fact that we have wasted one hour in this discussion of this question. I take the liberty of suggesting that Judge Peck accept the Stevens' amendment.

Mr. PECK: That is just what I am going to do.

Mr. TETLOW: I move the previous question.

Mr. PECK: Before that is done I want to offer an amendment to my own resolution.

The amendment was read as follows:

Amend the amendment by Mr. Peck to Resolution No. 108 as follows:

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Add at the end of resolution "Resolved that Resolution No. 90 is hereby rescinded."

Mr. DOTY: I want to call attention to the one fact you have overlooked. The member from Hamilton [Mr. PECK] and many other members seem to think that the prolongation of this Convention will come entirely from the introduction of proposals. Perfectly preposterous! That is not where the trouble is. There are enough proposals before us now to keep us here until next Christmas. There are many members who think we have a definite time-clock job, to come here at ten o'clock, ring up our time work till lunch time and then work three hours in the afternoon and we have done a day's work. We never will get through with this feeling. There is always going to be something else. It occurs to me that since we have passed a resolution to adjourn this week on Friday we have been doing a remarkably large amount of work, and that with the matters on the calendar and a few things that are yet to be reported the work can be concluded by one week from Friday with as much decorum and as much attention to business as we gave to our work yesterday; and who can say that we did not give every proposal before us proper consideration and that without the previous question too? And we can keep that up.

Mr. HARRIS, of Ashtabula: Do I understand you to say we can clean up the calendar if we work until Christmas?

Mr. DOTY: Nothing like that. Do you want what I said?

Mr. HARRIS, of Ashtabula: No; I want to ask another question.

Mr. DOTY: All right then, if you don't want me to tell you.

Mr. HARRIS, of Ashtabula: You have referred to the word "calendar" and I want to ask a question about that. How does it happen that in the arrangement of the calendar the report from your standing committee, which was presented to the Convention and agreed to after the report from my committee, appears on the calendar before mine?

Mr. DOTY: If the member will look up the rule he will find out why.

Mr. HARRIS, of Ashtabula: Does the gentleman refer to the rules that he makes as he goes along or to the standing rules of the Convention?

Mr. DOTY: If the member means to insinuate that I have been "hokuspokusing" the rules I want to deny it.

Mr. HARRIS, of Ashtabula: You were referring to the rules. I am referring to the calendar.

The VICE PRESIDENT: The Convention will be in order.

Mr. DOTY: I don't know what that has to do with the question, but it appears that the member from Ashtabula is trying to insinuate that something has been done with proposals that have gotten ahead of his. If he will look up the rules himself he would not have to ask such foolish questions.

Mr. HARRIS, of Ashtabula: I admit your rules are foolish.

Mr. TETLOW: I want to get through with this work and I don't want to hear all of these useless questions. I desire to press the motion for the previous question.

The main question was ordered.

The VICE PRESIDENT: The debate is closed—

Mr. DOTY: I demand a roll call on the resolution.

The VICE PRESIDENT: What was done with the amendment offered by the delegate from Tuscarawas [Mr. STEVENS]?

Mr. STEVENS: If I understand correctly the member from Cincinnati [Mr. PECK] has incorporated my amendment in his and I withdraw mine.

The VICE PRESIDENT: If that is agreeable the vote will then go upon the amendment offered by the member from Cincinnati [Mr. PECK], including the amendment of the gentleman from Tuscarawas.

Mr. HARRIS, of Hamilton: There is one word that is omitted I think in that resolution of Judge Peck. It was understood that no new proposal should be introduced.

Mr. PECK: That is the understanding of what this means.

Mr. WATSON: I move that that amendment be laid on the table.

The VICE PRESIDENT: The gentleman is out of order. The vote is on the amendment.

The yeas and nays were regularly demanded; taken, and resulted — yeas 52, nays 56, as follows:

Those who voted in the affirmative are :

Baum,	Harris, Ashtabula,	Norris,
Beyer,	Harris, Hamilton,	Peck,
Bowdle,	Hoffman,	Peters,
Brattain,	Holtz,	Pierce,
Brown, Highland,	Johnson, Williams,	Read,
Brown, Lucas,	Jones,	Redington,
Campbell,	Kerr,	Riley,
Collett,	King,	Roehm,
Cunningham,	Knight,	Rorick,
DeFrees,	Leete,	Shaw,
Dunn,	Longstreth,	Smith, Geauga,
Dwyer,	Malin,	Stalter,
Eby,	Mauck,	Stamm,
Elson,	McClelland,	Stevens,
Evans,	Miller, Crawford,	Stewart,
Fess,	Miller, Fairfield,	Stillwell,
Halenkamp,	Miller, Ottawa,	Stokes.
Halfhill,		

Those who voted in the negative are :

Anderson,	Fluke,	Moore,
Antrim,	Fox,	Nye,
Beatty, Morrow,	Hahn,	Okey,
Beatty, Wood,	Harbarger,	Partington,
Brown, Pike,	Harter, Huron,	Pettit,
Cassidy,	Harter, Stark,	Rockel,
Cody,	Henderson,	Smith, Hamilton,
Colton,	Hursh,	Solether,
Cordes,	Johnson, Madison,	Taggart,
Crosser,	Kehoe,	Tannehill,
Davio,	Keller,	Tetlow,
Donahay,	Kilpatrick,	Thomas,
Doty,	Kramer,	Ulmer,
Dunlap,	Kunkel,	Wagner,
Earnhart,	Lambert,	Watson,
Fackler,	Lampson,	Weybrecht,
Farnsworth,	Leslie,	Winn,
Farrell,	Ludey,	Wise.
FitzSimons,	Marshall,	

The roll call was verified.

The substitute amendment as amended was disagreed to.

The VICE PRESIDENT: The question now is on the adoption of the resolution of the delegate from Wood [Mr. BEATTY].

Resolution Relative to Adjournment—Civil Service.

The yeas and nays were regularly demanded; taken, and resulted—yeas 77, nays 30, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Hamilton,	Moore,
Beatty, Morrow,	Harter, Huron,	Norris,
Beatty, Wood,	Henderson,	Nye,
Beyer,	Hursh,	Okey,
Brattain,	Johnson, Madison,	Partington,
Brown, Highland,	Johnson, Williams,	Peters,
Brown, Pike,	Kehoe,	Pettit,
Campbell,	Keller,	Rockel,
Cassidy,	Kerr,	Rorick,
Collett,	Kilpatrick,	Shaw,
Colton,	King,	Smith, Geauga,
Cordes,	Knight,	Smith, Hamilton,
Crosser,	Kramer,	Solether,
Cunningham,	Kunkel,	Stalter,
Davio,	Lambert,	Stamm,
DeFrees,	Lampson,	Stewart,
Donahey,	Leete,	Tannehill,
Doty,	Leslie,	Tetlow,
Dunlap,	Longstreth,	Thomas,
Eby,	Ludey,	Ulmer,
Fackler,	Marshall,	Wagner,
Farnsworth,	Mauck,	Watson,
Farrell,	McClelland,	Weybrecht,
FitzSimons,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	

Those who voted in the negative are:

Anderson,	Fluke,	Peck,
Baum,	Halenkamp,	Pierce,
Bowdle,	Halfhill,	Read,
Brown, Lucas,	Harbarger,	Redington,
Dunn,	Harris, Ashtabula,	Riley,
Dwyer,	Harter, Stark,	Roehm,
Earnhart,	Hoffman,	Stevens,
Elson,	Holtz,	Stilwell,
Evans,	Jones,	Stokes,
Fess,	Malin,	Taggart,

The resolution was adopted.

Mr. PECK: I hope the gentlemen who have gotten on the water wagon will stay there and not change this resolution next week.

SECOND READING OF PROPOSALS.

The VICE PRESIDENT: The business in order is Proposal No. 169.

The proposal was read the second time.

Mr. HARTER, of Stark: As chairman of the committee which had this in charge I wish to announce that it is a unanimous report. Our committee has not been a busy one. We have taken care of about all the business placed before us and this is the most important matter that was before us. We are glad to offer a unanimous report and we are sorry that Judge Worthington is not here in person to advocate this proposal. We feel that it is one of the most important that has come before the Convention and trust it will be unanimously adopted, as it was by the committee.

Mr. KNIGHT: I am sure we all regret the absence of Judge Worthington, who is very much interested in this proposal. I think there is no doubt it is a matter we shall all agree without much debate, to place in the constitution. At present the merit system applied under the civil service in municipalities depends upon a mere legislative enactment which can be repealed at any time. The day in this country has passed when there is any question as to the entire necessity of this in all pub-

lic service. The object of this proposal is simply to place this state in line with other states in the Union and to extend the merit system of appointment and promotion—civil service in state, county and city—for merit and fitness alone. It is obvious that in each and every instance, on account of a variety of services, we can not apply this to all the heads of the state—in other words, not all can be made to come under the civil service. Therefore, the provision that “so far as practicable” appointments shall be made upon the basis of civil service. There are certain kinds of offices where it is impossible to require it to be used, and to require the impossible is never expected. This goes as far as any constitution can wisely go. It is a thing that can not be self-operating. It must require statutory enactments to carry it into effect. Therefore, the provision in the latter part of the clause which makes it the duty of the legislature to carry it into effect. I think the proposal should receive as substantial a vote as the other proposal of Judge Worthington, which was the first measure passed by a unanimous vote.

Mr. READ: Mr. President and Gentlemen of the Convention: When I was considering the proposals that would be the most important for the service of the state the civil service proposal was the first thing I thought of. I had prepared such a proposal in connection with another one, but because others were offered I withdrew mine. I want to say to this Convention—and I only intend to say a word, but what I do say I shall speak from personal experience in civil service—I consider this one of the most important proposals that can be presented for the good of the commonwealth of Ohio. Those who have been in the civil service and who have had experience, know that appointments are made, not upon merit, but on account of political preference, I care not who is holding the position as governor.

Mr. MILLER, of Crawford: I rise to a point of order. We can not hear, there is so much disorder.

The VICE PRESIDENT: The sergeant at arms will please maintain order.

Mr. READ: When a young minister once asked Henry Ward Beecher what he did when his hearers went to sleep Henry Ward Beecher said: “Whenever I hear of a congregation going to sleep, I instruct the man in charge of the church to go wake up the preacher.”

I hope this matter will be carried unanimously. I would like to see the Convention give its unanimous indorsement to a proposition of this kind. I would like to see the civil service conducted upon merit so that the persons appointed to positions will be appointed because they are capable of filling the positions to which they are appointed and not because they are political henchmen. That has been the case heretofore, and I know it.

Mr. WATSON: Is it not a fact that frequently a political henchman gets the men their positions, even when the examination is conducted?

Mr. READ: It should not be so. If the examination is properly conducted it would not be so. But now there is no recourse on that point and those who can do the best political work are appointed instead of those who can do the best for the service of the state. They do not concern themselves very much about the service to the state or the good of the commonwealth. I am

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glad there is such a proposition as this before the Convention and I hope it will be carried unanimously.

Mr. FARRELL: I would like to ask a question. Can you imagine any plan or theory that the legislature could adopt for providing for putting men into office into which the question of politics would not necessarily enter?

Mr. READ: If other things are equal there would not be any objection.

Mr. FARRELL: But can you imagine a bill the legislature could pass that would eliminate this evil complained of?

Mr. READ: A bill might not, but if it were properly carried out it would. The merit of this proposal strikes me as being so great that extended discussion is not necessary. This is a blow at the spoils system which has been such a great evil in the national government and, at present is an evil in our state government. It may not be effective to entirely remove that evil, but it is a step in the right direction, and I think we should vote for it unanimously. We paid Judge Worthington the compliment that we were glad to pay him on his former proposal, but we don't have to do that on this. The merit of the proposal should commend itself to every one and secure for the proposal our unanimous support.

Mr. PECK: If you want to weaken the power of the political boss over the state, this is the bill to do it. If a man is appointed to office by reason of his merits, as shown by an examination under civil service, he is not under any political obligation to anybody. He is more likely to do his duty in that office and not be running about the state fixing up political matters, as many of our prominent officers are doing today. We want a clean, honest political service, and there is no trouble about administering it. It is being administered by the United States government all through the country. It is being administered right now in Cincinnati in a large way. All the minor officers are being appointed under the civil service rule. The board examines applicants daily and these examinations are not simply school examinations on arithmetic and geography and clerical work; they include all that the man has had. That comes early in the examination and counts for more than anything else, his general fitness for that sort of work. It includes a great many things not included in the ordinary examination. It is working and is satisfactory to everybody, and is slowly but surely eliminating the power of the political boss. That is one of the reforms the people of Cincinnati voted for at the recent election and that they have accomplished. It is one that is going on all over the United States. It is in line with what we have been doing in this Convention and ought by all means to be adopted. I would regard it as a calamity if this proposal were defeated.

Mr. TANNEHILL: I will support this bill, but civil service as it is administered now is usually a big farce. In my county they had civil service examinations for census enumerators and it is a remarkable fact that every applicant from one political party failed and they were all appointed from the other political party.

Mr. HARRIS, of Hamilton: There is but one question in this proposal: Are you in favor of or are you opposed to civil service? There is no escape from that proposition, no matter how you may attempt to hide your real position. We know that the efficacy of any law

depends to a great extent upon the ability and the sincerity of those who have to execute it. We know that all men are not perfect and in any great measure of this kind there will be failures of enforcement by some people.

Bear in mind that civil service is not a plant of recent growth. It has a history of nearly forty years in the United States, but there is always a certain opposition to the setting aside of any old established rule of gentlemen, and we can readily imagine what the determined opposition would be to civil service when we remember that for seventy years preceding the adoption of the civil service the exact opposite had been accepted by all departments of this government, that to the victor belonged the spoils. For fifty years that was the cardinal principle of both political parties of the United States, but that doctrine has gone and no one in any community dare recommend it longer.

We recognize there are the particular instances of nonenforcement that has been recognized by Mr. Tannehill and others, that the individual charged with the carrying out of the law may not be in sympathy with it, and therefore he will carry out the law only so far as he feels he is compelled to do so by the statute. But it is not the exception that must be regarded. It is the general rule or proposition that all of you are familiar with. We know that politicians in the narrow sense, politicians for spoils only, dread nothing so much as civil service carried out in spirit instead of letter. It means the elimination of the political boss. It is only a question of time when you will practically completely destroy him. Given civil service and the initiative and referendum, and in one generation I venture to say the political boss will be as rare a creature in the United States as he is in England, France and Germany.

Now I want to call your attention to this fact, and it also appeals strongly to the labor delegates in this Convention: In the many requirements of employment in municipalities the far greater number of employments is in manual labor, as I would term it, and every civil service commission that is one in fact as well as name and that honestly carries out the spirit of the civil service, looks at the man's practical knowledge. We will need fifty horseshoers in the city of Cincinnati, and we examine men primarily as to their knowledge of horseshoeing, whether they are practical mechanics. The practical mechanic starts in with seventy-five per cent to his credit and the remaining examination is devoted to what he should know of ordinary knowledge. It is of great value to the ordinary labor man that a civil service law should be carried out in spirit and not in letter. Of course, there are instances of abuses. Every city has them. We have had that in Cincinnati. There is a fight always to overcome the abuse, but as soon as any place has had one year of the operation of a civil service law there is no power that can take it away, and this proposal is simply applying to the state the same principle that you demand for the municipality. If we adopt this, if it is ratified and becomes a law of the state, it will take time to get it to working properly. You can not expect it to be in full force and effect next year or the year after. It may take five or ten years, but after that you will hear no more of great political machines in the state controlling conventions and nominations.

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Mr. PETTIT: I am in hearty accord with a civil service law if it were ever carried out. I think a better name for it would be snivel service. Judge Peck says it has been carried out in the United States government for years. What do we see in regard to the rural route carriers of the state of Ohio or any other state? How many of them are democrats?

Mr. LAMPSON: Will the gentleman yield to a question?

Mr. PETTIT: Not now.

Mr. LAMPSON: Do you think the question of whether a man is a democrat or not—

Mr. PETTIT: I said I didn't yield. I say a democrat has as much sense in an examination as a republican, but he doesn't stand any more show to be appointed a rural route carrier or a census enumerator than a snowball in the lower regions. They announce down in our county that they will have an examination for rural carriers. The democrats go up there and take an examination, but they don't get the route and they don't even get appointed "sub." In Maysville Mr. Kehoe was a democratic congressman and he worked some democrats in, but they got rid of every one of them in a very short time. Not one could carry a route. It is all nonsense, talking of this law's being carried out. Grover Cleveland set an example when he appointed a board of examiners and he gave the republicans representation, but when he went out of office, did the republicans keep it up? Not for a minute. They didn't in our county. Talk about getting rid of the bosses! You won't do it by civil service, and I am opposed to the whole theory.

Mr. KERR: I have one particular friend who has the duty of going about to ascertain whether the civil service regulations are respected or not, and he says it is marvelous the number of people who are trying to violate the letter of the law, but I think that if you believe what has been said here the modern methods in politics ought to be corrected, and that they can be corrected very largely by this measure if the people will get back of it. The fault is not the law, but the looseness of the people under the law in the process of enforcing the law. But this Convention has put itself on record on so many modern reforms that it seems to me it would be fatal for us to adjourn without giving this proposal a very substantial vote. I should like to see it receive a unanimous vote, not simply because it was brought in by our much respected friend, who is absent by enforced necessity, but because it represents one of the most modern things that we are today thinking about along the lines of the betterment of government. I hope that this Convention will put itself on record in reducing the evils of the spoils system, and go as far as possible in making merit absolutely the essential in choosing servants of the government. As Mr. Watson and others have said, it has been a farce in some places, but that is because public opinion has not been sufficiently aroused. We can certainly arouse it and make it effective, and I hope we shall adopt the proposal unanimously.

Mr. STEVENS: In view of the fact that everybody up here seems to be in favor of the proposal, and nobody is against it, I move the previous question.

The main question was ordered.

The vice president resumed the chair.

The VICE PRESIDENT: The main question is ordered, and the roll will be called on the passage of the proposal.

The yeas and nays were taken, and resulted — yeas 84, nays 21, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Nye,
Antrim,	Harris, Ashtabula,	Partington,
Baum,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Harter, Huron,	Peters,
Beyer,	Harter, Stark,	Pierce,
Brown, Highland,	Henderson,	Read,
Brown, Lucas,	Holtz,	Redington,
Campbell,	Hoskins,	Riley,
Collett,	Johnson, Madison,	Rockel,
Colton,	Johnson, Williams,	Roehm,
Crosser,	Jones,	Rorick,
Cunningham,	Kehoe,	Shaw,
Doty,	Kerr,	Smith, Geauga,
Dunlap,	Kilpatrick,	Smith, Hamilton,
Dunn,	King,	Solether,
Dwyer,	Knight,	Stamm,
Earnhart,	Lambert,	Stevens,
Eby,	Lampson,	Stewart,
Elson,	Leete,	Stilwell,
Evans,	Leslie,	Stokes,
Fackler,	Longstreth,	Taggart,
Farnsworth,	Ludey,	Tannehill,
Fess,	Mauck,	Tetlow,
FitzSimons,	McClelland,	Thomas,
Fluke,	Miller, Crawford,	Ulmer,
Fox,	Miller, Fairfield,	Wagner,
Hahn,	Miller, Ottawa,	Winn,
Halfhill,	Moore,	Wise.

Those who voted in the negative are:

Beatty, Wood,	Farrell,	Marshall,
Brattain,	Halenkamp,	Norris,
Cody,	Hoffman,	Okey,
Cordes,	Hursh,	Pettit,
Davio,	Keller,	Stalter,
DeFrees,	Kramer,	Watson,
Donahey,	Malin,	Weybrecht.

So the proposal passed as follows:

Proposal No. 169 — Mr. Worthington. To submit an amendment to article XV, of the constitution. — Relative to the civil service.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XV.

SECTION 10. Appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained as far as practicable by competitive examinations. And it shall be the duty of the general assembly to enact laws providing for the enforcement hereof.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. WATSON: I move that we recess until 1:30.

Mr. DOTY: Wait a minute.

The motion to recess was lost.

Mr. DWYER: Mr. President —

DELEGATES: Regular order.

Mr. DOTY: This is the regular order.

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The VICE PRESIDENT: The special committee of which Judge Dwyer was chairman had authority to report at any time, and this is the regular order.

The report was read as follows:

The select committee to which was referred Proposal No. 241—Mr. Dwyer, having had the same under consideration, reports it back and recommends the passage of the following substitute for the proposal and all amendments thereto:

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws shall be passed providing for the prompt removal, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal provided.

Mr. DWYER: Mr. President and Gentlemen: In presenting my views on the proposition pending I realize that I am addressing gentlemen of eminence in the legal profession, gentlemen who have acquired distinction, as judges on the bench, as ministers of the gospel, as professors of learning, as members of the medical profession, in business affairs and in agricultural life; in fact, it would be difficult to collect a more representative body of men than are the members of this Convention. This being so, I shall not engage in any hustings oratory, for that would be out of place.

Much has been said in argument, both in praise and in blame of our courts, on which, by your indulgence, I shall briefly comment. Under our system of government, both state and federal, with written constitutions, the landmarks of jurisprudence by which our courts have to be guided are distinctly defined.

Under the federal constitution the courts must look to see what powers are expressly granted, for beyond the power expressly granted they cannot pass.

Under our state constitution the courts have only to look, when considering the subject matter before them arising under it, to see whether the power is denied or limited.

The constitution being the organic or fundamental law, all laws passed by the legislature, to be valid, must harmonize with its provisions. What authority is to determine this matter? Notably the courts. Legislatures are comprised of politicians, sent to carry out party policies. There is usually a majority in each house of one political party, actuated by party motives, and seeking party advantages. Take the redistricting of the state for congress. It is usually what is known as a gerrymander for party advantage. Take the apportionment of the state for members of the house and senate, and we have the same results. Whenever it is possible to obtain party advantage the majority party in the legislature is prepared for it, and in so doing it has very little regard for constitutional inhibition. For years a notable succession of gross violations of the constitution were enacted into laws which, for a long period, unfortunately, were held to be constitutional by the supreme court. I have refer-

ence to the laws growing out of the decisions of the supreme court in the Cincinnati Southern Railroad case. In that case, the legislature, having passed a law authorizing a city of the first class—having a population of over 150,000 population—to construct a railway, one terminal to be in said city, it was of necessity held to be constitutional. At that time Cincinnati wanted a railroad to reach the coal, iron and other minerals and timber of Kentucky and Tennessee for its factories, and the trade of the South for its merchants. Therefore, the law was passed. Under it the city had proceeded to build the road, it had made its contracts and it had issued its bonds and sold them, and they were in the hands of innocent purchasers. When the case as to the constitutionality of the law reached the supreme court the matter had gone so far that the status quo could not be restored, and great loss to innocent parties would result if the law were held unconstitutional. The supreme court, in the case of Walker v. Cincinnati, 21 O. S., held the law to be a law of a general nature and constitutional. It was a decision of necessity. But this decision was the opening of the Pandora box that let loose upon the state a flood of legislative evils to which I have referred. From that time for many years almost one-third of the session laws passed by the legislature were about as follows: "That in counties by the federal census of 1890 which had a population of not less than 21,720 and not more than 21,730, the county commissioners' reports shall be printed in folding circulars (a job for some printer)." "In counties having a population of not less than 40,480 and not more than 40,500 at the last federal census, the court of common pleas shall appoint an official stenographer (a job for some stenographer)." So matters went on, in utter disregard of the constitution. Cities were by law authorized to be divided into wards. The governor or some common pleas judge or somebody in line with the scheme was to appoint a partisan commission as authority to do the work. All this afforded fine opportunity for political bosses and they took full advantage of it, as the session laws of the legislature show. It was not the voice of the people, but that of the political bosses, through their tools in the legislature, that prevailed. Talk to me of trusting the legislature with all of this experience before us!

The supreme court first criticised this evil in one or two of its decisions, but in the case of the Cincinnati Hospital, 66 O. S., 444, it stamped it out forever. The judge who rendered that decision, Judge Schauk, is still on the bench of the supreme court, and to him more than to any other of the judges of that court is the credit due of putting the stamp of judicial condemnation on that nefarious kind of legislation. That the judges of the supreme court, as well as of all the other courts, are as free from bias in their decisions and as clean in their official and private life as any other class of men I claim to be true. Take the ministry. Don't we read every little while of the intolerance and misconduct of some of them? Yet who would denounce the entire body of the Christian ministry for the faults of the few? The medical profession is comprised in the main of honorable men; yet there are some who are unworthy, and this should be no condemnation of the entire body. And what I claim as true of the American courts is equally true of the courts of Great Britain. Much of the pro-

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tection of law thrown around Englishmen in their country has been the work of English judges. The reasonable doubt and the presumption of innocence in cases of crime, are the invention of the English judges in favor of the accused. And all the recent reforms in English legal procedure have been in the main the work of the English judges. On this floor the main criticism of the judges to which I have listened is that they lean in their decisions in favor of the interests. I hope that this criticism is much exaggerated. I trust we will consider the subject in the light of absolute fair play.

Seventy years ago, before the days of railroads and of machinery in factories, there was very little capital employed in business, not more than five or ten thousand dollars in any one enterprise, and encouragement had to be offered to people to induce them to go into business. Consequently the necessity for laws to protect human life and limb and health in this day of giant enterprises did not then exist. Such laws would then prevent people with their small means from embarking in business as one accident would bankrupt many of them. The doctrine of the fellow-servant and contributory negligence and assumed risk are relics of those days, but have outgrown their usefulness. If the proposals to amend the constitution which have been reported by the Labor committee, and to which I have given my full approval, are adopted by this body and ratified by the people hereafter at the polls, there will be no trouble with the courts. I would rather trust the courts any time than a lot of politicians in the legislature, who in every move they make are only looking to political advantage. So much for the courts.

The VICE PRESIDENT: The presiding officer is under the painful necessity of reminding the gentleman that his time has expired.

Mr. DWYER: I thought a member who makes a report is entitled to more time under the rules.

Mr. HALFHILL: It makes no difference how much time he is entitled to, I move that Judge Dwyer's time be extended until he finishes his address.

The motion was carried.

Mr. DWYER: I will now briefly consider the question of impeachment of judges for misconduct. Both Senator Burton and ex-Senator Foraker, in discussing the recall, said that they objected expressly to the recall as to judges, and so do I. They suggested that the attorney general prefer the charges of impeachment, but did not seem to know how to work the matter out. One of them suggested a commission to be appointed by the governor to try the charges in such cases. The special committee's plan is prompt and efficient. I trust what is done in this matter will be in such a way as comports with the dignity of the great state of Ohio. To me the position of a judge—to sit in judgment between man and man, in their controversies, as the representative of justice—is the highest office on earth. The other branches of government, being political, may become corrupt, but the judiciary should never.

On motion of Mr. Brown, of Lucas, the Convention recessed until 1:30 o'clock.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the vice president.

The VICE PRESIDENT: The business before the Convention is the report of the committee, of which Judge Dwyer was chairman. What shall be done with that report?

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: It seems to me, after the discussion of the original report, that the Convention acted wisely in referring this to a special committee, which has just reported. This report which is now before us looks as much like organic law as anything that has been before us for consideration. I am very much in favor of this report, because it agrees in substance with the feeling that a number of us have expressed here, that it would be much better to vest in some tribunal in Ohio the right to inquire into shortcomings of officials, and especially judges of courts, than it would be to adopt a "recall" proposal, which we fortunately killed yesterday, for this proposal now provides a way by which you can proceed in an orderly fashion, or enables the legislature to provide a way to proceed in an orderly fashion, and bring any offending officer promptly to book. Hence I am heartily in favor of this report, and I think that the very able address made by Judge Dwyer in presenting the same ought to recommend it to the Convention. He said some things in that address that are worth remembering by all of the members of this Convention. He referred to the case of Walker vs. Cincinnati, 21 O. S., in which the supreme court by force of circumstances rendered a decision which set in motion a great train of evils in Ohio. He also showed by the later decisions how the supreme court did assist the state of Ohio to recover from that; but there is one case which he did not mention, and I would like to refer to it. Starting in with 21 O. S., Walker vs. Cincinnati, where power was conferred upon the municipality to construct a railroad, you will find on examination of the reports that we never got away from the bad doctrine in that case until the report 38 O. S., Counterman vs. Dublin Township. I am particularly interested in Dublin township, Mercer county, for I was born there. They passed a law through the state legislature providing that a railroad six miles in length might be built by a township, and it was one of a series of acts of that kind providing a tax levy for such purpose by popular vote at the polls. At that particular time \$20,000 of bonds on the township was a great burden. The roads were not built and the ditches were not yet constructed. For myself, I helped earn the money by hard labor on the railroad for our share of the expense fund that hired a distinguished lawyer from my present city, who took that case to the supreme court, and the law was declared unconstitutional under which a tax of \$20,000 had been voted and levied on the property of Dublin township.

Now the point I want to make is that both of the lower courts held that kind of legislation constitutional, and it took the supreme court in that particular case of Counterman vs. Dublin Township to wipe out the most vicious kind of legislation that the state of Ohio has ever seen.

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Mr. LAMPSON: I am a little curious to know whether it was the holding of the law unconstitutional or your labor on the railroad that broke up the railroad?

Mr. HALFHILL: I presume the gentleman from Ashtabula [Mr. LAMPSON] thinks I am like himself, one who toils not and spins not, but I assure him that I did do honest, hard work on that railroad.

Mr. LAMPSON: My work is always constitutional.

Mr. HALFHILL: These are a very interesting series of statutes, and they were brought to my renewed attention today by the citation by Judge Dwyer. I hadn't thought of that case of Counterman vs. Dublin Township for a long time, but if you will examine Walker vs. Cincinnati, and trace its subsequent effects you will find that along in the eighties, or possibly in the latter part of the seventies, the legislature of Ohio passed much of that sort of special legislation, and it was the special interests of the state of Ohio that got those laws enacted. The supreme court in that instance was helping to relieve every foot of land in the state of Ohio from unjust taxation, for every foot and every acre of land and all personal property in the state of Ohio was laid under tribute by such laws. This has only been supplemental to the able argument in support of the proposition of Judge Dwyer that the courts of Ohio have protected the interests of the people of Ohio. I think this report of the special committee ought to be adopted, and I am heartily in favor of it.

Mr. ANDERSON: I may be mistaken, but it seems to me this is awkwardly worded: "Laws shall be passed providing for the prompt removal upon complaint and hearing of all officers," etc. You will notice that they are to be removed upon complaint and hearing. It seems to me that somewhere in there ought to be put "and a finding of guilty".

Mr. LAMPSON: May I ask a question? Would it not improve it a little to say "prompt removal from office"?

Mr. WATSON: I offer an amendment.

The VICE PRESIDENT: Has the gentleman from Mahoning yielded the floor?

Mr. ANDERSON: No, sir; I am very much in favor of the proposal if it is properly worded. It has been called the recall. It is not a recall at all. A recall is never based upon a hearing of the person sought to be recalled. It is never predicated upon a finding of guilty of the person sought to be recalled. A recall simply provided that if anyone has within his mind anything that would cause him to vote against the person sought to be recalled, that is a valid reason for a removal from office, so that this proposal does not sound in recall at all.

Much has been said in defense of the supreme court. One member even took the opportunity to refer to his boyhood days when he earned an honest dollar by the sweat of his face, and he used that to bring a case which the supreme court decided properly years and years ago; and he has remembered it in all these years because it was a proper decision. It seems that every opportunity is being taken here to hark back to some things that were said in reference to the supreme court, but the gentleman, harking back purposely or otherwise, mistakes what was then said.

There is no corruption of a court that I have ever known of. I have tried as many cases before judges as any member of the Convention. I was never conscious of any corruption on the part of a court. I was never conscious that it existed, but I do want to guard against judge-made law, and I have no apology to make to any of the defenders of the supreme court, or anybody else on that subject; but I would suggest that this proposal be worded so that it carry at least a clearer meaning of the thing we intend to do.

Mr. WATSON: I offer an amendment.

Mr. DOTY: The simple way out of this is to adopt the report of the committee, and then you have the report before you and it can be easily amended. If the report is adopted you have the report before you, and different amendments can come in as usual. I only want to give you a suggestion of the easy way.

Mr. WATSON: I withdraw my amendment temporarily.

Mr. EARNHART: I am opposed to this whole proposition. It looks like an ingenious subterfuge. My friend from Allen [Mr. HALFHILL] who is a fair fighter all the time, has accentuated that declaration. I look upon this as a subterfuge and not intended to be a corrective agency. The tribunal having the jurisdiction will be a court, and it cannot be expected to and it will not do anything in disregard of the wishes of its creator. I think we should not take any action at all on this matter, rather than make what seems obvious will be an ineffectual attempt. We well know — and I want to call the attention of the gentleman from Cincinnati, who spoke so eloquently a day or two ago against the recall, to just a word or two. He will remember, as we all do, that because the people could not obtain evenhanded justice the court house at Cincinnati was burned by a mob. Later on, just recently, fresh in the minds of all of us, a man down there who practically owned the courts, compelled those courts in a manner to forego prosecutions of himself. The man's name is George B. Cox, and he belongs in the penitentiary today, and you all know it. What are you going to do in an instance of that kind? We see it all over the land. A poor fellow steals thirty-five dollars' worth of something, and he is sure to go to the penitentiary. A man can steal a million, and they pat him on the back, and he comes out scot free. This is a dangerous condition and the conditions are growing worse as time goes on. There must be something changed or there will be trouble and we will have revolution. The people are long-suffering and patient, but there comes a time when endurance ceases to be a virtue, and the people will take the matter into their own hands. Then you will have effective corrective agencies, but the self-constituted tribunals are but mockeries, and I hope that this subterfuge will not pass, and that we shall have a free and open field. It is not an improvement over the present system. Leave a free, open field. When the time comes that the people want the recall, and that will be very soon, leave them free and open to take the matter into their own hands. I have faith in the intelligence of the people of the great state of Ohio. They will meet the situation and solve the problem intelligently and effectually.

Mr. HARRIS, of Ashtabula: I am of the opinion of the member from Cuyahoga [Mr. Doty]. I think that

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is entirely a proper course to take to decide what we will do with the report of the committee, and if I could outline what we would do, we would put the matter over a day or two and have the report printed. The member from Allen [Mr. HALFHILL] has given it as his opinion that this ought to go into the constitution. This may be proper, but every member should have this printed and be able to look at it. I think we need that to properly act on the question of accepting or refusing to accept the report of the committee.

Mr. BROWN, of Lucas: As a member of the committee which drafted this proposal, I wish to say to the Convention that the question now before us is upon agreeing to the report of the committee. That does not in any way bind any member of the Convention. We want to get the committee's report agreed to, and then there are two formal amendments, which we would like to have adopted if possible, one by the member from Franklin county [Mr. KNIGHT] clearing up the title, and another one which I have before me. Then, if it is entirely agreeable to all of us, have it printed and made a special order for any time that the Convention sees fit.

Mr. MAUCK: If we adopt this we have supplanted the Dwyer proposal, which I very much approved.

Mr. BROWN, of Lucas: That is correct. This supplants that.

Mr. MAUCK: Why not take up the special report, and let the pending question be on the substitution of that report for the other measure?

Mr. BROWN, of Lucas: Judge Dwyer was a member of the select committee which drafted this, and Judge Peck was a member of it, and they both recommend this substitute.

The VICE PRESIDENT: The presiding officer is anxious that the Convention be not confused on the effect of this vote. This is a report of the select committee, reported to us, and the question is on accepting that report. If it is accepted, this is not adopted, but simply to be presented in regular form as a proposal subject to any amendment that may be offered to it.

Mr. DOTY: Is not that the proposal, and would it not be up for second reading?

The report was agreed to.

Mr. KNIGHT: I have a formal amendment.

The amendment was read as follows:

In the title strike out the words "Section 23" and at the beginning of the line immediately following the resolving clause, insert "Section 24a."

Mr. KNIGHT: The proposal as it went to the committee distinctly provided for an amendment to article II, section 23, and that contains all of the article in the constitution on impeachment. If we accept this, we have by inference stricken out of the constitution what is now provided there on the subject of impeachment. I therefore offer the amendment making a new section, 24a, to correct that. It will be inserted in the proper place.

The amendment was agreed to.

Mr. BROWN, of Lucas: I offer an amendment.

The amendment was read as follows:

"In line 4 after the word 'removal' insert 'from office'."

The amendment was agreed to.

Mr. HARRIS, of Ashtabula: I cannot refrain from endeavoring to find out exactly what this matter means. I move that the substitute and amendments be printed, and that the whole question be deferred.

The VICE PRESIDENT: The motion to print has not been seconded. I recognize the member from Lucas.

Mr. BROWN, of Lucas: This is formal matter. What we desire is to get the proposal clearly before the body, and then have it printed.

Mr. HARRIS, of Ashtabula: I am willing to defer until this is done.

Mr. BROWN, of Lucas: This clears up the matter, and the proposal is now ready to take its regular course.

The VICE PRESIDENT: The gentleman from Guernsey [Mr. WATSON] is recognized.

Mr. HARRIS, of Ashtabula: I now renew my motion.

The VICE PRESIDENT: The gentleman from Guernsey has the floor.

Mr. WATSON: I will defer.

The VICE PRESIDENT: Where do you want this matter put?

Mr. HARRIS, of Ashtabula: I move that it be postponed until tomorrow.

Mr. DOTY: The proper motion is to postpone until tomorrow, and place it at the head of the calendar, and that in the meantime it be printed.

The motion was carried.

Mr. JONES: Mr. President—

Mr. DOTY: Regular order.

Mr. JONES: I would like the opportunity to introduce a proposal.

Mr. DOTY: The regular order.

The VICE PRESIDENT: There is objection to making any change from the regular order.

Mr. JONES: I want to move to suspend the rules for the purpose of introducing a proposal. I ask this favor because I am informed by the chairman of the committee to whom the proposal will be referred that they will have no further meeting this week, but will have a meeting next week, and in order that the matter may get into the hands of the committee, which it would not do if not introduced until Monday night, I would like to suspend the rules for the purpose of having it introduced.

Mr. DOTY: Personally, I have not the slightest objection, Mr. Jones—

The VICE PRESIDENT: A motion to suspend the rules is not debatable.

The motion to suspend the rules was lost, the vote being 49 in the affirmative and 29 in the negative.

The VICE PRESIDENT: The motion is lost, as it requires a two-thirds vote to suspend the rules. The regular order now is Proposal No. 72, which the secretary will read.

Proposal No. 72 was read the second time.

Mr. HOSKINS: I want to discuss this proposal at the request of the author, Mr. Stokes, and not upon my own initiative, as under the ordinary rules he should open a discussion of this sort. The committee on Corporations had this matter under consideration at some considerable length, and it was also more or less discussed last week when another proposal along the same lines was under consideration. This proposal and several

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others formed a combination of proposals that were put before the committee on Corporations. This was formulated by the subcommittee, reported to the full committee, and reported to this Convention, I believe, recommended by the entire committee on Corporations.

The original idea of the proposal was to supervise the sale of stock by corporations in the state of Ohio, both domestic and foreign. I might say that the idea proper has been suggested by what has been enacted in the state of Kansas to prevent the sale of fraudulent stock, to prevent the public from being imposed upon by the sale of stocks and bonds where there is little or no value behind them. When we came to discuss the question we thought it ought to be broader than that, and that authority ought to be conferred on the legislature not only to provide against the evils that might grow out of fraudulent sale of stocks and bonds, but that it might provide for supervising the organization, control and issuing of securities by corporations. I believe that the state has a perfect right to supervise and control the issuance of securities, either stock or bonds, by all the corporations in the state. A corporation is an artificial person. It enjoys all of its privileges by reason of the fact that the state has given it life, and it protects the citizens engaged in that capacity by exempting them from liability as they would be liable in a partnership. Corporation liability is limited, but partnership liabilities are not limited, and for these reasons we believe the state should take some action to protect its citizens from the wrongs they have suffered in the past by reason of the sale of fraudulent stocks and bonds.

I think if I could judge anything of the temper of the Convention last week that they have probably discussed this question almost as much as they care to discuss it. The committee also believes that the legislature ought to provide for the classification of corporations. We have not changed section 1 of article XIII. That stands as it is in the present constitution. The first sentence of the present proposal embraces all of section 2 of the present constitution, and the new matter is that which follows the first section. Any of those who want to follow the changes will simply read into the present constitution all after the first section: "Corporations may be classified, and there may be conferred upon proper boards, commissions or officers such supervisory and regulatory powers over their organization, business, issue and sale of stock and securities, and over the business and sale of stock and securities of foreign corporations in this state as may be prescribed by law."

Mr. BROWN, of Highland: This is meant to take the same place here as those laws in Kansas called the "sky blue" laws?

Mr. HOSKINS: The "blue-sky" laws.

Mr. BROWN, of Highland: There does not seem to be any provision here to prevent any kind of company from selling fraudulent mining stocks?

Mr. HOSKINS: We think there is.

Mr. BROWN, of Highland: This seems to apply only to corporations. Would it not be well to add private companies also?

Mr. HOSKINS: I do not understand that there is any such thing as private companies selling stock.

Mr. BROWN, of Highland: Private mining companies might sell their mining privileges.

Mr. HOSKINS: I would say that you cannot undertake to supervise a business which the state does not create, and the state does not create the natural individual. If my friend from Cuyahoga comes over into my county with a spavined horse and beats me in a horse trade, I have no way of reaching him except by the criminal law; but if he comes over there with any corporation that is given life by the state, and undertakes to sell me something in that corporation, which the state has licensed to do business within the state, then the state is responsible for what it is doing, outside of the criminal law. As I understand it, if anyone outside of a corporation would undertake to sell a mining privilege, it would be something which that man must own in his individual or private capacity; and I do not believe the state should undertake to supervise that any more than the ordinary every-day private transactions of individuals. Does that answer your question?

Mr. BROWN, of Highland: Yes, sir, very well; but I do not see why the constitution of this state could not give the officers of the state power to regulate the sale of fraudulent products by any kind of an organization, whether corporate or private.

Mr. HOSKINS: The laws of Ohio do regulate the fraudulent sale of all products that are sold under false pretenses by the criminal law, but it would be an utterly impracticable proposition to require a private individual, before he undertook to dispose of his own private property, to file information before a board as to his private property.

Mr. BROWN, of Highland: We should be given power to inquire at least.

Mr. NYE: Does not this say over the sale of stocks of foreign corporations?

Mr. HOSKINS: Yes.

Mr. NYE: The very thing that the gentleman is asking for.

Mr. HOSKINS: No; the gentleman was asking about a provision requiring the application of this to private individuals. We have tried in this to assume control over the organization of corporations, the sale of stocks and bonds by any private corporation organized in the state, and foreign corporations that undertake to sell their securities in the state, or anybody else who undertakes to sell them.

Mr. HARRIS, of Ashtabula: These blue-sky laws provide that an individual may not transfer his holdings of stock in any corporation in Kansas until the corporation has complied with the laws of Kansas by registering with the proper board and have a permit for the dealing in that kind of stock. Is that correct?

Mr. HOSKINS: I am not acquainted with the details of the operation of those blue-sky laws.

Mr. HARRIS, of Ashtabula: If I own stock in a mining company, or in any other wild-cat business incorporated in Kansas or any other state, would I as an individual be permitted to dispose of that to the citizens of Ohio and not be subject to the provisions of the proposal?

Mr. HOSKINS: This provision does not undertake, and I do not think the constitution should, to provide the details under which that stock should be transferred, but if this proposal is adopted the legislature may pro-

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vide a rule and a law under which you could make those transfers.

Mr. HARRIS, of Ashtabula: The legislature must do it?

Mr. HOSKINS: The legislature must do it. Now, if there are no further questions —

Mr. TAGGART: Would it not add strength to this proposal if, in line 10 after the words "foreign corporations" you would use "joint-stock companies or partnerships"?

Mr. HOSKINS: We discussed that question, and the judgment of the committee was that if we undertook to supervise the sale of stocks and bonds of both domestic and foreign corporations we at least ought not to supervise the sale of property that belonged to partnerships. If ten men together form a partnership what they own is their private property, and they have a right to dispose of that according to the laws of trade so long as they do not violate the criminal laws. Of course we are not seeking here to lay down any criminal rules, because our statutes take care of the violation of criminal laws and we think we ought not to undertake the supervision of that which belongs to a private individual in his private capacity as we should if this applied to partnerships.

Mr. TAGGART: I especially refer to foreign corporations and foreign joint-stock companies, or foreign partnerships. Has the committee discussed the question of the state having the right to supervise and regulate the sale of securities of foreign corporations and foreign joint-stock companies? The Adams Express Company, you know, is not a corporation.

Mr. HOSKINS: That is probably correct.

Mr. TAGGART: Would it not strengthen that proposal to add, "foreign joint-stock companies and foreign partnerships"?

Mr. HOSKINS: I will say to the Convention I do not know that that would be objectionable as applied to joint-stock companies, but I do believe it would be objectionable when it relates to partnerships. It might be so far-reaching that it would seriously hamper the transactions of private business, and I would say further that we never have, so far as I know, suffered in the state of Ohio from the sale of worthless securities issued by any private partnership or joint-stock company. In fact, I have never been able in my own mind to define what a joint-stock company is. Do you understand what it is?

Mr. TAGGART: It is a joint-stock company and not a corporation.

Mr. STOKES: I am going to assist in expediting the work of this Convention by making my remarks exceedingly brief. The gentleman from Auglaize has very fully explained the matter.

That part of the proposal relating to classification of corporations comes from some other proposals and also from amendments offered by the committee. My original proposal referred more to what is known as the blue-sky laws.

Every member of this Convention is conversant with conditions that have made necessary some provision for regulating the sale of stocks of industrial companies and providing penalties for violation therefor.

I have received a letter from the bank commissioner of Kansas, where they have a law in force covering the sale of stocks, in which he says that out of six hundred applications for license to sell certain securities he was able to approve only fifty-two, showing that over ninety per cent of the industrial companies are unworthy of the confidence of the investing public. The great benefit to be derived from this proposal comes from the fact that a place may be established where the necessary information can be obtained by prospective investors, and is open to that class of investors that is not conversant with the financial ways of the stock shark. The victims are numerous everywhere in this state. It is estimated that more than \$5,000,000 of worthless stock is sold in Ohio every year. Without further remarks, I wish to indulge the hope that the proposal will be unanimously adopted.

Mr. WINN: What is the purpose of providing for a classification of corporations?

Mr. STOKES: That came through the committee's adoption of some of the other proposals, and it was referred to a subcommittee. Mr. Jones will explain that to you more fully than I can.

Mr. BROWN, of Highland: I want to offer an amendment.

The amendment was read as follows:

In line 10 after the word "corporations" insert "and joint-stock companies".

Mr. BROWN, of Highland: I have nothing to say except that I have had some observation of fraudulent stock being sold by citizens who did not belong to corporations, as I understand them, and I believe that this state ought to have the right to inquire into conditions as to the purchase and sale of stocks through its individuals or people interested in foreign businesses, whether they be incorporated or private or joint-stock companies. I do not know the law well enough to know whether or not the state has the right to inquire into businesses of a private character, but it seems to me if there is any place where the state would have a right it would be in the fundamental law of the state. I think the extension of this privilege to inquire into joint-stock companies at least would be admissible in the fundamental law of the state.

Mr. WINN: Will you explain what you mean by a joint-stock company?

Mr. BROWN, of Highland: The gentleman from Auglaize [Mr. Hoskins] said he didn't know what a joint-stock company is. My notion is that a joint-stock company is the same thing as a corporation, but it is not as extensive. It does not seem to be controlled in the same way. I am not certain about that definition. I know that joint-stock companies and corporations are recognized as different things. They might be differentiated in law when the question came to a test, and I want to cover the whole matter.

Mr. LAMPSON: Is there any such thing as a stock company that is not incorporated in the state of Ohio?

Mr. BROWN, of Highland: I do not know at all, and if this amendment is out of order it can be defeated, but I have understood that there is a difference between corporations and joint-stock companies, and I want to cover them both. I would like to see the same thing applied to partnerships but they say it cannot be done.

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Mr. JONES: The trouble with our present constitutional provision, which is sixty years old, in reference to corporations is that it simply provides for the organization of corporations by general laws. The same law that provides for one kind of a corporation must necessarily provide the organization of all corporations. The generality of that provision precludes the legislature from making special provisions with regard to corporations of particular classes. It is desirable, and one instance will suffice out of many which may be cited, to have provision with reference to the classification of corporations. Take the charitable and quasi charitable institutions—for instance, the colleges which wish to receive donations and to hold them upon particular terms—there may be no obligations or stocks or securities in that kind of a corporation. As the matter now stands they are all controlled, however, by one general law. There should be a provision by which separate statutes relating to the organization and business of different kinds of corporations could be enacted, so as to enable them to meet the purposes for which they were organized.

Mr. HALFHILL: What do you say as to there being sufficient authority under the present constitution to pass the laws contemplated in this proposal?

Mr. JONES: I do not think the authority exists.

Mr. HALFHILL: Is it not a fact that the state of Kansas conferred that authority on the superintendent of banking and that he issues licenses?

Mr. JONES: That is simply with reference to the sale of foreign securities in the state of Kansas. I have said that the power exists with reference to the sale of foreign securities in the state of Ohio to regulate their sale, but under this general provision of our present constitution I do not think the power exists now either to classify corporations or to exert that power over their organization and the issue and sale of their securities which it is desirable to have. The thing which in the last sixty years has caused all of this complaint of which we hear so much about trusts and monopolies and the control of prices, is due to the lack of control over corporations. That sort of a thing never could have grown up but for the power that existed to put capital together under the form of corporations. We have been going on in Ohio as in every other state with absolutely no attempt practically to control or supervise corporations. We have not undertaken to limit them in any way as to their size or the amount of securities they may issue, or to control them in their operations in any respect.

The remedy for the trouble that has given rise to all this complaint is to invest legislatures with absolute power, in every respect that is deemed desirable by the people, to control corporations. As has been suggested, they are the creatures of law. They are, therefore, subject, and ought to be subject, to such control as the wisdom of the people dictates, and there ought not to be any restrictions over the exercise of all the power deemed desirable in reference to them.

I do not believe there is any need of including joint-stock companies, although I do not see that it could do any harm. A joint-stock company is simply a partnership. It is nothing but a partnership, and the only thing that distinguishes it from the ordinary partnership is that the interests of the partners is evidenced by cer-

tificates, called ordinarily certificates of stock. So that all the rules that apply to ordinary partnerships apply to joint-stock companies, and in dealing with their property and in holding and enjoying property they exercise the same rights, and no others, that the individual exercises. They have no special privileges, exemptions or special rights, but are subject to the same liabilities and rules which control the conduct of individuals and ordinary partnerships.

Mr. EBY: As a member of the committee, I did not sign the report on this proposal by Mr. Stokes, and I shall have to take issue in a few words with the gentleman from Fayette [Mr. JONES] in saying that the present constitution does not confer upon the general assembly the power to deal with corporations. I think the present constitution gives almost the widest latitude to the general assembly to deal with corporations. I am entirely in favor of that portion of the proposal which relates to the sale of securities and stocks of foreign corporations, and I indicated to the committee my intention of offering at the proper time, and at the first opportunity, an amendment cutting out the first part and including the latter part, and I wish to offer that amendment as a substitute at the present time.

The amendment was read as follows:

Strike out all after the resolving clause in Proposal No. 72 and insert the following: "The general assembly shall by law provide for the regulation and supervision of the sale of stocks or bonds or securities of all domestic and foreign corporations."

Mr. EBY: I think the other part of the constitution relating to corporations is full, and that past general assemblies have made laws regulating them, but we have been lax when it comes to the sale of securities by corporations, especially foreign corporations. I think my amendment covers all that and does not provide for anything further.

Mr. HALFHILL: Why do you use the word "shall" in your amendment? Could not you confer the same power by saying "may"?

Mr. EBY: That is only a question of grammar. I thought "shall" was mandatory.

Mr. HALFHILL: No doubt it is, but inasmuch as it applies to every corporation, good, bad and indifferent, large and small, and there are many small private concerns, why do you force the passage of a law on them?

Mr. EBY: The legislature will make a general law, and it will apply to this. I do not think it is aimed at good home corporations. It is only to protect against these corporations that are foisting worthless stocks on the people, and it should be made as mandatory as possible.

Mr. KING: It seems to me, Mr. President and Gentlemen, that the report of the committee ought to be adopted substantially as it made it. I certainly could not favor this amendment which strikes at a very important part of the report. How far the general assembly can go in undertaking to deal particularly in its legislation with peculiar corporations has never yet been determined. At the time of the adoption of the present constitution there was not in operation in Ohio, and

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probably had never been heard of by any of the makers of the constitution, the institution known as the telephone, and a telephone company today is organized under the same law as was organized the corner bakery, if it is a corporation. They cannot go to work for that particular kind of transportation which the telephone company deals in and provide any different character of organization for it. It may be they do not want to, but if the power were there I take it that the legislative ingenuity would undoubtedly determine some different system. Very probably our successors will meet in constitutional convention and may have to deal with corporations formed for the purpose of handling an aerial transportation. And so along the line, as inventions develop and new ideas come forward, new propositions, involving new principles of law, will be presented, and even old ones are constantly being presented.

Now, so far as the rights of individual injury to persons and property are concerned, the courts have been able to get along with those questions, new as they are, but the legislature has never been able to deal with their organization and management practically along the lines intended for that particular service. There was not any sense in 1851, and there is vastly less sense today, that we should tie up the legislative hands by saying that all corporations shall be exactly so long and so short, that they shall fit in the same kind of a box and be exactly alike. The legislators have undertaken ingeniously, and probably constitutionally, although in hundreds of cases that question has never been tested, to go as far as they could upon some branch path, but also preserving their action, so that they might dodge back and answer any constitutional objection that might be made to their legislation. I think they ought to have the power to classify different kinds of corporations, and to legislate for each according to its peculiar qualities. I hope this amendment will not prevail, and I move that it be laid on the table.

The motion to table was carried.

Mr. KNIGHT: In order to somewhat relieve the committee on Phraseology, I beg to offer an amendment.

The amendment was read as follows:

In the first line of the title, strike out the figure "8" and insert the figure "2".

Mr. KNIGHT: It reads section 8 in the title and section 2 in the body. Obviously it should be section 2 both places.

The amendment was agreed to.

The VICE PRESIDENT: The vote is upon the amendment offered by the delegate from Highland to insert the words "and joint-stock companies" after the word "corporations", in line 10.

The amendment was agreed to.

The VICE PRESIDENT: The question is now on the passage of the proposal.

The yeas and nays were taken, and resulted — yeas 104, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Brattain,	Cody,
Antrim,	Brown, Highland,	Collett,
Baum,	Brown, Lucas,	Colton,
Beatty, Morrow,	Brown, Pike,	Cordes,
Beatty, Wood,	Campbell,	Crosser,
Beyer,	Cassidy,	Cunningham,

Davio,	Johnson, Madison,	Peters,
DeFrees,	Johnson, Williams,	Pettit,
Donahay,	Jones,	Pierce,
Dunlap,	Kehoe,	Read,
Dunn,	Keller,	Redington,
Earnhart,	Kerr,	Riley,
Eby,	Kilpatrick,	Rockel,
Elson,	King,	Roehm,
Evans,	Knight,	Rorick,
Fackler,	Kramer,	Shaw,
Farnsworth,	Kunkel,	Smith, Geauga,
Farrell,	Lambert,	Smith, Hamilton,
Fess,	Lampson,	Solether,
FitzSimons,	Leete,	Stalter,
Fluke,	Leslie,	Stamm,
Fox,	Longstreth,	Stevens,
Hahn,	Malin,	Stewart,
Halenkamp,	Marshall,	Stilwell,
Halfhill,	Mauck,	Stokes,
Harbarger,	McClelland,	Taggart,
Harris, Ashtabula,	Miller, Crawford,	Tannehill,
Harris, Hamilton,	Miller, Fairfield,	Tetlow,
Harter, Huron,	Miller, Ottawa,	Thomas,
Harter, Stark,	Moore,	Ulmer,
Henderson,	Norris,	Wagner,
Hoffman,	Nye,	Watson,
Holtz,	Okey,	Weybrecht,
Hoskins,	Partington,	Wise,
Hursh,	Peck,	

So the proposal passed as follows:

Proposal No. 72 — Mr. Stokes. To submit an amendment to article XIII, section 2, of the constitution. — Relative to investment companies.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XIII.

SECTION 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.

Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stock and securities, and over the business and sale of the stock and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. HOSKINS: I would like to call attention to the fact that Proposal No. 72, on which we have just voted, and Proposal No. 174, that we adopted last week, to a certain extent cover the same proposition, and I move that the committee on Phraseology be authorized and instructed, if possible, to combine Proposal No. 72 and Proposal No. 174 in one proposal, so that we shall not have two sections bearing on the same subject.

Mr. ELSON: It seems to me that that motion is not in the best form. I do not think the gentleman means the two proposals shall be combined in one. It seems to me best that the motion should be that Proposal No. 72 should be combined with Proposal No. 174, except the portion that belongs to the bill of rights, and that that should be placed in the bill of rights. Is that the idea?

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Mr. HOSKINS: Yes.

Mr. ELSON: I am not sure whether your motion will cover it.

Mr. HOSKINS: We can try to do it. I want to make the motion.

The VICE PRESIDENT: The presiding officer would ask that the motion be reduced in writing, because I am of opinion that instructions to committees should be given when we are on a proposal. I have been overruled on that twice, but I still think I am right.

Mr. WATSON: As I understand when Proposal No. 174 passed the other day, it was thought that that could not be separated from the bill of rights and secure the end sought. That is a question to be considered.

The VICE PRESIDENT: The chair will put the question, and let the member reduce the amendment to writing later. The motion is to instruct the committee on Phraseology to combine these two proposals if possible.

Mr. KING: I move as a substitute that they be instructed to report these proposals back at the same time, and let the Convention do the adjusting.

Mr. NYE: I wish the gentleman would change the motion, if he will. The first part of Proposal No. 174 is under section 1 of the bill of rights. There has been a part added to it, and I wish he would fix it so that it is only the amendment to Proposal No. 174 that he asks to combine.

Mr. HOSKINS: The motion that Judge King made is that they report back at once.

Mr. NYE: I am on that committee, and I don't want to take responsibility that does not belong to us.

Mr. HOSKINS: I accept that amendment of Judge King.

The VICE PRESIDENT: Then the motion is that the committee on Arrangement and Phraseology be instructed to report both of these back at the same time.

Mr. PECK: There is no conflict between these sections at all. One of them authorizes the general assembly to regulate the sales of personal property of all kinds, including stocks and bonds, and the other authorizes them to make special regulations as to stocks and bonds. One covers the whole subject, and one part of the same subject, and there is no necessity of worrying about either one.

Mr. KNIGHT: It was not because of any alleged conflict, but it was in the hope that the two could be so combined as to require the submission of only one amendment if the amendments are submitted separately.

Mr. STEVENS: We always get into trouble when we do anything foolish.

Mr. PECK: We do.

Mr. STEVENS: I hope the amendment will prevail. This calico patch has been a thorn in my side ever since it was passed.

Mr. PECK: Because you never understood it.

Mr. STEVENS: I am in favor of Judge King's amendment.

The motion of the delegate from Auglaize [Mr. Hoskins] as amended by the acceptance of the amendment of the delegate from Erie [Mr. King] was carried.

The PRESIDENT: The next business is Proposal No. 313.

Mr. LEETE: As the matter contained in Proposal No. 313 has been combined in Proposal No. 64, which has been passed, I now move you that this proposal be indefinitely postponed.

The motion was carried.

The PRESIDENT: The next business is Proposal No. 34—Mr. Thomas, which the secretary will read.

The proposal was read the second time.

Mr. THOMAS: Gentlemen: You will note that the title to the proposal will have to be changed and I understand Brother Knight has the change already prepared. Labor for more than twenty years, as well as the manufacturers who have had to compete with prison-made goods, have made efforts in Ohio to abolish contract prison labor. About twenty years ago a law was passed abolishing it, so far as the Ohio penitentiary and reformatory were concerned, but the legislature refused to make any appropriations that year or the succeeding year to carry out the method of reform provided in the bill. That made it necessary to repeal the law so some form of employment could be had for prisoners in those institutions.

In 1906 we got passed what is known as the Wertz bill, providing for the abolition of contract prison labor so far as the Ohio penitentiary and reformatory were concerned, but it still permits the contracting of prison labor in many of the workhouses and other penal institutions of the state, as the Wertz law applies to those two institutions only. If manufacturers who have had to compete with this class of labor could come in here and tell you their story, I think you would find many of them have nearly been put out of business by the competition of prison-made goods. Those engaged in the woodenware industry were practically driven out of the business in Ohio for many years on account of that competition. The Wertz bill provides that the prisoners may be used in the manufacture of goods for the use of the state, in preparing material for good roads and providing for the raising of the necessary products for their own use, or for other institutions of the state. Since the adoption of the Wertz bill four hundred acres of the Morgan farm have been taken over by the penitentiary, and last year several hundred bushels of potatoes and other products were raised for the use of the penitentiary. This year the whole of the farm was practically taken over for cultivation by the prisoners of products for the use of that and other institutions. Down in Mt. Vernon, where we have the tuberculosis sanitarium, the prisoners have been used to build the roads from the institution to the public roads and back of the insane asylum you will find the prisoners used in quarrying material to help build good roads for the state. Under the Wertz bill the counties in the vicinity of the quarry are allowed to purchase this material at cost. As we are all in this Convention very much in favor of good roads, and as that is one of the subjects that we have disposed of, it means that this form of labor can be used successfully in aiding the state to get good roads. You will note that in this proposal, besides abolishing the contracting or selling of prison labor, it also provides for the prevention and sale of prison-made goods unless such goods are conspicuously marked "prison made." There is no use of Ohio abolishing, contracting or selling prison labor if we are going to permit every other state in the Union

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that is selling its prison labor to contractors to come in here freely with its prison-made goods and dispose of them without the knowledge of the citizens as to what they are buying. We have a test case on in Toledo now on the question, and it is dragging on and it is hard to tell when it will be disposed of. Now we ask the Convention to insert a provision in the constitution that no prison-made goods can be sold in Ohio, but that is prevented by the interstate law. It is my opinion that at least ninety per cent of the citizens of Ohio would not buy prison-made goods knowingly, and it is a fact that those prison-made goods come in free competition in our stores and other places of sale with the goods manufactured in Ohio. That makes it necessary that we should have some means whereby our citizens should be able to determine what they are buying.

Mr. WINN: Is the prime object of this proposal to prevent competition between prison-made goods and goods not prison-made?

Mr. THOMAS: Yes.

Mr. WINN: Do you regard it as justifiable to put these prisoners out on a farm raising corn and potatoes in competition with the free farmers?

Mr. THOMAS: So long as they are raising it for their own use. The farmer has the same right to stand his share of competition as have any other class of citizens.

Mr. WINN: Suppose in the raising of the crops the prisoners should raise some amount in excess of the amount necessary for the state. What would become of that excess?

Mr. THOMAS: They need only raise the amount necessary for their own use. If they raise an excess it can be turned over to other charitable institutions of the state.

Mr. WINN: I understand that all the penal institutions can be engaged in the same business at once?

Mr. THOMAS: Farming?

Mr. WINN: Some sort of labor. The proposition as I understand it is that those prisoners can be taken out to a quarry and put to getting out stone and breaking it up and preparing for building roads in competition with other laboring men engaged in that same business.

Mr. THOMAS: Yes.

Mr. WINN: The whole purpose is to prevent the employment of prison labor in manufacturing institutions in competition with similar manufacturing institutions where free labor is employed?

Mr. THOMAS: Yes, for profit. Whatever profit comes from the prison labor should go direct to the people themselves. There are sufficient charitable institutions in the state at the present time that have to be supported by taxation that could get the benefit of this prison labor in the raising of the necessary products for their use as they are getting in Cleveland at the present time through the use of our prison farm. They do not come into competition in the sense that they are in the open market with other people for the sale of their goods. Their work goes directly for the benefit of the state. I want to cite an article in LaFollette's magazine along this line. This article from LaFollette has a copy of the prospectus put out by the American Fibre Reed Company of which Leslie M. Shaw is the head.

LaFollette's magazine of March 2 has an interesting article relating to the American Fibre Reed Co., one of the largest of these prison contractors.

In part it says:

We have received a copy of a recent prospectus of the American Fibre Reed Company, enumerating the advantages under which it operates, announcing its plans for increased output, and offering \$200,000 of its preferred stock at par to the public.

Mr. Shaw's prospectus is impressive. It says: "The American Fibre Reed Company manufactures fibre and reed furniture with prison labor. Its factories are located inside prison walls and it has, at the present time, 8,000 prisoners under contract in Maine, Illinois and Kentucky. (Prison contracts are usually made for eight years and generally continue indefinitely). This company pays for its labor 52 cents per man per day; its competitors who employ free labor pay an average wage of about \$2 per day.

"There are no strikes or labor troubles in prison. This company is supplied free of rent with factory buildings, storage warehouses and ground inside the prison walls and with free heat, light and power. To acquire such facilities as this company has obtained free with its contracts would necessitate an additional investment of approximately \$1,000,000. Having to make no investment for factory buildings, storage warehouses, heat, light or power, the company's funds are kept actively engaged in liquid assets such as raw materials, finished goods and accounts receivable. These are ideal conditions for profitable manufacturing.

"Dividends of 7 per cent on the preferred and 10 per cent on the common stock are strongly assured; in fact, the company expects its net earnings to be double these dividend requirements.

"The company's experience and organization enables it to obtain these contracts and advantages in preference to other manufacturers of fiber and reed furniture who have not had prison experience.

"The demand for fiber and reed furniture having grown so rapidly, the company has decided to double its output. This should give it control of about 65 per cent of the fiber and 50 per cent of the reed business in the United States."

This is the editor's comment on the matter:

Meanwhile the movement against contract prison labor is gaining headway. The states are beginning to awaken to the evils and injustice of exploiting prisoners for private profit. Legislation of the last year shows definite tendencies toward the state's assumption of its responsibilities for its own use of the prisoners in agriculture, mining, and manufacturing for the state, on state lands, in state mines and as operatives in state factories. Twenty-one states have passed laws designed to protect imprisoned men and women from being used as cheap labor to pile up dividends for favored manufacturers. Not one state legis-

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lated to give new powers of leasing or contracting for the labor of prisoners and one only, Idaho, extended the field of its present leases.

A new special committee on manufacture in prisons and reformatories was created at the recent annual meeting of the National Consumers' League. The chairman is Julian Leavitt, author of a series of studies of prison labor now appearing in the American Magazine.

The National Consumers' League is made up of ladies and gentlemen, who are not among the physical workers, but are engaged in social reform work. They appointed a chairman and this is his comment on the subject:

There has been for a number of years much complaint by manufacturers who use the label of the Consumer's League (particularly makers of silk petticoats) that they suffer under the cut-throat competition of contractors who use the labor of men, women and girls and boys detained in prison and reformatories, whose labor is sold to the contractors at a price with which free labor cannot compete. Manufacturers co-operating with the Consumers' League point out that men and boys who are trained for the needle trades in these institutions find no employment when they are set at large, except in the case of a trivial number of cutters, and that the reformatory aim in their imprisonment is thus wholly defeated. It is the object of the new special committee to obtain and make public information upon the relation of the prisons and reformatories, primarily to the trades in which the label of the Consumers' League is used.

Now, without taking up the time of the Convention further to discuss the matter, I want to call your attention to the latter part of the proposal which provides, "Where the prisoner has a dependent family his earnings may be paid for their support." Under the old contract system in use in the penitentiary, if prisoners worked overtime, or if there were some premium put upon extra effort upon their part to get out a larger output, then they were paid small earnings which could be saved up for their own use, or sent to their families. A prisoner's family, unless it is self-supporting, becomes an object of charity, and I feel and the labor movement feels that where we are taking the earnings of a prisoner for the benefit of the state at large there is no reason why the prisoner's family should be allowed to starve or become objects of charity.

Mr. WINN: Under the provisions of this proposal could the state buy coal lands and put the convicts to work mining coal for the benefit of the state, or rather for the use of the state?

Mr. THOMAS: Yes.

Mr. STOKES: Could the state under this proposal use the prisoners to work on the public roads?

Mr. THOMAS: Yes, I think so. You will notice it reads:

All persons confined in any penal institution in the state, so far as may be consistent with discipline and the public interest, shall be employed in some beneficial industry for the use of the state or its political subdivisions.

That would permit the legislature, I think—

Mr. PETTIT: Can not you get all you are asking for from the legislature at the present time without anything in the constitution?

Mr. THOMAS: It is possible we may do it, but I think it is necessary to make it a constitutional provision so that the legislature may follow it out as it should have done years ago. Six years ago the Wertz bill was passed, and every year since then the contractors and interests back of them have prevented the necessary appropriation to carry the provision of the Wertz bill into effect, and they have come to the legislature persistently trying to get that law repealed. Last year I think there was a commission appointed by the legislature to make an investigation of the subject and to make recommendations along the lines suggested here.

Mr. PECK: I understood you to say a while ago that this provision of yours would be valueless unless we excluded this prison-made stuff from other states.

Mr. THOMAS: I said there was no use from a competitive standpoint of abolishing the making of prison-made goods in Ohio if every other state is allowed to bring its goods in here and sell them.

Mr. PECK: Have you investigated the question of whether it is in the power of the state of Ohio to exclude such goods from the state under the constitution of the United States?

Mr. THOMAS: It cannot as I understand it.

Mr. PECK: I doubt it very much.

Mr. THOMAS: I do not believe I quite heard you. Just repeat that question.

Mr. PECK: I asked you whether you had investigated the question of whether the state of Ohio can exclude prison-made goods from being sold in Ohio? I very much doubt that it can. The constitution of the United States guarantees for the citizens of each state all the rights of every other state, and they can come and bring their property with them under these decisions.

Mr. THOMAS: I have stated the matter in just the same manner as you have—that this state can not prevent the sale of prison-made goods here, but we can determine in this proposal that any such goods that come in here shall be conspicuously marked "prison made" and then our citizens can decide whether they want to buy them or not.

Mr. PECK: That would be difficult of enforcement and you may run against the interstate commerce law on that.

Mr. MOORE: Do you not think that we could require them to brand their goods "prison made" to designate their quality, the same as the quality of any other article of commerce?

Mr. THOMAS: I do not see why a provision of this kind would not be perfectly in accordance with the interstate laws. At least I have asked some of the attorneys in the Convention and they inform me that they believe that provision could be put into effect without any fear of interference of any interstate commerce laws.

Mr. HURSH: I will confess that possibly I have not been paying as close attention to all the proposals as I should because this amended proposal never reached my attention until it came up for discussion a few minutes ago. You will pardon my relating a little conversation I had the other evening. I assure you it will be interesting to the Convention. This proposal so fits into

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the conversation, it appeals to me as one of the things to go forward. I will, however, go back a little. Last Friday evening I was talking with an eminent physician, a very humane man, who has a ranch in Colorado about twelve or fourteen miles from Denver. He said when the present administration of the state of Colorado came in—probably some of you have read this in some of the magazine articles, and I am not prepared on it, and perhaps will give it to you in a desultory way—a college professor went to Governor Shafroth and said, "I want to be put in charge of the prisons of Colorado." He had no pull, but he insisted and finally he got the place. What did he do? He went to the prisons of Colorado and said to the inmates, "I am going to take the guards away from you. I am going to put you on your honor. Simply because you men have been condemned to prison you are not going to be condemned for all these years to be criminals, and I am going to make men of you. I am going to give you a chance." What did he do? They are building state roads there and one of these state roads was built right through the doctor's ranch, just back of his house, and a gang of these men came along there and worked. This superintendent of a Colorado prison takes those men without a single guard and without anybody to watch them, just takes them and puts them on their own honor, under bosses from their own prison, and assigns them to work. They are making the public highways of Colorado. That is not all. They had in that bunch of men who worked there through the doctor's ranch three life prisoners, men who were in prison for murder. One of them was a Kentuckian who had graduated from Harvard University, but who in a moment of passion had killed a man hardly knowing why he did it. He said, "I am aware I should suffer this retribution." But this was not all. This superintendent every two days comes out with a bunch of letters which he distributes among the prisoners and which different men over the state write to the prisoners saying, "I am willing to take you just as soon as you get free." This humane professor is working a way by which these men, even life prisoners, want to be reformed and have some hope.

You know it is supposed in our state that when a man is confined in a prison for a few years he is never fit for society, that he is beyond redemption, but it has been demonstrated there by actual test that it is possible to restrain these men by putting them upon their own honor. I could relate further conversation, but I want to give just one incident to show how far these men are trusted. The doctor had a daughter six years old. There was only an orchard between his house and the place where the men were working and he said to one of the men who had charge of the gang, "Will it be safe to allow my daughter out upon the premises or upon the highway?" And he answered, "Perfectly safe, absolutely so," and every day that gang of men, supposed to be vicious, is working down on that road and the little girl goes down on that road and at dinner time one of the men carries her home as he would his own child, showing how far behind the times we are in regard to the treatment of prisoners.

Here is a provision by which we can utilize the prisoners of the state and redeem some of them; here is a chance to put hope in the heart of a criminal. The day

the judge passes sentence upon him he must not be considered an Ishmaelite, with every man's hand against him. In a few years he can be taken out and worked by the state, not in competition, but on work for the state, and be given a chance to reform and be redeemed among men.

Mr. RORICK: I want some information. When these prisoners go out working in the country are they not working in competition with some one else who would do that work if the prisoners didn't do it? I can't understand the difference between working in competition one place and another. If they were not in the penitentiary they would be laboring in competition with somebody, and if they are laboring at all in the penitentiary they are laboring in competition with somebody.

Mr. HURSH: I am not arguing so much upon the point of competition with prison labor. I am simply arguing upon the humane side of the question.

Mr. RORICK: I agree with that.

Mr. WATSON: Is it not a fact that while they were working upon the public highway no private corporation is speculating upon their labor, but the state is getting all of it, whereas when they work under the prison system at present invoked someone is speculating on their labor?

Mr. HURSH: My idea is that the poor benighted men can be taken from prison walls, taken out in the air and given God's sunshine and have better ideas of manhood instilled into them.

Mr. PETTIT: Ought not this same man to have a right to choose some profession if he sees fit?

Mr. HURSH: I think so. I have just taken this opportunity to show you where the state of Ohio can do an immense good and improve conditions over those we had.

Mr. HARRIS, of Ashtabula: I think it is very evident to the members of the Convention from the answers that have been made by Mr. Hursh that he is approaching this question from one side and the member from Cuyahoga [Mr. THOMAS] is approaching it from another.

Mr. THOMAS: I am trying to approach it from all sides.

Mr. HARRIS, of Ashtabula: I am going to approach it from both sides. Singularly it happens that the argument of the member from Cuyahoga [Mr. THOMAS] sounds very familiar. I think I noticed an awakening on the part of the member from Defiance [Mr. WINN]. I think it was somewhat familiar to him. I think Mr. Doty also recognized the language as being similar to something we heard here eighteen or twenty years ago.

Mr. DOTY: Oh, no.

Mr. HARRIS, of Ashtabula: Have you forgotten it? Brother Hursh is talking along the line of recovering and restraining the criminals. A beautiful story of how the warden of the Colorado Penitentiary at Canon City has succeeded in trusting to the honor of his prisoners in reforming some of them! I have been there and it is true that under the warden's administration the convicts in the Colorado penitentiary at Canon City have done a large amount of work making highways. They have constructed roads from Canon City up to the Royal Gorge, from which point you can look down on the valley of the Arkansas River and the railroad following the

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sinuous windings of the river. They have built other roads so that men can take an automobile and go from Canon City in various directions on the most beautiful highways. All of that sounds very nice, but there is one point that I want to call your attention to just there. If those convicts had not built those roads there were plenty of people not confined in the penitentiary that at certain seasons would have been very glad to get that work to do.

Now the warden of the principal penitentiary in Oregon has proceeded along lines similar to those pursued at Mansfield, Ohio, in the reformatory, where we endeavor to reclaim the men and are not endeavoring to remove competition with free labor. That is the least consideration. The member from Cuyahoga [Mr. THOMAS] has referred to a law enacted six years ago by the legislature, and I want to call your attention to the fact that we have had such a law on the statute books for twenty years. There was such a law when I came to the general assembly in 1894. It provided that after a certain date no more contract labor could ever be permitted in the penitentiary of Ohio, and it remained there for years and years. What was the reason it didn't stay there? The legislature never followed it. The provision was that the prisoner should be working on state account. How would that work? It was my fortune when I came here eighteen years ago, without solicitation on my part, to be made chairman of the prison and prison reform committee of the house. Now I want to remind gentlemen of the financial condition of this country at that time. If there ever was a time when the laboring men were struggling for any employment it was then. They were willing to dig ditches or build roads or anything else because they were being fed in Cincinnati and Cleveland and Columbus in soup houses. They were being fed in Hocking Valley and we had had a statute enacted a year before which provided identically for the condition the member from Cuyahoga proposes to put in this—that is to say, that all goods made in the penitentiary or any workhouse in Ohio should be conspicuously branded "prison made," and in case it could not be branded it should be labeled in such a way that the consumer would know when it reached him it was prison made. Simply a boycott.

Mr. THOMAS: May I ask you a question?

Mr. HARRIS, of Ashtabula: Not at this time. I did not disturb you. We had that statute in force. We had no appropriation and no money to make an appropriation. It was a condition, not a theory. There were five hundred idle men at the penitentiary, sitting from morning to noon and from noon until night, with nothing to do. Now this is not hearsay with me. I was there and saw it. They admitted me to the penitentiary when I went down there without a question. I saw that many times and simply because there was no market for the goods the state was producing. The same thing is true in part today. They are using antiquated machinery so the production will be small and keep the prisoners busy. A proposition was brought on in the senate and it was passed. The managers of the penitentiary were frantic over the condition. The bill came to this house. It was referred to my committee, and not one man but a dozen men came to me from various counties asking me what we were going to do with that bill. I said we are

going to report it out and recommend it for passage. "Yes, but I have a labor union down in my county and I don't like to have it passed." Well, the Harshbarger law was held unconstitutional on a technicality by the circuit court when Judge Shauck was circuit court judge, before he was advanced to the supreme court. So we did not have to repeal it.

Now this proposal designs to put prisoners to work on the state-account plan. They have the state-account plan in Illinois and I took a member of my committee and went over there—of course on a pass. We went to Chicago. I had a letter of introduction to the warden of the Illinois penitentiary at Joliet. We found our way out and presented the letter and we were allowed to examine the Joliet penitentiary which was operated on the state-account plan. We were shown everything that could be seen. They were making substantially the goods they do in the Ohio penitentiary. They showed us every thing, the raw material, the goods advanced a little, then a little more and then finished and ready to be shipped out. Then we came around to the office of the warden for a sort of summing up. I said to him, "How do you manage this business as far as the purchase of stock is concerned?" He said, "We go out in the open market as any manufacturer would." "Do you buy your machinery?" "Yes." "You have convict labor to make your goods?" "Yes." "Where do you sell your goods?" "Anywhere." "Will you inform me how you avoid competition with free labor?" He smiled at both corners of his mouth, and there was a little German secretary there and he answered and said, "I will tell you how we do it, we whip the devil around the stump. We do just as any one else would do, and we sell goods in the same market." The manager, after he had time to collect himself, said, "If there is any profit in this business the state gets it instead of the contractor." That is all the difference. And no labor organization can get anything else out of it except that. I said, "You have some money invested here?" He said, "We have \$500,000 of state money invested in stock and goods in various stages of manufacture." Two years later I was there pursuant to the same quest and they then had \$1,000,000 of the money of the state of Illinois invested in material and goods in various stages of manufacture and for sale in the department stores in Chicago and at every other place they could sell them.

Now, coming to the proposition advanced by Judge Peck, this committee at my request conducted correspondence with almost every state in the Union where they had a different kind of institution of labor for the convicts in the penitentiaries. We wrote to the South, where they were employed in the mines. We wrote to Texas, where they were employed on the farm. We wrote to North Carolina, where they were employed in the mines and for road construction. Pennsylvania has not been charged with being very much against union labor. The great prison at Philadelphia—

Mr. WATSON: May I inquire whether this is under the five-minute rule or under a two-hour rule.

Mr. THOMAS: I move that the member's time be extended.

The VICE PRESIDENT: The time is not up yet. I am watching that.

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Mr. HARRIS, of Ashtabula: The great Moyamensing prison in Philadelphia is an immense institution and they have always conducted the business on the solitary plan and with the view of keeping the prisoners engaged with something that resembles employment; in some instances they will have a man working as a shoemaker and he makes the shoe complete. Another makes something else complete. At the Western Penitentiary in Allegheny, they have a policy similar to that pursued in Illinois, except the goods cannot be sold in Pennsylvania. The question was, "Where is your market?" The law provides that the goods shall not be sold in Pennsylvania. They can be sold anywhere else. Judge Peck has suggested you can not interfere with interstate transportation. They can send the goods in here and you can not prohibit them. The culmination of the whole thing is that in no possible way can you employ the inmates of the penitentiary at anything useful or productive without putting them in competition with free labor. I don't care what they produce, whether it is potatoes or brooms. There is not a single department of industry in which you can put men to work where you don't compete with somebody.

Mr. KNIGHT: I have had the pleasure of voting for two or three propositions in the interest of labor. I am sorry I can not add another vote on this, but in the first place it does not contain a single line, letter or syllable that is not purely statutory. Everything that is in it that is not unconstitutional, the general assembly of the state of Ohio can enact. It does undertake in one clause to require something which will certainly be declared unconstitutional by the supreme court of the United States if it is attempted to be enforced, that goods must be labeled; this is an attempt to discriminate by forcing the goods to have a certain label put on before they come into Ohio. Further than that, it is a little difficult to brand potatoes or apples "prison made." And yet they are produced by that kind of labor.

Again, in three places of the proposal the phrase is used which is not known either to the constitution or the laws of Ohio, "prison made." We have no prisons in Ohio. We have a penitentiary, workhouses and reformatories. But the term "prison" is not known to our laws in this state. We have workhouses at Columbus, Cleveland and Cincinnati, and reformatories, which are not in the pure sense of the word penal institutions, so that in that feature the proposal is distinctly wrong.

Mr. MOORE: Is there any general term covering all those places?

Mr. KNIGHT: So far as I know the statutes no state has found it.

Mr. HURSH: In view of the fact that the labor organizations of this state are in favor of this plan of disposing of convict labor, should there be any objection to disposing of the matter in this way?

Mr. KNIGHT: I think so, without raising the question of organized or unorganized labor. I think as a citizen of Ohio I have a right to my opinion about what should be done with convict labor. I think every one of us has a perfect right to his opinion on that point. A little further on, in line 10 of the proposal, there is something that is not altogether clear, at least it is not to my mind. What is meant by a "dependent family?" How far are you going? Every convict in the penitentiary

who has a relative of any kind who is in any way dependent upon efforts other than his or her own—is that going to turn the proceeds of the convict's labor to their support? What is the definition of a "dependent family?"

We have reference made to two states, especially to Colorado, where I am glad to believe—the incident was not unknown to me—an attempt is being made to look after the reformation of the prisoners even though it may happen to compete with some of the labor or all of the labor of the rest of us. It is rather an interesting fact that there is not a word or syllable in the constitution of Colorado on this subject, and the state of Colorado and the state of Oregon are doing something that they are both free to do without any provision in their constitution. Those are the states which have been cited for us to follow. There is not a thing in our constitution that prevents our doing everything that is mentioned in this proposal, except the one thing already mentioned as barred by the federal constitution. Therefore I do not favor the adoption of the proposal.

1. Because it is purely legislative.

2. There is a difference in opinion as to the wisdom of it. I do not believe in putting it into the constitution and locking it up there at the present time.

Mr. BROWN, of Lucas: This proposal, while not identical in words, is identical in principle with what has been several times attempted. There are two principles attempted in Ohio. There are two principles involved in it. The first is the principle of competition with free labor. The second is inhibition against peonage. I wish to suggest to the member from Franklin county that the true test of the merits of any proposal to amend the constitution is not whether or not the thing sought to be done can be done if the amendment is not passed. There is nothing I know of that we now do that we could not do by an act of the legislature if the constitution was silent on the subject. The constitution, however, does attempt to define policy. Just one example: If the constitution did not have the language "The right of trial by jury shall be inviolate," the general assembly could pass a law providing for a trial by jury and we would have it, but we could come along at any time and amend that law and do away with it. But the people have committed the state to that form of trial by a jury and that is part of the fundamental law. So the question is "Shall we make it a part of our state policy that free labor shall not be put in competition with convict labor, and that peonage shall be abolished?"

Mr. KNIGHT: Does the gentleman contend that this removes competition between the so-called convict labor and free labor?

Mr. BROWN, of Lucas: I say it attempts to do so.

Mr. KNIGHT: I do not understand the word "attempt."

Mr. BROWN, of Lucas: It attempts to do so and in a large measure it can be made successful by proper enactment. A few evenings ago a majority of us, some with some misgivings, voted to authorize a minimum wage. Having made that a part of the state policy, do you propose to have them come along and compete with men who get no wage? What is to become of the manufacturer under such circumstances? I do not believe you

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can raise wages indefinitely and promiscuously and generally and not raise the cost of living ultimately.

Mr. HARRIS, of Ashtabula: Do you want the convicts to work at all?

Mr. BROWN, of Lucas: I certainly do.

Mr. HARRIS, of Ashtabula: Does this proposal suggest a way of avoiding competition?

Mr. BROWN, of Lucas: I think so. I will get to that by and by.

Mr. HARRIS, of Ashtabula: I wish you would develop that.

Mr. BROWN, of Lucas: If you will be patient a minute I think I can reach it. I am not at all clear that we can go on raising the wages of the people and not ultimately raise the cost of living and perhaps defeat what we are trying to do. Now I voted for that provision the other night, not because the average wage is not all right, but because some wages are altogether too low. Take the roller in a rolling mill who gets \$15 per day and compare that wage with the wage of a young woman who works for fifty cents a day in a store. That requires some explanation.

Mr. HARRIS, of Ashtabula: You have spoken of a girl working in a department store here at fifty cents a day. Does she work there because she wants to? She doesn't work there because she is compelled to.

Mr. BROWN, of Lucas: Yes, she does. She is compelled to work there and work for fifty cents a day.

Mr. HARRIS, of Ashtabula: Does she not work there because she would rather work there than be out at domestic work?

Mr. BROWN, of Lucas: No, sir; you have asked me that question and there is my answer. I think it is well enough for the state of Ohio to have an opportunity to say whether it shall commit itself definitely to the policy of not putting the free labor in competition with convict labor.

Now the other proposition is one upon which I lay more stress, and that is the question of whether we shall once and for all declare against peonage in Ohio, the renting of men out to other men. Under our present system we have done it. I have seen the work down at the penitentiary. There is no use of sending a man to the penitentiary if there is no hope of reformation. How can you hope for anything when you turn a man over to another man? A man must be working to be healthy and happy, but he should be under the exclusive control of the state of Ohio every minute. When we passed a proposal the other day doing away with capital punishment did you mean to destroy hate with hate? You can only destroy hate with love.

So I say for all time let us prevent peonage in Ohio.

Mr. HARBARGER: Gentlemen of the Convention: It seems to me there are some phases of the question that we have not touched upon yet. It is not all a question of competition between free labor and prison labor. There is another question that enters into it. It is the inhuman driving of prisoners by contractors for the purpose of getting a profit. The profit is the question with the contractors. That is the great question with them. It seems to me that should enter into the consideration of this matter. Again, this question does not wholly revolve about the penitentiary. It goes to the workhouses of our counties, where contracts for the labor of the inmates are

let out. Men tell me who have managed our institutions and workhouses here that it is a disgrace to the community where a man is sentenced for a trivial offense that he is put to such hard work and so much is required of him and the profit does not go to his family or to the city or to the state, but goes to the contractors. I think that is one of the features of the question that should be considered in voting on this matter. I am heartily in favor of this proposition.

Mr. FLUKE: It seems to me that all of the talk on this proposition has been from the viewpoint of the trade union. Now I am a trade unionist myself. I know it makes considerable difference whose ox is gored. I am willing to see all the trade unionists get a fair wage, but I expect, if we let them have their way, about a year from now when I come to town I will see a basket of potatoes in front of some grocery store labeled with great big letters "prison made." Now, I don't want to see that. That comes in direct competition with the business I am in. It would interest me to know what effect prison-made potatoes would have on a union man. I am inclined to think they would give him indigestion. This may be a blessing in disguise after all. I wonder if these prison-made potatoes would cut off the wire worm and that other little pest known as the Colorado beetle. If I am assured that prison-made potatoes will kill him off I will be inclined to support this proposal; otherwise, I will not. The fact that the product of a prison farm is not sent out in open competition doesn't prevent it from being in competition. I have heard it said again and again, and I have come to believe it myself, that it is utterly impossible to work prison labor without coming in competition with free labor somewhere.

Now there is another thing I want to say, and that is on the question by the gentleman from Hardin [Mr. HURSH].

I presume it is necessary to keep these men employed. I think they should be employed out of consideration to them as a humane measure, and if they must be employed some provision should be made and some place found to put them. I will say this: That if everybody else kicks the prisoners off the face of the earth, they can go and raise corn and potatoes; farmers are not afraid of it. The history of most such institutions when they have gone into the agricultural business is that a bushel of their corn or potatoes costs more than the average farmer gets, and we can stand competition, although I hope this proposal will not pass.

Mr. FARRELL: Will the member yield to a question? Do you understand that the adoption of this proposal would permit the product of the prisoner to come in conflict with free labor?

Mr. FLUKE: Certainly.

Mr. FARRELL: I didn't understand that.

Mr. FLUKE: Any product consumed in the state comes into competition with some other product.

Mr. FARRELL: You would not find any prison-made potatoes at a grocery.

Mr. FLUKE: I have had the privilege of getting acquainted with the manager of our twelve hundred-acre farm and they are engaging in agriculture on a large scale.

Mr. FARRELL: That is what this is intended to do, but the product must not be sold out in the market.

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Mr. FLUKE: There are several hundred acres of agricultural land owned by the state at this time and the purpose is to increase and work that to the fullest capacity. It is only a question of a few years when there will be no more market in the state institutions for anything outside; they will have a surplus and that will go on the open market.

Mr. FARRELL: But this prohibits that.

Mr. FLUKE: What will become of it?

Mr. HARRIS, of Ashtabula: I would like to ask a question right there. If the convict in the workhouses and penitentiaries were fed potatoes and the state did not produce them, would they be bought from the outside?

Mr. FLUKE: Yes.

Mr. HARRIS, of Ashtabula: If they produce enough to fully supply the prisoners, they don't buy any from the outside?

Mr. FLUKE: No.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

Strike out all after the resolving clause and insert the following: "The contracting or sale of prison labor is hereby prohibited."

Mr. WINN: I have always been opposed to the plan of contracting our criminals as they have been contracted in the past, especially in our penitentiary, and I offer this so the policy of the state may become fixed. It is unlawful now according to statutory provision to make contracts by which prisoners in the Ohio penitentiary are hired out to contractors. That far this proposal is properly written. To that extent we may properly write this proposal in the constitution, and to no further extent. We can very properly declare it to be the policy of this state that hereafter no law shall be enacted permitting those having charge of any penal institution of the state—jail, workhouse, penitentiary, or reformatory—to let out the labor of the inmates by contract so that the profits for their labor shall inure to some contractor. This question of the employment of the prisoners is the hardest question the state has to deal with right now. There are more than fifteen hundred prisoners in the penitentiary and there is employment for very few of them. The remainder of them are in the idle house. I was down there visiting a short time ago and the idle house was full of them; and it is the most serious question with which the state is confronted. For eight months in the year men can not be taken out on the public highways to build roads, nor can they work upon the farm. They must do something or their idleness will mean insanity and disorder, just the opposite of what we have been talking about, which is the reformation of the criminals. My opinion is that this question had better be left to the condition of affairs arising from time to time. It is true that whatever they do will be in competition with free labor. If they go out and build roads it will be in competition with other men who are engaged in building roads or who would be if the employment were offered. If they make brooms they are in competition with other broommakers of the state.

I recall that perhaps eighteen or twenty years ago there was a factory in our penitentiary where men were engaged in making brushes, and there was an institution

of the same kind in Toledo and the proprietors of that institution came to the general assembly and persuaded the general assembly, and I believe correctly, to enact a law providing that not exceeding ten per cent. of the output of any particular industry in Ohio should be made by prison labor, and I voted for it. I was opposed to prison labor then, and I am now; but at that time they were making brushes down there and a great many were engaged in that one line of business and they were making enough to overstock the market. There is sure to be some competition. It will always be so. It is bound to be so. There is no such thing as the elimination of competition. There will be competition no matter in what line of work prisoners are employed. It seems to me therefore that if we simply put ourselves on record as saying that hereafter prisoners shall not be let out by contract, we have done all that anybody has asked us to do. It is fair and it is fundamental. That can be properly written in the organic law. Beyond that it is all statutory and I believe it would be injurious to the state to go farther than that, and I hope that this amendment will be adopted.

Mr. McCLELLAND: I am not surprised at the introduction of this proposal, nor am I surprised at its urgent advocacy by the representatives of labor unions. It is to be expected that such would be the case. It is perfectly natural that every group of individuals should think they are the people and their interests are the great interests of the commonwealth. We can not help that. It is natural that the representatives of organized labor should feel that way and that they should seek to have our support as they have received it on three separate proposals. We have voted almost unanimously for two of them. But there are limits to this. The lawyers feel that they are the people and the farmers of this Convention feel that they are the people, and whatever the occupation men are engaged in they feel that they are the people, that they must have consideration at the hands of the Convention. And so in our legislative bodies, these people who can readily group together and organize usually get what they want. For either they can furnish the talk themselves or they can get talkers to talk for them; and so they can get what they want. And this has come out as a part of the general movement in the state and nation; and this movement is so strong that it is easy to make a mistake, as our labor friends have done here.

Mr. TETLOW: Will the gentleman yield for a question?

Mr. McCLELLAND: I will not. I am not accustomed to asking questions and I do not want to be interrupted by being asked.

People all over the country are making that mistake. It was made last year by the head of the nation himself in the Canadian reciprocity matter, when he assumed that the labor unions and the manufacturers' unions were all there were in the country and the farmers' unions were not to be reckoned with. So that greater men than we are and greater bodies than this have made these mistakes, and the position of the presidential candidate himself is largely the result of the mistakes made by him in the reciprocity matter, for farmers had to be reckoned with. If the inmates of our penal institutions are to be given labor—and they must be given labor

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unless we are more cruel than to impose capital punishment—they must be given honest toil to relieve idleness. If they are to live and remain sane we must furnish them occupation. We farmers are willing to accept our share of competition, but if they raise potatoes and wheat for their own use it comes into competition just as much with farm labor as it would with other labor when they make brushes and shovels or forks or anything else, and sell them in the open markets of the world. Any kind of labor comes in competition with labor somewhere and somehow. Something was said a little while ago about preventing the sale of their surplus products in the open market. It is not so stated in the proposal. The goods sold in the open market must bear the stamp "prison made;" that is all. But is it fair at all for us in the present state of the sociological problems and the penal problems to put in the fundamental law of the land such a prohibition which can not be changed for twenty years?

Mr. STILWELL: The discussion of this proposal has disclosed some faulty phraseology, and perhaps some of the substance of the proposal ought to be modified. I, therefore, move that it be referred back to the committee with the right to report at any time.

Mr. HARRIS, of Ashtabula: I do not know that I have any objection to recommitting it to the committee, but I object to the part of the motion which allows the committee to report at any time.

Mr. STILWELL: I assure the gentleman that I shall not take any unfair advantage. The matter is before the Convention, but it ought not go to a vote. It may be made a special order for 1:30 a week from now—no, I will make it Tuesday, April 30, at 1:30 o'clock p. m.

Mr. DOTY: Can we undertake to say to a committee that it shall or shall not be ready to report?

Mr. STILWELL: We will be ready to report.

Mr. DOTY: I was only objecting to establishing such a precedent. Yesterday another special committee was given the right to report at any time.

Mr. TETLOW: I would ask Mr. Stilwell a question before I vote on this. What are the points at issue in this proposal that are not clear?

Mr. STILWELL: We want it in different shape in order to bring about proper consideration.

Mr. PETTIT: I rise to a point of order. There is a motion before the house.

The VICE PRESIDENT: There is, but it is debatable.

Mr. TETLOW: Personally I do not care whether this proposal goes back to the committee to be redrafted or not, but it seems to me if there is any trouble about the thing it could be done on the floor of the Convention. I favor this proposal and I can not see any fault in it. I think the matter will be cleared up by an amendment on the floor. Let us get through with the proposal and be done with it.

Mr. DOTY: It is only fair and right if this proposal, after the long discussion we have had, is referred back to the committee that they shall have the right to report at any time, because the proposal has been climbing up the calendar and has finally got to discussion today. We have been discussing it and now it is desired to have the committee do some work on it and let it come back at the head of the calendar. I am willing to

move to amend to allow this committee to report at any time.

Mr. HARRIS, of Ashtabula: That is where it was at the beginning. The members know what they are working at. That is to give the chairman the right to come back at any time when he sees the coast is clear. He has seductively told that they are going to make some amendments. We want to be here when they come in. We want to scan those amendments. I don't say that in any offensive sense, but we all understand the spirit in which we are approaching this. We put the proposals on the calendar so that they come in order. When we allow any committee to take a bill or proposal off the calendar with leave to report at any time we are giving them an advantage which is not due them and which is prejudicial to the Convention.

Mr. THOMAS: That same thing was done day before yesterday with Judge Dwyer's proposal and I do not see why my proposal has not as much right as Judge Dwyer's. It is only a case of prejudice against the proposal that the member from Ashtabula is raising.

Mr. WINN: I am sorry that the gentleman from Ashtabula [Mr. HARRIS] made any objection. I think we should treat this proposal as we treated Judge Dwyer's proposal yesterday. I too want to be present when they report it back, and I am going to be here. If the member from Ashtabula [Mr. HARRIS] wants to be present when it is reported back there is a very easy way for him to be present. We are going to clear the calendar. We are going to do all the work, it makes no difference which comes up first. There is merit in this proposal and I hope those having it in charge will work out something that will be satisfactory to every member on the floor. I hope the motion of the member from Cuyahoga [Mr. STILWELL] will prevail.

Mr. STILWELL: I will make that read "at any time" instead of "Tuesday, April 30, at 1:30 o'clock p. m."

The motion was carried.

The VICE PRESIDENT: Proposal No. 304—Mr. Halfhill, is the next business in order and the secretary will read it.

The proposal was read the second time.

Mr. HALFHILL: Gentlemen of the Convention: Ever since the organization of the state of Ohio we have had a common pleas court, and under the old constitution we had a common pleas court and supreme court. Under the present constitution we have justices of the peace, common pleas court, circuit court and a supreme court. By the action of the Convention here already had, the justice of the peace is no longer a constitutional officer, assuming, of course, that our action is ratified. The circuit court has been changed into the court of appeals, and the jurisdiction both of that court and the supreme court somewhat modified. Now that leaves the common pleas court. There is nothing in this proposal that in any way interferes with or changes the existing jurisdiction of the court of common pleas, because the constitution provides that the court of common pleas shall have such jurisdiction as is conferred by law, and, as we know, that jurisdiction is broad and covers a wide field. We do not know, provided the justices of the

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peace no longer continue to exist as petty courts, just how much the legislature will leave of that jurisdiction, of whether the legislature will confer all of it upon the court of common pleas. But it is very likely that many petty cases brought before justices of the peace under the \$300 limit, confining their jurisdiction, shall eventually be tried out by the court of common pleas, and it is very likely—inasmuch as the court of appeals no longer hear appeal cases *de novo*, that is to say, tries them anew on the evidence by witnesses produced in that court—and it is fair to assume that the common pleas court will have to try those cases with more care than has been heretofore exercised, and will have to take additional time in so doing, so that a record of the trial in that court where the cases are carefully tried, may be taken by way of review to the circuit court or court of appeals as we have named it. Therefore I say the action already taken by the Convention in adopting the proposal which eliminates the office of the justice of peace and modifies the jurisdiction of the circuit court so that trials will have to be had with more care in the court of common pleas, has, by force of that action, added to the duties of the court of common pleas irrespective of what the legislature may do in the future. The fundamental law as we have changed it, if what we have done is adopted, has already enlarged the duties of the common pleas court.

What is the condition in which we find that court as created under the existing constitution? The constitution of 1851, which probably represents the best that the convention at that time could do, established for the county of Hamilton a single district, not thereafter to be subdivided, and then provided that the residue of the state should be divided up into eight other districts as equitably as might be done. But it seems that before the convention adjourned its work it proceeded to divide up the state and mark out by actual county lines and designate by actual counties what those districts should be. So we have had now and ever since the constitution was adopted nine common pleas judicial districts in the state of Ohio. Now the constitution further provides that any one of those districts may be subdivided, but the subdivision can not pass beyond the numeral three, so there can be no division of any common pleas judicial district into smaller units than an aggregate of three subdivisions. That is awkward. Under the common pleas jurisdiction, therefore, each common pleas judge can only be a judge within the limits of the particular district in which he presides, and he must be elected to office by the votes of those residing within the limits of the subdivision in that district in which he resides.

Now, when it comes to making those subdivisions of common pleas districts, it must be done by the general assembly and it takes a two-thirds vote of that body to establish or change the lines of a subdivision. The consequence is that in framing the subdivisions of each of these common pleas districts there have been all kinds of political logrolling, until you find possibly four or five counties in the district that have been able to band together and get a subdivision made which is not equitable compared with the territory left in the rest of the district, but which nevertheless has been enacted by the general assembly in order to put those four or five

counties into a subdivision where they will either always elect a republican lot of judges or a democratic lot of judges, and unfortunately we can not get away from these subdivisions that have been created under that system, and we are not able even to be relieved to any extent by that act of the legislature which requires the election of judges on a nonpartisan ballot. I just mention that in passing, not that it is anything against the judges or against the men elected to office, although they have been elected on a partisan ballot in the past, and under such arrangement one subdivision belongs to one political party and another subdivision to another political party. Nor is that all of the objection. In order to create the condition where that might exist, the general assembly has frequently made inequitable subdivisions of a political judicial district. Now, it was unfortunate that those districts were defined and crystallized in the constitution, because long before this day the inequalities that existed would have been remedied by the general assembly and we would not now have the condition that confronts us, and this proposal that is offered in here would not be necessary. When we start to get away from the existing conditions we have several things to consider.

1. We can not possibly get along without the court of common pleas holding at least two or three terms a year in each county of the state in order to take care of the legal business that arises in that county. Being a court of such general jurisdiction, it is indispensable. So that we were confronted in the first instance by the thought that possibly the probate court, being one of much more limited jurisdiction, might be abolished, and the power of the probate court conferred on the court of common pleas, and then we would have a court of common pleas to take care of all the trial business before a jury and in equity and exercising functions of a probate court as they are exercised under the present constitution. Accordingly I prepared a proposal of this kind and had it referred to the Judiciary committee. I may be pardoned for saying that that proposal was what we might call a skirmisher, to find out what the Judiciary committee thought about it, and I found out in decided terms that some of the members of the committee would never listen to abolishing the probate court and the conferring of its jurisdiction on the common pleas court, because in some parts of the state that court had become dear to the people and in some parts of the state they considered it an indispensable court, just as indispensable as the court of common pleas. Therefore, by instruction of the Judiciary committee, I prepared two other proposals. One of those proposals is the one now before us and the proposal now before us has within it a provision, as you will see upon examination, that if the people of any county desire to abolish their probate court and confer the powers and jurisdiction of that court upon the court of common pleas they may do so, and, after they try it and find it is not to their best interest that such a thing has been done, they can again by popular vote re-establish the probate court. So that we have a probate court in existence all over the state of Ohio just as it is now, if the people in any community want it, and we have a proposal whereby the probate court can be done away with and merged into the common pleas court in any county of Ohio if the people desire to do so.

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Mr. ELSON: I suppose the sole object of combining the two is to save time and expense and it is intended to apply to the small counties.

Mr. HALFHILL: That is quite right. It has a utilitarian side to it that I will discuss later.

Mr. BEATTY, of Wood: For information I want to ask the author of this proposal a question. This provision says, "There shall be established in each county, a probate court, which shall be a court of record, open at all times." That means "always" does it not?

Mr. HALFHILL: That means open at all times when it is legal to transact business. That is the term used in the present constitution, if I remember correctly.

Mr. KERR: Does not that mean that the court shall not be closed, that it shall have continuous terms?

Mr. HALFHILL: I think the terms are continuous. It means that it shall be open at all business times.

Mr. MAUCK: In those counties which now have no court of common pleas, would one be elected this fall if this proposal is ratified?

Mr. HALFHILL: It expressly says that judges of the common pleas court in office and elected thereto prior to January 1, 1913, shall continue to hold their offices.

Mr. MAUCK: An amendment goes into effect as soon as voted upon?

Mr. HALFHILL: Yes.

Mr. MAUCK: Now if this is adopted this fall, will the counties that have none, elect a judge this fall?

Mr. HALFHILL: That will be taken care of in the schedule, and it will be effectively stated so there will be no friction.

We started out with the assumption that we could not get along without a common pleas court in each and every county. I think that is evident. That is to say, we must hold a court in each county to settle personal disputes and differences and define and protect property rights, because that is a part of our civilization. We must maintain a court in each and every county, but in holding that court we are at the same time at a disadvantage, because we do not have a judge in each and every county; so we thought we could make the central proposal with two objects in view or possibly more.

2. We would wipe out these awkward judicial districts, which ought never to have been in the constitution, by saying the county shall be the unit, the judge shall be elected within the county, the judge shall reside within the county and each county shall have a judge. So we have accomplished that much. We have unshackled the judges so that their authority, if they are assigned thereto, extends to any part of the state of Ohio. I believe after considering what is done in other states, that that is of itself a very beneficial thing.

Mr. WINN: If this amendment is agreed to it makes the judges of the common pleas court county officers.

Mr. HALFHILL: I think not.

Mr. WINN: Do you see any objection to changing section 1 of your proposal so that it would provide that each county of the state shall constitute a common pleas district and one resident judge, and such additional resident judges, etc., shall be elected? The old constitu-

tion provides the state shall be divided into a certain number of common pleas districts.

Mr. HALFHILL: Yes.

Mr. WINN: Would it not be advisable to provide here that each county in the state shall constitute a common pleas district instead of saying that we should elect one judge in each county?

Mr. HALFHILL: No, sir; I think not, because the county is a political subdivision that antedates the constitution, and it is entirely possible that the legislature may want to change the common pleas judicial district. It is entirely possible when the general assembly comes to consider the re-establishing of the districts for the common pleas court that it will make ten districts, and possibly, as population and property increase, twelve districts; and the general assembly may find it a very good arrangement to make a common pleas district co-ordinate with the limits of the circuit court or court of appeals districts and to have a chief justice of the common pleas court elected in that district, etc. So we did not think it was wise to use the word "district" in the constitution because we provide in substance that they shall be elected in a certain limit, to-wit, a county, and that makes it a district.

Mr. WINN: Did you consider carefully as to whether or not this will make the judges county officers?

Mr. HALFHILL: I think it would be impossible that they might be made county officers when it defines them as state officers elected in a county.

Mr. WINN: So is the county treasurer.

Mr. HALFHILL: Yes, but this goes further. This extends the jurisdiction of these officers throughout the state of Ohio. It puts them under the supervision, until the legislature otherwise declares, of the chief justice of the supreme court. It ties up the entire judicial system, one part with the other, so that it seems to me impossible that it should be construed into anything else than a state office and all common pleas judges will be constitutional officers.

Mr. RILEY: Have you figured how many judges you will have under this arrangement?

Mr. HALFHILL: I am coming to that. To look a little further into the economic part of it, the legislature of Ohio has established the salaries of the common pleas judges as follows, in section 2251 General Code of Ohio:

Judges of the common pleas and superior courts, each \$3,000.

Then follows section 2252:

In addition to the salary allowed by the preceding section, each judge of the court of common pleas and of the superior court shall receive an annual salary equal to sixteen dollars for each one thousand population of the county in which he resided when elected or appointed, as ascertained by the federal census next preceding his assuming the duties of such office, if in a separate judicial subdivision. Such additional salary shall be paid quarterly from the treasury of the county upon the warrant of the county auditor. If he resides in a judicial subdivision comprising more than one county, such additional salary shall be paid from the treasuries of the several counties of the subdivision in proportion to such popula-

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tion thereof upon the warrants of the auditors of such counties. In no case shall such additional salary be less than one thousand dollars or more than three thousand dollars.

The time of the delegate here expired and on motion it was extended to allow him to finish his remarks.

Mr. HALFHILL: So that by the limit of this statute the common pleas judges can not be paid less than \$4,000 and his salary can not exceed \$6,000. When you come to look at that feature of it, and when you reckon that with this proposal you can, if you so desire, in the small counties combine two courts, you will see that we have perhaps something here proposed to the people of the state that will not only help greatly in the administration of justice, but will save a considerable amount of money to each county, if it desires to save it, because there are only twenty-two counties in the state that do not have a resident common pleas judge; but those twenty-two counties are frequently part and parcel of an awkward subdivision where by virtue of the situation the people of an entire subdivision are delayed in their matters before the court and it has worked excessive hardships, so that when you take justice right to the home, to every man's door, by saying the court of common pleas shall be within his county and open practically all the year, you have conferred a considerable boon. That on a basis of a salary of \$4,000 a year would only amount to \$88,000. The state of Ohio would be paying for those twenty-two judges to take care of and properly administer justice right at the door of every man; and, as has been said, justice delayed is justice denied.

The condition that exists in some of our counties is not to the credit of the state of Ohio, and it is impossible to escape that condition because of the frequent changes the judges have to make from one county to another. You may realize in a small way the disadvantages when you know that sometimes a judge is presiding over a court and before half of the business is ended he must pick up and go to some other county. Then he comes back the next time and begins all over again, and that in a small way describes what the judge has to contend with in leaving a docket unfinished and never getting through, going from one place to another, leaving unfinished work behind. All of those delays will be done away with if we have some one in each county ready to transact business all the time.

The probate judge by statute gets as a salary \$100 for each one thousand inhabitants for the first fifteen thousand and then he gets \$65 per thousand up to and including the next fifteen thousand and \$55 per thousand up to and including the third fifteen thousand, so that in a county of forty-five thousand population the probate judge himself gets the sum of \$3,400, and in addition to that all of the clerk hire of that court is awarded and paid by the county commissioners out of the county treasury. So you will readily see that in a county of forty thousand or forty-five thousand population with the salary of the probate judge \$3,400 and the addition of the salaries of the clerks and deputies the amount will soon aggregate \$5,000. You could in any county of the state, if desirable, and if the two judges were not necessary, combine those two courts by merging the probate into the common pleas court. And

remember that this salary paid to the probate judge is paid out of the pockets of the people living in the county. Everybody prosecuting business in the probate court where they probate a will or distribute an estate pays a tax in the form of fees which is later transferred to the county treasury and then paid back in the way of salary, so that all of these fees come out of the pockets of the residents of these counties.

Three thousand dollars of the salaries of the judge of the common pleas is already paid by the state because he is a state officer, and the people of the county would not have a great additional amount to pay. If there were forty thousand people in the county they would only have \$640 to pay, based on the existing statute, in order to have the services of a common pleas court and a probate court, if you combine the two.

Mr. REDINGTON: Is it not true that some common pleas judges are drawing their salaries based on the population of the district of which they are part?

Mr. HALFHILL: There was a circuit court case involving that decided in the eastern part of the state some time ago which changed the rule. That case is now in the supreme court, and in my judgment will be reversed.

Mr. REDINGTON: Would not that work a hardship in the small counties, if the small county would have to pay the judge's salary based on the district?

Mr. HALFHILL: It would make the conditions harder on the small counties. Now these twenty-two judges that would be created would have authority to go to any county where they might be needed. For instance, in my county there is a great deal of the time when we ought to have two judges, but we have only one and he is there only part of the time. There are many counties in the northern part of the state, where there are great factories and great industrial establishments, to which the judge could come from some other county for a few weeks and help out in a way that would be very satisfactory.

Mr. BROWN, of Highland: There was a suggestion made to me by the judge of one of the courts in the state to the effect that that particular provision would work a hardship on the judges in that there was no provision made for paying the expenses of travel of the judge in going to the different parts of the state. He would also be subjected to extraordinary charges for living expenses.

Mr. HALFHILL: The judge was misinformed on that point, because there is a provision in the present law allowing expenses to the extent of \$150.

Mr. BROWN, of Highland: That would not amount to much.

Mr. HALFHILL: One hundred and fifty dollars would pay for several weeks' expenses and he would only be called out a few weeks at a time in any one year and he would probably be sent close to his district. The chief justice would attend to that and he would not send a judge clear across the state if it could be avoided.

There is another provision here that you do not want to lose sight of. How many of you gentlemen in this Convention who are not members of the legal profession know those members of the bar in an adjoining county that are qualified to be a judge of a court?

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Mr. DOTY: I know lots of them.

Mr. HALFHILL: You who are not members of the legal profession, or professional politicians, would not know who is qualified to be a common pleas judge, and there will be an advantage in this, that when you get the election down to your own county each individual will very likely have a much more potent influence in selecting a good man for the office of judge than you would if that particular man resided in some one of two or three other counties constituting a subdivision.

Mr. BROWN, of Highland: The laity may not know the fact, but the lawyers no doubt do know the fact that same counties have not a man in it fit to be a judge of the court. What condition would you be in then?

Mr. HALFHILL: It would be a good idea to propagate a few lawyers there. I know of no such conditions existing anywhere in Ohio.

Mr. BROWN, of Highland: I do.

Mr. STILWELL: In what county? Not in yours?

Mr. BROWN, of Highland: Oh, no.

Mr. HALFHILL: They are not in your congressional district, are they?

So when you come to select this judge and come to vote on a nonpartisan ballot you will eventually get more satisfactory judges in those counties where the county is not now of itself a subdivision; and this is something that intimately interests and touches all the people of the state of Ohio.

I think it is necessary to supplement the attempt that has been made to reform the judicial system of Ohio by adopting this proposal, and I hope it will receive the hearty approval of the Convention. I thank you for your undivided and earnest attention.

Mr. PECK: This matter was very thoroughly considered by the committee on Judiciary and Bill of Rights. It was before us a long time. I think it was perhaps more thoroughly discussed than anything we had before us, but it was not out of any difficulty about the first proposition as to the one judge of the court of common pleas for each county. That was one thing that every member of the committee was agreed upon and there was absolutely no opposition to it. The difficulty grew out of the proposition to combine the probate court and the common pleas court. There was a strong party in favor of the abolition of the probate court and the consolidation of the power of that court with the court of the common pleas and there was a still stronger party opposed to that proposition. Finally it was settled by the agreement embodied in the proposal to the effect that any county might have that sort of an arrangement if it voted for it. That is the present arrangement by which the people of the county may consolidate the two courts by a vote if they wish to get rid of one of them.

Now the idea of one judge of the court of common pleas to each county struck every one very favorably. The members from counties other than the one from which I come knew more about it than I did. Personally, I did not come here with much information on the subject, because you notice by reading the constitution of 1851 the county of Hamilton was favored in that matter as it was provided that the county of Hamilton shall constitute a district by itself. We have always had our judges to ourselves and never had any trouble. The average lawyer in Hamilton county does not know there

is any such thing as subdivisions or common pleas districts, and it is only when they meet with the common pleas judges on some formal matter that it occurs to any of us that there is such a thing as a common pleas division. We have had no trouble. It will continue the same if each county has its own judges.

There was great complaint, and many members of the Convention came to me and complained about the situation of the common pleas court in their counties and out of them. They say, "We are districted up with this, that and the other county and we can not get a judge when we want one. Our cases are put off from month to month and year to year. The judge comes once in a while. He is always in a hurry and about the time we get fairly going off he goes and we don't see him for another six months. There is a great deal of trouble and our dockets are all behind and there is a great delay in the administration of justice." So they all got the idea that each county should have the court of common pleas, and it is a correct idea. As I understood it, the principal reason for districting in 1851 was an economic one. The state of Ohio at that time was comparatively poor. You can see from other things in the constitution how extremely economical the convention was, and a number of small counties at that time really had no need for a court of common pleas for themselves, but now there are very few counties in the state that ought not to have a separate court of common pleas, and they will grow up to it in a few years. With the increase of population and business of the state the time is very near when there will be no county in Ohio that will not need a common pleas court, and I do not believe there are any counties in Ohio that can not furnish a man fitted for the position. I don't take any stock in that statement.

Mr. BROWN, of Highland: If you would go among the laymen a little you might get some information.

Mr. PECK: I have seen lawyers from a good many parts of the state and I do not believe there is any one here who will admit there is any county in his district that hasn't a lawyer fit to be judge of the common pleas court. I do not think you will get anybody to rise on the floor of this Convention and admit it. I do not know of any such county and I have not heard of one. The statement was a surprise, but if there should be such counties they can take a layman until they can grow a lawyer, as suggested by the member from Allen. The truth of the matter is there ought to be a court of common pleas in each county, and the slight difference in the matter of expense ought not to cut any figure in consideration with the great gain that is made in the convenience of the people. These courts are the creatures of the people. The court of common pleas has always been the court of the people of Ohio, as its name indicates. It has great general jurisdiction, legal and equitable, civil and criminal.

Mr. DWYER: And this gives the common pleas court jurisdiction all over the state.

Mr. PECK: Jurisdiction is given in every county. They can hold a court in any county of the state when the chief justice sends them there. The chief justice will say, "Mr. Judge, go over into such a county and hold court," and the judge goes over there and proceeds to hold the court. It is a system that ought to work

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well. Of course the proof of the pudding is in the eating, but so far as can be foreseen by anybody—and there were several ex-judges on the committee and we had the advice and assistance of Mr. Halfhill, the proposer of the measure—we believe that this is a valuable reform and a good thing for the state of Ohio, and that it will assist in the speedy administration of justice, which is one of the reasons why I insisted upon the adoption of Proposal No. 184, providing for a reform of the supreme court and the institution of a court of appeals.

This is supplementary to that, and it ought to be carried out. This is a court in which a great many more of the people are directly interested than are interested either in the supreme court or the court of appeals. It is the court of the people and the one to which they ordinarily resort whenever legal remedies are required.

Mr. BROWN, of Highland: It requires a good deal of temerity for a layman to speak on a legal subject, but I have had a great deal of interest in this proposal and have considered it and followed it carefully through all its forms. I have concluded it is a good thing if we can afford it. It is a matter of \$88,000 to the state. It provides a court in every county and it gives the people of the county the privilege of having only one court, of merging the common pleas court and the probate court into one court. The opposition to the abolition of the probate court is because of the relations of the probate judge with his clientele or constituency and because of the personal, intimate, fraternal and paternal interest that the probate court has been giving in matters of expediency and advice to the patrons of the court. The common pleas judge could not do those things, because the matters might be afterwards brought before him in the court of common pleas and he would be disqualified from sitting in the case, or he might be compelled to nullify his own advice as probate judge because his advice would be incompatible with the law as he afterwards found and it would be contradictory of the constitution. I find, however, after these things have been discussed, and from interviews with a number of people, that there are a great many in different counties of the state who are strongly in favor of abolishing the probate court. In those counties under this proposal that thing can be done in accordance with the wishes of the people and in the interest of economy. I think before this proposal would be in effect very long there would be enough counties that would deem it advisable to abolish one of the courts, and have only the common pleas court, to make up for the added expense we have provided for in this proposal.

Some time ago, in a most extreme emergency, I was justified in getting out an injunction, as everybody recognized and fortunately we had a judge in the town. I secured this injunction, which was of vast importance to me and to others, as it was a case in which we had rights that were important. If the judge had been in Madison county, which is in the judicial district where I live, I would have had to secure a hearing in Madison county; the necessity for an injunction would have been past, and the damage the injunction prevented would have taken place long before we could have done anything. I have talked with a number of gentlemen on this floor who are similarly situated and they are asking for relief. I believe we can give it to them, and I am per-

fectly confident there is not a man on the floor, lawyer or layman, who does not know it is a good thing. I think the counties that do not need two courts will soon have only one. We will thus save the state a great deal of money and furnish a court to every man to which the people can go in an emergency. I am in favor of the measure and I think everybody should vote for it.

Mr. OKEY: I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 94, nays 12, as follows:

Those who voted in the affirmative are:

Anderson,	FitzSimons,	Moore,
Antrim,	Fox,	Norris,
Baum,	Hahn,	Nye,
Beatty, Morrow,	Halenkamp,	Okey,
Beatty, Wood,	Halfhill,	Partington,
Beyer,	Harris, Hamilton,	Peck,
Bowdle,	Harter, Huron,	Peters,
Brattain,	Harter, Stark,	Pettit,
Brown, Highland,	Henderson,	Pierce,
Brown, Lucas,	Hoffman,	Read,
Brown, Pike,	Holtz,	Redington,
Campbell,	Johnson, Madison,	Rockel,
Cassidy,	Jones,	Roehm,
Collett,	Kehoe,	Rorick,
Colton,	Keller,	Smith, Geauga,
Cordes,	Kerr,	Smith, Hamilton,
Crosser,	Kilpatrick,	Solether,
Cunningham,	King,	Stalter,
Davio,	Knight,	Stamm,
DeFrees,	Kramer,	Stevens,
Donahay,	Kunkel,	Stilwell,
Doty,	Lambert,	Stokes,
Dunlap,	Lampson,	Taggart,
Dwyer,	Leete,	Tannehill,
Earnhart,	Leslie,	Thomas,
Eby,	Ludey,	Ulmer,
Elson,	Marshall,	Wagner,
Evans,	McClelland,	Watson,
Fackler,	Miller, Crawford,	Weybrecht,
Farnsworth,	Miller, Fairfield,	Winn,
Farrell,	Miller, Ottawa,	Wise.
Fess,		

Those who voted in the negative are:

Dunn,	Johnson, Williams,	Riley,
Fluke,	Longstreth,	Shaw,
Harbarger,	Malin,	Stewart,
Hursh,	Mauck,	Tetlow.

So the proposal passed as follows:

Proposal No. 304—Mr. Halfhill. To submit an amendment to the constitution.—Relative to amending sections 1, 3, 12, and 15, or article IV, so that each county will elect at least one judge of the court of common pleas.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. That section 3, article IV, be amended to read as follows:

One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of

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common pleas as are necessary, may be held at the same time in any county.

Any judge of such a court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas and assign some other judge for such place, or assign any such judge to another county to hold court therein.

SECTION 2. That section 7 of article IV be amended to read as follows: There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. But the general assembly may provide by law to submit to the electors of any county the question of combining the court of common pleas and probate court in such county and provide that such courts shall be combined in any county where a majority of the electors at such election shall so vote. And provision may also be made for similar submission to the electors of the question of the separation of such courts in each county where the same may have been combined and for such separation when a majority of such electors shall so vote.

SECTION 3. That section 12, of article IV, be amended to read as follows:

The judges of the courts of common pleas shall, while in office reside in the county for which they are elected; and their term of office shall be for six (6) years.

SECTION 4. That section 15, of article IV, be amended to read as follows:

The general assembly may increase or diminish the number of judges of the supreme court, may increase beyond one or diminish to one the number of judges of the court of common pleas in any county, or may establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by the general assembly shall continue its existence until otherwise provided by law. The judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall continue to hold their offices for the term for which they were elected.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: There are two proposals on the calendar which have not been referred, and I move that the rules be suspended and the two proposals be referred to the proper committees.

The motion was carried.

Proposal No. 332 — Mr. Dunlap. To the committee on Equal Suffrage and Elective Franchise.

Proposal No. 333 — Mr. Peck. To the committee on Judiciary and Bill of Rights.

By unanimous consent the following proposal was introduced and read the first time:

Proposal No. 334 — Mr. Jones. To submit an amendment to article II of the constitution. — Relative to the creation of a system for the registration and guaranteeing of land titles and to simplify and facilitate the transfer of real estate.

By unanimous consent Mr. Stilwell offered the following resolution:

Resolution No. 109:

Resolved, by the Constitutional Convention of the state of Ohio, That the Honorable William H. Lewis, Assistant Attorney General of the United States, be invited to address the Convention Tuesday morning, April 30, at 9:30 o'clock.

Mr. STILWELL: I move that the rules be suspended and that we consider the resolution at once.

DELEGATES: No.

Mr. STILWELL: I suggest that the gentleman is in the city at this time —

Mr. PECK: Well, we don't want him.

Mr. STILWELL: —and the hour set will not disturb the Convention.

The motion to suspend the rules was lost.

Mr. FACKLER: I ask unanimous consent to submit a report of the Short Ballot committee.

Consent was given and Mr. Fackler submitted the following report:

The standing committee on Short Ballot, to which was referred Proposal No. 16 — Mr. Elson, having had the same under consideration, reports it back with the following amendment and recommends its passage when so amended:

Strike out all of line 9 after the words "Term of office" and all of line 10 up to the period — and insert in lieu thereof the following: "The governor, lieutenant governor and auditor of state, shall hold their offices for four years, beginning with the officials elected in 1914. The auditor of state elected in 1912 shall hold his office for two years only."

Mr. HOSKINS: Where does that report go?

The SECRETARY: It is up for consideration now.

The VICE PRESIDENT: This is a report from a select committee to which this was sent.

Mr. HOSKINS: Why doesn't it take its place at the foot of the calendar?

Mr. DOTY: Is not this the situation? The Convention referred the proposal to the committee and the committee reports back, recommending an amendment. Is not the amendment before the Convention now? If we adopt the amendment and it amends the proposal then it goes on the calendar.

The VICE PRESIDENT: The presiding officer understands that we were considering the second reading of the proposal. It was referred back to the committee and this committee now reports it back with an amendment. It will be placed on the calendar, but the question now is on agreeing to the committee's report.

The report of the committee was agreed to.

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Mr. DOTY: Inasmuch as this particular proposal has been engrossed and read the second time, it does not come within our rule and I do not know exactly where it goes. My own idea would be that it goes to the foot of the calendar.

Mr. HOSKINS: I move that the proposal be placed at the foot of the calendar.

Mr. DOTY: For tomorrow? That means about two weeks.

The motion was carried.

Mr. PECK: I have a little bunch of things here that my committee worked on yesterday, which I would like to present.

Consent was given and Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 25 — Mr. Bowdle, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

Mr. Doty moved that further consideration of the proposal be postponed until tomorrow and that it be placed on the calendar for that day.

The motion was carried.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 3 — Mr. Thomas, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 165 — Mr. Stilwell, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 318 — Mr. Thomas, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 289 — Mr. Fluke, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 278 — Mr. Bowdle, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 156 — Mr. Davio, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. DOTY: It appears that the author of Proposal No. 15 [Mr. RILEY] the other day moved under the rules to take that proposal from the committee, and therefore the committee did not have it to report out. So if there is no objection I move that it be recommitted to the committee so it can come out in regular order.

The motion was carried.

Mr. PECK: Now I bring the report out as follows:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 15 — Mr. Riley, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the words "and such" at the end of line 9 together with all of lines 10 and 11 and in lieu thereof insert the following: "and the number of persons to constitute such grand jury and the concurrence of what number thereof shall be necessary to find such indictment shall be determined by the general assembly."

In line 16 strike out the words "or district".

In line 17 strike out the parenthetical mark "(".

In line 22 strike out the parenthetical mark ")".

In line 24 change the first comma to a semi-colon and insert immediately thereafter the words "but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel."

In line 24 strike out the word "or" and in lieu thereof insert as follows: "No person shall".

In line 24 change the semi-colon to a period and strike out all of the proposal thereafter.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck the proposal as amended was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 315 — Mr. Smith, of Geauga, having had the same under consideration, reports it back and recommends its passage.

The report was agreed to.

The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 152 — Mr. Brown, of Highland, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all after line 3 and in lieu thereof

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insert the following: "The business of buying, selling or handling foodstuffs shall not be subjected to any license or other charge by any municipality."

The proposal was ordered to be engrossed and read the second time.

Leave of absence for the remainder of the week was granted to Mr. Rorick.

Leave of absence for today was granted to Mr. Walker.

Mr. Doty moved that the Convention adjourn until 9 o'clock a. m. tomorrow.

Mr. Hoskins moved to amend the motion by striking out the figure "9" and inserting in lieu thereof the figure "10".

The motion to amend was lost.

The original motion was carried.

SIXTY-THIRD DAY

MORNING SESSION.

THURSDAY, April 25, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and opened with prayer by the delegate from Knox [Mr. McCLELLAND].

The journal of yesterday was read and approved.

On motion of Mr. Miller, of Crawford, leave of absence for the remainder of the week was granted to Mr. Miller, of Fairfield.

SECOND READING OF PROPOSALS.

Proposal No. 241 — Mr. Dwyer, was taken up.

The proposal had been read the second time. The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 93, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Moore,
Antrim,	Hahn,	Norris,
Baum,	Halenkamp,	Okey,
Beatty, Morrow,	Halfhill,	Partington,
Beatty, Wood,	Harbarger,	Peters,
Beyer,	Harris, Ashtabula,	Pettit,
Bowdle,	Harris, Hamilton,	Pierce,
Brattain,	Hoffman,	Read,
Brown, Highland,	Holtz,	Redington,
Brown, Lucas,	Hoskins,	Riley,
Campbell,	Hursh,	Rockel,
Cassidy,	Johnson, Madison,	Roehm,
Cody,	Johnson, Williams,	Shaw,
Colton,	Kehoe,	Smith, Geauga,
Cordes,	Kerr,	Smith, Hamilton,
Crosser,	Kilpatrick,	Solether,
Cunningham,	King,	Stalter,
Davio,	Knight,	Stamm,
DeFrees,	Kramer,	Stevens,
Doty,	Kunkel,	Stewart,
Dunlap,	Lambert,	Stillwell,
Dwyer,	Lampson,	Stokes,
Eby,	Leete,	Taggart,
Elson,	Longstreth,	Ulmer,
Evans,	Ludey,	Wagner,
Fackler,	Marshall,	Walker,
Farnsworth,	Mauck,	Weybrecht,
Farrell,	McClelland,	Winn,
Fess,	Miller, Crawford,	Wise,
FitzSimons,	Miller, Fairfield,	Woods,
Fluke,	Miller, Ottawa,	Mr. President.

Mr. Earnhart and Mr. Malin voted in the negative. So the proposal passed as follows:

Proposal No. 241 — Mr. Dwyer. To submit an amendment to article II of the constitution.—Relating to impeachment of officials.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 24a. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this

method of removal shall be in addition to impeachment or other method of removal provided.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next order of business is reading of Proposal No. 325 — Mr. Anderson.

The proposal was read the second time.

Mr. MARSHALL: With the consent of the Convention, I rise to a question of personal privilege for just a moment. I have a statement that I would like to read to the Convention. I shall occupy only a few moments.

Mr. DOTY: I rise to a point of order.

Mr. MARSHALL: I want to make a statement.

Mr. DOTY: I object to the statement.

The PRESIDENT: The member will state the matter about which he wishes to be heard.

Mr. MARSHALL: I want to say that when I was a boy going to school —

Mr. DOTY: I renew my point of order.

Mr. MARSHALL: I want to say something about the banquet next Wednesday.

The PRESIDENT: The member is out of order. That is not a question of privilege.

Mr. MARSHALL: I was going to say —

The PRESIDENT: The member is out of order. The gentleman from Mahoning is recognized.

Mr. ANDERSON: Mr. President: This proposal, Proposal No. 325, I regard as of great importance. The need of such a change has been discussed for many years. For years in our part of the state, at different times, the need of just such a change as this proposes to make has been recognized by both the bench and the bar, and it was at the urgent request of Judge Robinson, one of the best men who ever rendered a decision, and of other judges in our part of the state, that I introduced this proposal. As it was originally introduced it read "All acts of the general assembly in derogation of the common law shall be liberally construed." Judge Peck, the chairman of the committee, suggested the language, which I think is better than mine, "Statutes in derogation of the common law shall not be strictly construed." One is affirmatively stated, and the other is negatively stated, and I think Judge Peck's is better. "Derogation," in short, means "repeal." I wish to explain to those not members of the bar that the common law largely consists of customs that have come down through the ages. A custom, when it becomes crystallized thus into a law, has the force of precedent "whereof the memory of man runneth not to the contrary." If within the memory of any man something other than the custom existed, then it is not a law, or if there is even a legend when it did not exist, it is not a custom. Not only the customs whereof the memory of man runneth not to the contrary, but judge-made law, about which I spoke some days ago, constitutes the common law. What I mean by judge-made law is the laying down of a certain proposition years and years ago, which was added to by another judge and then by another, until it comes up to us with its accumulated additions. It seems that some

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of the lawyers have not paid much attention to what constitutes judge-made law. In fact, it seems the first they ever heard of it was on the floor of this Convention. That which I have said in criticism of judge-made law is very mild indeed when you compare it with what President Taft and other men of national reputation have said in reference to it.

When the common law, which is the custom of ages, or the judge-made law, which is part of the common law, becomes a hardship, or fails to properly give the whole remedy that should be given, or for any reason there ought to be a change, you can have relief only through the legislature, because no judge-made law was ever repealed by other judge-made law. In other words, if you want to do away with judge-made law where it works an injustice or fails to give the proper remedy, you have to go into the lawmaking body and have a statute passed.

Now the rule of construction made by the judges is that when you try to remedy the ills of the common law by statutory enactment the construction then put upon that statute shall be strictly against giving the remedy. It always seemed to me a foolish proposition that when you have to go into the legislative body to get the change made the construction shall be that you did not intend to make any change.

Mr. LAMPSON: The point that occurs to me is that if authority by way of a constitutional mandate is given to a court not to construe a statute strictly, would not that operate as a mandate to the court to make judge-made law?

Mr. ANDERSON: No; I am afraid I have stated it awkwardly. The desire apparently to still keep judge-made law when, for the purpose of getting away from the ills of judge-made law you go into the general assembly and get laws passed, leads the judges to construe the legislative enactment strictly. In other words they say to the people who had this passed and to the legislature, "You shall not have a remedy under it, but we will keep the judge-made law."

Mr. LAMPSON: Construing a statute strictly would be in accordance with its meaning?

Mr. ANDERSON: You are forgetting the wording of this proposal. This only applies to statutes in derogation of the common law, where you repeal the common law by statutory enactment. That is the scope of this proposal.

Mr. NORRIS: Do you define the common law as what you call judge-made law?

Mr. ANDERSON: That is part of it.

Mr. NORRIS: What is the remainder of it?

Mr. ANDERSON: Customs whereof the memory of man runneth not to the contrary.

Mr. NORRIS: What is your definition of judge-made law?

Mr. ANDERSON: Do you really want a definition?

Mr. NORRIS: Yes.

Mr. ANDERSON: It is law which the judges have taken it upon themselves to make, law that is not found in the statutes. It is different from statutory or legislative law.

Mr. NORRIS: Are you not in your proposal endeavoring to establish a different rule from that which has always prevailed in Ohio concerning this?

Mr. ANDERSON: What are you going to read from?

Mr. NORRIS: Cooley's "Constitutional Limitations." A gentleman happened to have the book, and I just picked it up, and I will read the definition of the common law:

Common law consists of those maxims of freedom, order, enterprise and thrift, which have prevailed in the conduct of public affairs, the management of private affairs, the regulation of domestic institutions, and the acquisition, control and transfer of property, from time immemorial.

Is not that a definition of the common law?

Mr. ANDERSON: Yes; I gave it—whereof the memory of man runneth not to the contrary. But that is only a part of the common law. That is the common law that comes to us from the ages, the part that is based on custom and custom alone. If there were a legend as to when that was not the common law, then it does not crystallize into law. It must be the kind of custom whereof the memory of man runneth not to the contrary, and by reason of the fact that it is so old—I am not criticising it on account of its age—but by reason of the fact that it is so old and that we have made so much progress and that there are so many things now that were not in existence or dreamed of at the time it became the common law, sometimes it is necessary to go into the legislature to have the common law changed. Now, when you do go into the legislature to have it changed this proposal, when it becomes a part of the constitution, says that you must not construe those legislative provisions strictly.

Mr. BROWN, of Highland: This proposal prohibits a strict construction being placed upon the statutes in derogation of the common law?

Mr. ANDERSON: Statutes repealing the common law.

Mr. BROWN, of Highland: And it says they shall not be strictly construed. That prohibits any court from construing a statute in conformity with this law.

Mr. ANDERSON: No; certainly not.

Mr. BROWN, of Highland: If it is not to be strictly construed, how is it to be construed? Is it to be construed according to the whim of the man construing it in any gradation of strictness. There is no limit how it can be construed.

Mr. ANDERSON: Will you not permit me to ask you a question: How do you define the difference between liberal and strict construction? What kind of statutes are construed strictly?

Mr. BROWN, of Highland: I do not know.

Mr. ANDERSON: I thought you didn't. Now I want to answer your question so that you may understand. Statutes are construed strictly or liberally. It has been found that certain common law defenses in certain kinds of cases have become obnoxious. So congress proceeded to do away with the common law rule by statutory enactment, to be able to give full relief. The supreme court of the United States had to change the rule of construction, because if it had followed the construction of the Ohio supreme court, the strict construction of the statutes repealing the common law, there would have been no relief. They decided those statutes

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were remedial, and therefore should not be strictly construed.

Mr. BROWN, of Highland: This absolutely prohibits construction according to its terms. It says it shall not be construed according to its terms.

Mr. ANDERSON: That does not mean that to a lawyer.

Mr. BROWN, of Highland: It makes no difference whether you are a lawyer or not; it is a question of the meaning of the term.

Mr. ANDERSON: No, sir; it is not a question of the meaning of a term. Please remember the controlling part of that sentence is "the common law." If you will all the time have that in view when you are discussing this you will know what is aimed at.

Mr. BROWN, of Highland: You admit you are giving more power than now exists?

Mr. ANDERSON: No, sir; taking power away.

Mr. REDINGTON: Prefacing my remarks by the statement that I am asking for information only: Our legislature has codified some of the common law. For instance, as I understand, our legislature has codified the law in regard to notes and bills, and about warehousemen, consignors and consignees, fixing the liability of a maker of a note, the drawer of a bill and the indorser of commercial paper, etc. The query in my mind is what effect will this constitutional provision have upon such statutes when you say that the court must not strictly construe those statutes?

Mr. ANDERSON: Are the statutes you refer to in derogation or repeal of the common law? They have nothing to do with the common law at all.

Mr. REDINGTON: I assume when they have codified—

Mr. ANDERSON: The statutes you refer to have nothing to do with the common law at all.

Mr. REDINGTON: And they have codified others—

Mr. ANDERSON: But this has nothing to do with codification.

Mr. REDINGTON: The subject of commercial

paper is a subject in the common law.

Mr. ANDERSON: This proposal only refers to cases where the common law does not give the proper remedy or there is hardship under it. Then you go into the law-making body and repeal the common law by a statutory enactment. That is the only thing to which this proposal applies.

Mr. BROWN, of Highland: I will ask you if under this proposal the criminal lawyer would not reap a considerable advantage?

Mr. ANDERSON: No, sir.

Mr. BROWN, of Highland: In other words, is it not to the interest of the criminal lawyer—

Mr. ANDERSON: I wish you would suggest that to the gentleman from Medina.

Mr. KING: I want to ask you whether the statute creating a crime or offense wholly unknown, previous to the passage of the statute, or wholly unknown in the common law, is a statute in derogation of the common law?

Mr. ANDERSON: I do not believe it is, but you are asking a difficult question. If it is not known to the common law it could not be in derogation to that, if it didn't exist before.

Mr. FACKLER: Do you think the negotiable instrument code is not in derogation of the common law, and does it not set aside the law commercial with reference to commercial papers?

Mr. ANDERSON: It does, but not in the instance he cited. In the codification of it?

Mr. FACKLER: Yes.

Mr. ANDERSON: Does this have any reference to codification?

Mr. FACKLER: Yes; the law in many instances in our country is different from statutory law.

Mr. ANDERSON: Yes, and they have statutory law because the common law did not give the proper relief. Now, I do not care to take up further time—

Mr. HALFHILL: I understand your proposition to be that you would apply to remedial statutes the same rule of construction?

Mr. ANDERSON: No; I said that in the instances I stated, where laws were passed because under the common law hardships were had, under the common law the judge-made defenses of assumption of risks, contributory negligence, fellow servants, etc., were so obnoxious that congress, so far as they could legislate in reference to interstate commerce, wanted to do away with such defenses, and consequently congress passed certain laws. Now the judges in some of the lower courts attempted to apply the rule of strict construction to these safety-appliance statutes and really nullified them, and I gave you many instances where that very thing was done in Ohio. Then the supreme court of the United States, wishing that those safety-appliance laws should prevail, called them remedial statutes, and said they should not be construed strictly.

Mr. DWYER: Remedial statutes are not strictly construed.

Mr. ANDERSON: No, sir; and the supreme court had to put these in the class of remedial statutes to keep from construing them strictly.

Mr. HALFHILL: Is it not possible for them to construe them broadly enough to cut off the common law?

Mr. ANDERSON: Yes, and that was done, but even with the doing of it, after congress, in section 8 of the appliance law, stated that the defense of assumption of risk should not be set up by the master, that very thing was done.

Mr. PECK: I have never been satisfied with this and I want to offer a few words.

Mr. KRAMER: This proposal sounds well, but I would like to know what the supreme court would do when one of these matters came to it?

Mr. ANDERSON: That is rather a difficult question. The effect depends largely on who constitute the supreme court.

Mr. KRAMER: That is what I think.

Mr. ANDERSON: But we should do what we can toward relief by causing a proper construction to be made of statutes passed for the one purpose of correcting the hardships which exist under the common law.

Mr. KRAMER: I didn't hear the answer to Mr. Lamson's question. If the courts are not construing the statute strictly, according to its meaning, does it not give the courts more power than they have now?

Mr. ANDERSON: Are you not getting interpretation and construction mixed?

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Mr. KRAMER: I don't know.

Mr. ANDERSON: I think that is what Mr. Lampson had in mind, interpretation and not construction. This applies to construction and not to interpretation.

Mr. CUNNINGHAM: Commercial paper has been referred to, and the code, which is an interpretation or rule of construction. There are well-known rules governing commercial paper, and ought not statutes which change well-known rules receive a strict construction?

Mr. ANDERSON: They should receive a strict interpretation, but there is a difference between interpretation and construction. This applies to the general rule of construction and not interpretation.

Mr. DOTY: I desire to offer an amendment to this proposal.

The amendment was read as follows:

Strike out lines 4 and 5, and insert "No court of this state shall exercise any power not conferred by the constitution or by law."

Mr. DOTY: Of course I cannot enter upon a discussion of any legal matter without fear and trembling, but after all we laymen have been learning a good deal of law this year, and quite a little this morning. We had one class over there under a professor, and we had a de novo class over here under a doctor, and therefore it is impossible for any of us who have any degree of intelligence not to have absorbed some law.

Mr. BROWN, of Highland: Which law do you refer to, statutory law or common law?

Mr. DOTY: I do not think it is particularly necessary to point out which law—just law.

Mr. PECK: Any old kind.

Mr. DOTY: I read Blackstone once years ago. That was sometime back, but I was a reporter in police courts, justices courts and other courts, and I have absorbed some legal knowledge there. I have also attended several sessions of the general assembly, and this session, so far, of this Constitutional Convention, and I know I have absorbed in various ways, not very deep into the skin, but a large, though perhaps inexact, knowledge of the law.

Mr. PECK: I rise to a point of order. The amendment proposed is not germane to the proposal amended. It has nothing to do with that subject.

Mr. DOTY: May I be heard on that point of order? I have five minutes on the point of order.

The PRESIDENT: The president will rule the point of order not well taken.

Mr. DOTY: That knocks me out of five minutes. The member who has introduced this proposal has made some remarks here at various times in derogation—I believe that would be a good word—of the supreme court making law. As near as I can make out, this proposal says the court can make some more law. I may be wrong. If I am, that is the fourth mistake I ever made in my life. It looks to me as though that is what he is up to. That is what I want to stop. I want to stop the judges from making any more law. I think if that amendment that I have offered is made part of the fundamental law of the state of Ohio, it will have a tendency to prevent the judges from making any more law, and I therefore hope the amendment will prevail.

Mr. NORRIS: I want to compliment the gentleman.

I don't know anything about the amendment, but he struck the keynote in his speech.

Mr. DOTY: It was purely inadvertent on my part, if I did, Judge.

Mr. NORRIS: This proposal simply opens the door for judge-made law.

Mr. KNIGHT: I have been hoping that this Convention would not reach the silly stage before hot weather, but in this proposal we have the most concrete evidence that we have reached the silly stage already. Most of us have heard before the phrase "judge-made law." We had two hours of it some days ago. We had it rehearsed and boiled down on a question of personal privilege. It fell down, flickered out, and we had hoped expired the other evening. Now we have it again before us.

It seems to me that the proposal itself is not worthy of the consideration of this Convention at the rate of \$300 an hour. I have noted that though the report of the committee recommended the adoption of this proposal with the amendment as presented, still the chairman of the committee does not sign it, and I have come to have a good deal of confidence in the judgment of the chairman of the committee on Judiciary and Bill of Rights.

Mr. ANDERSON: Will the gentleman yield to a question?

Mr. KNIGHT: No, sir; I have never asked the gentleman a question while he was speaking, and I prefer not to yield.

I object to amending the constitution of the state of Ohio to help the private practice of attorneys. It seems to me that this proposal has that principal object in view, that it will be especially beneficial to the private practice of attorneys in damage suits.

The common law of England, which underlies the law of this country, is good. It is the growth of custom, and custom which all of us, whether we know it or not, follow in our every-day business and in nearly all of the transactions of life. It does not need a lawyer to know many of the things which are the common law. Hardly a day passes in the life of a single one of us that we are not doing things that we have a right to do because that right has come down to us from time immemorial in the common law. It has been almost if not the invariable practice in all the states of this country that statutes enacted by the legislature undertaking to modify customs, which customs have crystallized into the best kind of law, shall be strictly construed, and just as little of these customs removed without our knowing it as is possible. This proposal undertakes to reverse the course of procedure which it is vital to us to have retained. Every law which seeks to change the common law ought to be strictly construed. Further, this proposal is a direct mandate to the courts to construe statutes—I apologize for having to use the phrase judge-made law—to authorize judge-made law of the worst kind, worse than we have ever had. It seems to me the proposal is one that can well be dispensed with, and I therefore move that the proposal and pending amendment be indefinitely postponed.

Mr. PECK: I assented to this proposal, and perhaps suggested the wording with some hesitation in the committee. I did not then and do not now feel certain

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about the entire propriety of it, but I have seen some curious results worked out of statutory law by judges from the application of that rule. I have seen statutes beneficial nullified by a strict construction of that rule. The statutes were strictly construed until they were all frittered away. I do not believe in that sort of construction, and I have not much to do with what the gentleman terms damage suits. My practice has not been in that line, and I was not thinking of that class of cases when I assented to that proposal. I was thinking of it in a general way. When the general assembly passes a law it should be given effect. I think we are all agreed to that, and it should not be frittered away by a series of constructions, and I propose to add at the end of the present proposal as it now stands these words by way of amendment: "But the same shall be fairly and liberally construed to effect the object of the statute." I do not suppose I can do that under the motion to indefinitely postpone, but if I do have opportunity to offer that amendment, I shall offer it.

Mr. HALFHILL: I would like, before the vote is taken, to have the proposal read with the Doty amendment.

The SECRETARY: The amendment of Mr. Doty strikes out all the original proposal and the proposal would then read:

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors, to read as follows: "No court in this state shall exercise any power not conferred by the constitution or by law."

Mr. HALFHILL: I confess it does strike the original proposal all out. It is a finishing stroke, delivered with swiftness and dispatch at the center of the target. But as to the main proposal or any amendment that may be offered thereto, permit me to say I can conceive how a proposal like that may be introduced here in entire good faith, but it is revolutionary to an extent that we hardly can comprehend the amount of revolution that would be comprised in those few words. The common law is the great fountain of learning that we draw from, both the courts and the legislature, and we must remember that it is a great body of law. The common law has judicial records going back for seven hundred years in England, and there are reported cases back for six hundred years. Of course, for the first three hundred years it is in barbarous law—French or Latin—but for the last three hundred years we have reports in our own tongue, and in all of those the great body of our rights and privileges as citizens are well defined. Now when our ancestors as colonists came here and established for themselves the several colonial governments they were secured in all of those rights and privileges by virtue of being English subjects, and we have succeeded to them, and what I want to point out is that they are perhaps greater in their scope and extent than all the legislative acts of all the states of the federal union. In fact, we can scarcely afford to cast aside the common law as it is defined, or else we will lose our bearings when we enact statutes and bring them before the courts for construction and interpretation. It was said by the proponent [Mr. ANDERSON] that the common law is not ap-

plied strictly, or that the rule of construction is not applied strictly, to remedial statutes, and that is true.

But we have two classes of legislative enactments. One class deals with remedies. Sometimes they call that adjective law. Then we have another class that deals with rights and privileges, and that is substantive law. All of the adjective law, all of the remedies and rules of evidence, never came within the common law rule of construction at any time, and therefore this proposal could not apply; and when it comes to the substantive law of rights and privileges, we all know what the rights and privileges are, and we can know by the decisions of the courts defining these rights and privileges whenever an innovation is made upon them by the legislature. Then and at all times we have a definite base line to start from as a rule of construction and anything else would be chaos.

Permit me to read the rule of construction given in Sutherland:

Such statutes as take away a common law right, remove or add to common law disabilities, confer privileges, or provide for proceedings unknown to the common law, or in derogation of the common law, are strictly construed.

Those are simply the statutes that deal with substantive rights, privileges and disabilities affecting the rights of persons, and the rights of property, and in no way at all referring to court procedure or remedial law. We have now a definite rule of construction, and I submit the proposition as suggested here is wrong in this, that it removes a definite starting place, to-wit, the common law, and you do not have a definite ending place, to-wit, strict construction on statutes governing rights and privileges, and then you have no stake set, no point at which the judge may stop, and instead of the law becoming a fixed rule of action, with a definite starting place and a definite stopping place, you would have the law administered according to the idea of the particular judge who is construing that particular statute.

Mr. DOTY: A point of order. The gentleman's time has expired.

The PRESIDENT: The gentleman has thirty seconds still.

Mr. HALFHILL: I can answer the gentleman from Mahoning, who I see has risen.

Mr. ANDERSON: Is not this the fact, that you go into the legislature to get relief because the common law does not give the remedy or this relief?

Mr. HALFHILL: Undoubtedly so.

Mr. ANDERSON: Then should not that remedy or correction which the lawmaking body gives be construed so as to carry out the real object of the law?

Mr. HALFHILL: No. The legislature should clearly define its own remedy, and then the court will construe it according to the expressed language, which ought to plainly set forth the object of the law.

Mr. FESS: It appearing that everybody has spoken that wants to, and desiring to bring this matter to a vote, I move that the whole matter be tabled.

The motion was seconded.

The PRESIDENT: All those in favor will say aye, and the contrary no. The motion is carried.

Mr. ANDERSON: We didn't have an opportunity to

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vote on the motion to table. I move that the motion to table be reconsidered.

Mr. DOTY: I rise to a point of order. It is against our rules to reconsider a motion to table.

Mr. ANDERSON: I move that it be taken from the table then. I know as little about parliamentary proceedings as Mr. Doty does about law. My object is to have a ye and nay vote on the proposition.

Mr. FESS: I make a point of order that the gentleman cannot make a motion to take from the table unless he suspends the rules.

The PRESIDENT: The point is well taken.

Mr. DOTY: You can make that Monday night.

The PRESIDENT: The next business is amended Proposal No. 240, which will now be read.

The proposal was read the second time.

Mr. ANDERSON: Gentlemen of the Convention: This may seem to be helping the practice of some lawyers—

Mr. DOTY: Not mine.

Mr. ANDERSON: I do not know how it may appeal to those who are so well qualified in the law by reason of associating with some law professor in some college. I presume that all that is needed to be expert in all branches of the law is to have some experience like that.

Now, I have had some experience—I suppose I have had more experience where the individual is on one side and the corporation on the other than most here. I have made that a life study. I did not take it up intentionally in the first place, but I drifted into it, and I have made it a study and I ought to be more familiar with its hardships than those who have conducted the practice of law generally. The proposal you have just voted down would not in any way aid a damage lawyer, the professors to the contrary notwithstanding.

Mr. HOSKINS: May I ask you a question?

Mr. ANDERSON: You may not. I will not yield to you. You will never yield when I want to ask a question.

I say that all of those statutes passed to assist the individual are liberally construed because they are remedial statutes. The professor did not know that. I ask this particular professor to consult his fellow professor at the noon hour.

Now the limitation of recovery, by legislative enactment in Ohio, is \$10,000 in case of death, where no widow and minor children are left. Where minor children and a widow are left, dependent upon the husband and father killed, the legislative limitation in Ohio is \$12,000. Let me give you the rule of law. This is by the supreme court of Ohio, and it has not been overruled by a university professor. I read from 55th Ohio State, page 517:

In arriving at the total amount of damages in such cases (death cases) the jury should consider the pecuniary injury to each separate beneficiary, not found guilty of contributory negligence, but the verdict should be for a gross sum, not exceeding \$10,000.

Let me illustrate. Say that Mr. Donahey while coming to this Convention is killed by a head-on collision or by a derailment. His widow and his children would be entitled to recover. I understand that Mr. Donahey has been blessed with eight children. So he would leave a

wife and eight children. In arriving at the amount of damage in such cases the jury must consider the pecuniary injury to each separate beneficiary. In other words, the jury in trying that case would be told by the trial judge, "You must take into consideration the money loss to the widow, and the money loss to each one of her eight children, and then return a gross sum not exceeding \$12,000." In other words, the jury would take the amount of money that Mr. Donahey is earning in his business—not what he is making at the Convention here—and they would consider that, and they would consider his expectation of life, and they would consider the money lost to the wife and to each of the eight children, but they couldn't go above the \$12,000. Now any of you can see that that amount could not be right.

Different states have put this into their constitution. Utah (1895):

Art. XVI, Sec. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

Kentucky (1890):

Sec. 54. The general assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.

Oklahoma (1907):

Art. XXIII, Sec. 7. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

To you who are not attorneys, and are not connected with any institution where law is taught, I wish to explain that at common law the right of recovery for wrongful death did not exist. That right can only be created by statute. Consequently, it says "the right of action shall not be abrogated."

Certainly if Pennsylvania, where there are so many industrial plants, where there are so many men employed on railroads, where there are so many men killed each year, can have this section in their constitution, Ohio could not go very far wrong by following Pennsylvania's example.

Pennsylvania (1873):

Art. III, Sec. 21. No act of the general assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and, in case of death from injuries, the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted. No act shall prescribe any limitations of time within which suits may be brought against the corporations for injuries to persons or property, or for other causes different from those fixed by general laws regulating actions against natural persons, and such acts now existing are void.

Now the great state of New York has thousands and thousands of men employed on railroads and in industries.

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New York (1894):

Art. I, Sec. 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

Mr. DWYER: You have reference to compensatory damages?

Mr. ANDERSON: Yes; the same as discussed in the committee.

Mr. FACKLER: I would like to know how you can reconcile Proposal No. 240, beginning with "The right of action to recover damages for injuries resulting in death shall not be abrogated", with Proposal No. 24, which we have already passed.

Mr. ANDERSON: What is Proposal No. 24?

Mr. FACKLER: That provides that the state may provide compulsory workmen's compensation and employers' liability laws, and limit the right of recovery.

Mr. ANDERSON: The mere reading of it covers it. I am very much in favor of workmen's compensation laws.

Mr. FACKLER: If any injury results in death, the workmen's compensation act limits the amount of the recovery, takes away the very thing that this provides for.

Mr. ANDERSON: Add to this, then, "provided that nothing herein shall in any way affect the authority of the general assembly to enact a workmen's compensation law," and we can fix it in two minutes.

Now it may be said that the corporations, or those causing the death, would not be properly protected, but they are protected, first in the trial court by a motion for a new trial, which goes to the learned judge, and the judge can cut down a verdict to any sum he thinks proper. Not only that, but if the common pleas judge fails to cut down the amount given by the jury then the circuit court or the court of appeals has the absolute right to cut down the amount, provided the learned judges believe it to be too large.

Mr. CROSSER: Is it not a fact that that amendment is not at all necessary, for the workmen's compensation law would not be affected?

Mr. ANDERSON: I don't think it is necessary. Let me read you from 22 O. S., page 446:

Where the damages assessed by a jury are excessive, but not in a degree to necessarily imply the influence of passion or prejudice in their finding, the court, in the exercise of sound discretion, may make the remittitur of the excess the condition of refusing to grant a new trial.

In the first place, our statutory law provides if the trial judge believes that the amount given by the jury was induced by prejudice or passion then he can give a new trial, or even if he does not believe that the verdict was induced by prejudice or passion he can still cut it down and can say to the plaintiff in the case, "If you do not accept this amount that I suggest then I will grant a new trial," and the supreme court, in 22 O. S., says the court has that power. Now I do not want to take up too much of your time. As I say, Kentucky, Arkansas, Oklahoma, Pennsylvania and New York have like constitutional provisions, they have had them for a number

of years, and they have not worked any hardship there. I believe it is a proper measure for us to adopt here.

Mr. KING: This proposal simply provides for something that can be enacted under the constitution today, and I therefore move to lay it on the table.

The PRESIDENT: The question is on the motion to lay on the table.

Mr. ANDERSON: The yeas and nays.

The PRESIDENT: All those in favor of the motion say aye, and the contrary no.

Mr. ANDERSON: The yeas and nays.

The PRESIDENT: Not now.

Mr. ANDERSON: I demand the yeas and nays. I want the vote recorded.

The PRESIDENT: The motion is carried.

Mr. WINN: May I ask the president if he heard the demand for the yeas and nays?

The PRESIDENT: The rules require that the demand shall be seconded.

DELEGATES: We seconded it.

Mr. WINN: It was seconded.

Mr. ANDERSON: You gave no chance. I don't care much about this, but I want to know what we may expect in the future. There is a right involved here, and I say I was right under parliamentary law and under the rules of this Convention.

The PRESIDENT: The gentleman is out of order. Proposal No. 166 is the next thing in order, by Mr. Stilwell.

The proposal was read for the second time.

Mr. STILWELL: It is my hope that it will not require a great deal of the time of the Convention to dispose of this proposal. The judiciary committee has thoroughly discussed it, and it is my recollection that it was approved without any objection. It is made necessary because of the fact that the mechanics' lien law in Ohio was declared unconstitutional.

Mr. HOSKINS: Before you take your seat I want you to explain why we cannot have this now.

Mr. STILWELL: There was a legal controversy over the former mechanics' lien law, and it was declared unconstitutional by the supreme court of Ohio. The circuit court of appeals of the United States differed from this opinion of the supreme court of Ohio. However, that is of no effect in this state. I want to quote from the language of the circuit court, Judge Lurton delivering the opinion, referring to the mechanics' lien law. I am not going to read the full decision, but only parts here and there that are applicable:

With every disposition to come to an agreement with the views of the supreme court of Ohio, in the interest of harmony of decision, we are nevertheless compelled to express our inability to assent to the conclusions of that learned and impartial tribunal as to the validity of the legislation under which complainant's rights are claimed. The decision of that court was not placed upon any merely local or peculiar provision of the constitution of Ohio. The ground upon which they placed their objection to the law was that it was an unreasonable and oppressive restraint upon the owner's liberty of contract.

This restraint upon an owner's liberty of contract, the learned court said, was prohibited by

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those declarations of the Ohio bill of rights which declare that among the inalienable rights of man is "the right of enjoying and defending property, and seeking and obtaining happiness."

The "rights" supposed to be violated are rights deemed fundamental under all forms of popular and constitutional government, and like declarations are to be found in all or most of our state constitutions. The question is therefore one of general law, having as much reference to the constitution of any other state as to that of Ohio.

In all or nearly all of the states there are statutes intended to give liens to those who contribute labor or materials to the enhancement or improvement of the land or buildings of an owner. These statutes vary in their character and purpose. Originally, they were chiefly acts giving a lien to persons having direct contractual relations with the owner. Such statutes did not protect those who contributed to the improvement through dealings with the contractor, and were soon followed by statutes extending the lien to persons not contractually connected with the owner, but who furnished labor or materials for the building through contracts with the principal contractor.

Referring now to the statute in Ohio, the court says:

But the validity of such statutes need not be rested upon mere authority. They find sanction in the dictates of natural justice, and most often administer an equity which has recognition under every system of law. That principle is that every one who, by his labor and materials has added to the property of another, thereby acquires a right to compensation. This strong natural justice has given rise to a variety of liens recognized by the common law. Thus, without any agreement the common law gave to one who, by his labor or expense, has made, preserved, enlarged, or repaired a chattel, a lien thereon for his security, which he may, however, lose if he surrenders possession.

Concluding their decision, Judge Lurton says:

The right of him who, by his labor and materials, had contributed to the betterment of another's estate, was an imperfect right, because it had not been done at the instance of the owner, though presumably with his knowledge and at the instance of his contractor. At the common law neither the owner nor his building was chargeable, there being no contractual relation. The statute recognizes the equity of such contributors, and has turned the imperfect into a perfect right, by prescribing the consequences of a building contract, and giving a remedy to all who, at the instance of the contractor, shall contribute to the performance of his contract with the owner. That legislation which is sanctioned by the dictates of natural justice can only be avoided by pointing out some specific provision in the organic law which has been violated by its enactment. Neither upon reason nor authority are we able to come to an agreement with the Ohio court. In the exercise of our independent constitutional jurisdiction, we

must declare our conscientious judgment to be that the Ohio statute was not void.

Now just a word from the supreme court of the United States giving its approval to the decision of the United States circuit court of appeals:

The circuit court of appeals expressed its earnest desire, in the interest of harmony of decision, to come to an agreement with the state court, but its sense of duty compelled it to sustain the constitutional validity of the statute upon which the plaintiffs based their claim. Upon a careful consideration of the objections urged to the statute, and after an extended review of the authorities, the circuit court of appeals held that the statute did not deprive the owner of his property without due process of law, nor unreasonably interfere with his liberty of contract; that the restraints put upon the owner by the provisions in favor of subcontractors and those who furnished materials to be used by the contractor in execution of his contract with the owner, were neither arbitrary nor oppressive; that such provisions were no more onerous than required by the necessity of protecting those who actually do the work or furnish the material by which the owner is benefited; dictates of natural justice, and, as must be conclusively presumed as was known to the owner when he contracted for the building of his house, its requirements could only be avoided by pointing out some specific part of the organic law which has been violated by its enactment.

We are constrained to withhold our assent to the views expressed by the supreme court of Ohio, and to express our concurrence with the circuit court of appeals. The great weight of authority in this country as to the meaning and scope of constitutional provisions substantially like those to be found in the constitution of Ohio is, in our opinion, against the conclusion reached by the learned state court. Exercising an independent judgment on the subject, we are obliged to so declare.

I simply want to call your attention to the fact that this proposal only permits of legislation of a character that has been suggested, and it is made necessary because of the fact that the supreme court of Ohio has previously held certain phases of the mechanics' lien law unconstitutional. I doubt if there is a delegate in the Convention who does not fully appreciate the injury that is done to material men and mechanics by reason of their inability to collect for material or labor because of unscrupulous and oftentimes dishonest contractors. I am not assuming to say what kind of a law would be passed under this provision of the constitution, but I am assuming that such a statute would be passed as would require of all dishonest men to do the thing that all honest men do now.

The losses that have been sustained in the state of Ohio since this law was declared unconstitutional would mount into the millions in the last eight or ten years, and the losses are altogether to those who as contractors or subcontractors have either been lacking in ability in the particular line of business they were engaged in, or

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because they had deliberately set out to defeat justice or to defeat the material men or the laborers.

Mr. BOWDLE: If you will answer a question it may save me from making a speech. Why is it you leave out the word subcontractor? In other words, why are you not willing that the subcontractor should have a lien?

Mr. STILWELL: My idea is that ninety-five per cent of the damage done is done by subcontractors, and yet under this provision it is my understanding that if the legislature so desires, the subcontractors may be included, but the evil largely exists in the subcontractors.

Mr. ELSON: Do we understand by this proposal that the owner is responsible for the pay of every laborer who does a day's or an hour's work under any contractor in building, or one who furnishes any material, however small—that the owner is ultimately responsible for the pay?

Mr. STILWELL: That is one of the points I want to mention again. I have that faith in every delegate here that I do not believe there is a man in this Convention who would build a home today and not see, without the law requiring him to do it, that the material and the labor that went into his house were paid for before he paid the contractor. It is only requiring men of a different calibre from what the Convention is composed of to do the same thing.

Mr. ELSON: The contractor may have men in his employ who are only employed a small portion of the time, on part of the building. They may be employed elsewhere a good deal of the time. Would it not be making things complicated to require the owner to be responsible for each part of that man's time?

Mr. STILWELL: It had no such result when the law which was declared unconstitutional was in effect previous to its being declared unconstitutional by the court. I do not think it would have that result.

Mr. ELSON: I want to support this measure, but I want to thoroughly understand it.

Mr. STILWELL: It would require from the owner a little more care in the selection of the character of men who do his work.

Mr. LAMPSON: Does the gentleman know whether or not there was experienced any trouble or difficulty on the part of the owners of buildings before the lien law was declared unconstitutional?

Mr. STILWELL: No, sir; there was little or no trouble, and it was a great blow to all involved when the law was declared unconstitutional.

Mr. KRAMER: I was just wondering whether it would not work a hardship on the contractor. Would it not make it almost necessary for the man who had the house built to retain all of the money for the building of the house until the length of time had elapsed in which the material men would have a right to perfect their lien? We have four months now in which a contractor can file a lien. If the legislature would give the material men four months in which to protect his lien upon the property or building, would it not be necessary for the owner of the property to withhold the payment for the building until that whole time elapsed, and would not that work a hardship on the contractor?

Mr. STILWELL: He could be protected by a bond.

Mr. KRAMER: Yes; that would be a provision for protection.

Mr. STILWELL: That is a simple matter and of little cost.

Mr. HOSKINS: Would the giving of the bond be adequate protection to the contractor in this, that unpaid material might turn up afterwards and he would have no remedy except by a suit on the bond?

Mr. STILWELL: That is true.

Mr. HOSKINS: Would you have any objection to inserting in this proposal the word "subcontractor," as suggested by Mr. Bowdle?

Mr. STILWELL: Only that, as I have stated, the trouble is largely caused by the subcontractors, and you are including in the proposal the very men that we are seeking to protect ourselves against.

Mr. HOSKINS: Is not the subcontractor often one of the most important parts of a large contract? There are a number of them, and they are entitled to as much protection as the material men. I hope the delegates will recognize that.

Mr. HARRIS, of Hamilton: I have no objection to this except to that part which guarantees one class of men doing business in the state of Ohio. It offends the moral sense so thoroughly that it is only necessary to read it to be against it. Why should the legislature guarantee the credit of men selling material any more than it guarantees the credit of farmers who send their corn to a commission merchant, or the merchant who sells boots and shoes or any other article of merchandise? It is incredible that this proposition should be considered for a moment. I say there is a wide gulf separating the merchant or the farmer or the material man and the laboring man, who ought to get the fullest possible protection that the laws can devise for him.

Mr. STOKES: What protection would the laboring man have against the man putting up a building and collecting the money and getting out?

Mr. HARRIS, of Hamilton: I say I am absolutely willing to give the laboring man the lien.

Mr. STOKES: Well, is not the material man's claim just as important?

Mr. HARRIS, of Hamilton: That is so ridiculous I hate to have to reply to it. Is not the farmer who produces corn or raises chickens, or the merchant, just as important as the man whose time is employed in delivering material? What difference is there in principle?

Mr. STOKES: If you ask that as a question, there is this difference in the construction of a building, that it may take three, six or nine months from the time the material is furnished, and the man may be responsible at first and not at the end.

Mr. HARRIS, of Hamilton: If he has common sense enough to be in business he should know with whom he is dealing and to whom he is selling, and when he extends the credit it is purely at his option.

Mr. STILWELL: Are you insisting that the mechanics' lien laws, heretofore passed in this state and in every state in the Union for the last one hundred years, are ridiculous?

Mr. HARRIS, of Hamilton: I do not know what those mechanics' lien laws are. I say if any of the lien laws provide protection for poor credit in favor of the

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material men as against farmers and merchants, then I say it is unjust, immoral and highly ridiculous. I offer an amendment:

The amendment was read as follows:

In line 4 insert the word "and" after the word "artisans."

In line 5, strike out "and material men."

In line 6, strike out "or furnished material."

Mr. NYE: Gentlemen of the Convention: I am in full accord with this proposal to the extent that it is proposed here, and I am opposed to the amendment as presented by the gentleman from Hamilton [Mr. HARRIS]. If there is any one class of people that need protection it is the class of people that furnish labor and material to put up a building on property or real estate that cannot be removed. Take other kinds of property, and if it is personal property possession can be held, but the man who owns land and hires someone to build a building upon it retains possession of the property, and he holds it there for all time, and the man who furnishes the labor and material ought to be protected and have some kind of protection for that labor and material furnished to make the property more valuable.

Mr. HARRIS, of Hamilton: How many times ought the owner of real estate be under obligation to pay for the house that he has built?

Mr. NYE: Only once, but he ought to make his contract in such a way that that one payment shall pay the parties that furnished the material and furnished the labor. It is within his power in making his contract, whether he makes it with the contractor or with the subcontractor, to make it in such shape that he is absolutely protected, and he can withhold his money until the party who furnishes the material and labor shall receive his pay.

Mr. OKEY: Do you think under the terms of this proposal a subcontractor could be protected?

Mr. NYE: I am of the opinion that he might be protected even under this.

Mr. OKEY: That is a point.

Mr. NYE: But if it is not broad enough to cover him, if he furnished material or labor, it is possible it might be made broader.

Mr. HARRIS, of Hamilton: If a farmer ships five hundred bushels of wheat to a commission house in Cleveland on Tuesday and it reaches there on Wednesday, and the commission house sells and delivers the five hundred bushels of wheat on Thursday, how can the farmer get possession of his personal property on Friday when the commission man has failed?

Mr. NYE: He can provide in his contract, if he desires, that the wheat or corn shall not be delivered until he receives his pay for it.

Mr. HARRIS, of Hamilton: Would not that prevent the transaction of all business.

Mr. NYE: No. That is entirely different from constructing a building. Here is a building being constructed that will take a year or two to build. The man owns the land, and he hires the contractor, and he can provide in his contract that the material and the labor shall be paid for before he entirely pays the contractor. He has abundant means to protect himself, and he should do it so that the laborer, the artisan, the mechanic and the material man get their pay.

Mr. HARRIS, of Hamilton: Is not the mere fact that it takes from sixteen to eighteen months to put up a building of any size a great deal more protection to the material man, who has all of the time the building is in progress of construction to go to the head contractor, and, if he fails, to go to the owner and get his money? Is not that immeasurably greater protection than the farmer or merchant has whose goods, being personal property, leave his possession?

Mr. NYE: This Proposal No. 166 provides that laws may be passed to protect all of these men. Just what the details of those laws will be I cannot say, but the very thing you speak of can be provided for. I am of opinion that it ought to be provided for, and that the mechanic and artisan and laborer should receive their pay for the material or for the additional value that they put upon that property.

Mr. FOX: I was solicited by three different material men in Mercer county to work for this proposal, saying that the laws, as they are now, were entirely inadequate to protect material men. I would like to see the proposal pass without amendment. The trouble with the amendment of the gentleman from Hamilton [Mr. HARRIS] is that he wants to protect some and not the others. His proposal seems to carry the plan to only protect one set of people. And his reference to the farmer and the grain has no application at all. We all know that the farmer doesn't sell his grain that way. He brings it to a warehouse and he gets his money before he leaves.

Mr. HARTER, of Stark: Is it not a fact that the farmer can protect himself when he ships his grain to Pittsburgh or Cleveland by drawing with bill of lading attached?

Mr. FOX: Certainly.

Mr. HARTER, of Stark: And is it not a fact if contractors and material men are not protected it would discourage enterprises and business undertakings?

Mr. FOX: It certainly would.

Mr. HARRIS, of Hamilton: The gentleman from Stark [Mr. HARTER] just asked you if the farmer could not protect himself by attaching the bill of lading to his shipments?

Mr. FOX: Yes, sir.

Mr. HARRIS, of Hamilton: That is really selling for cash?

Mr. FOX: Yes.

Mr. HARRIS, of Hamilton: Could not the material men protect themselves by selling for cash all the time?

Mr. FOX: Not all the time.

Mr. HARRIS, of Hamilton: But suppose a fellow comes to you and says, "I want to buy this lumber. I will have this house put up in thirty days and I will settle for it?"

Mr. FOX: If I think he is good I will extend him credit, and if I don't I will not.

Mr. HARRIS, of Hamilton: Suppose you think he is good and he is not good.

Mr. FOX: I lose.

Mr. HARRIS, of Hamilton: We don't protect you there. In this proposal you are simply protecting against credit.

Mr. FOX: The way I understand it, this protects everybody. How should they be protected?

Mr. HARRIS, of Hamilton: The same as you pro-

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tect yourself with people coming to your store. Those you think are good you extend credit to, and those you do not, you do not.

Mr. FOX: And a lot that we credit and think are good, when the time comes around, don't pay.

Mr. HARRIS, of Hamilton: Then it is your bad judgment in extending credit.

Mr. FACKLER: Is it not a fact that merchandise sold for the purpose of erecting a building becomes part of the real estate and cannot be taken off as other personal property can?

Mr. HARRIS, of Hamilton: That has just the opposite effect from what you intend. The very fact that the merchandise sold is material in process of construction for six to eighteen months, where the owner of the material can go to the head contractor and to the owner and say, "This man is not paid, and I will hold back some of the material if he is not paid," which the farmer cannot do, because his personal property disappears in a day—every fragment of it is gone. And why should you protect that man who can protect himself when you don't protect the farmer?

Mr. HARTER, of Stark: Is it not a fact that bread-stuff is always sold for cash?

Mr. FOX: Yes.

Mr. HARTER, of Stark: And lumber and building material is always sold on time?

Mr. FOX: Generally so. And I do not see why there should be any discrimination in this proposal, and I would like to see it adopted, but without the amendment.

Mr. ROCKEL: I think we are wasting a great deal of time discussing the question of the policy of the law. That is entirely in the hands of the legislature. Almost all the states of this Union have passed just such laws as this would authorize our legislature to pass. They have made it different in its application. In some states they have required the contractor to file a statement with the owner of the property as to all material men and all subcontractors and matters of that character. In other states they provide different details. It would be entirely unnecessary to have this amendment at all in the present constitution were it not for that peculiar view that our supreme court took of our present constitution. That is all there is to it. We might have all these details of what is in the laws of various other states carried out under the present constitution but for the decision of the supreme court of Ohio which prevents it. And I think if that question comes before our supreme court they will reverse that decision, but it stands now as a bulwark in opposition to everybody.

Mr. JONES: I understood you to say that this proposal simply authorized the enactment of such a character of mechanics' lien law?

Mr. ROCKEL: So I understand.

Mr. JONES: Is it not in effect the enactment of a lien law itself, in that it provides that material men and workmen of every class shall have a lien upon the property, real and personal, upon which they bestow work or materials? Does it not create a lien in favor of all workmen and material men under all circumstances, dependent only upon the fact that their material shall go into the property?

Mr. ROCKEL: Sometimes it is well to go back. Laws may be passed to secure mechanics—

Mr. JONES: I beg your pardon. I was misled by the original proposal instead of the substitute.

Mr. NORRIS: May it not be that some of the members have turned to the original proposal instead of the substitute proposal? My friend Jones did and I did.

Mr. ROCKEL: We might discuss the policies that Mr. Harris, of Hamilton, has brought up, but that is a matter for the legislature. But let me say it has been thought wise to carry out a law that would protect the people who put money into a particular piece of property. That is all this does. You advance money for a man to build a house, and you really build the house. Why should you not have a right on that property to get your money back?

Mr. PECK: You would not have any money if you just advanced the money?

Mr. ROCKEL: Not at present. I mean your material or labor or whatever it is that goes in and increases the other man's property. As I said, we might go into the details of this matter. All the other states have something of this character—Illinois, Indiana, and almost all the other states. Therefore I move that the amendment of Mr. Harris, of Hamilton, be laid on the table.

The motion was carried.

Mr. HOSKINS: I offer an amendment.

The amendment was read as follows:

After the word "laborers" in line 4, insert a comma and the word "subcontractors."

Mr. STILWELL: We agree to that.

The amendment was agreed to.

Mr. HALFHILL: This proposal has a word in the forefront of it that limits its scope and effect and overcomes to an extent some things that have been here urged against its adoption. Laws may be passed which shall secure to certain men "their just dues"—note the word "just." Can anybody object to that as the policy of the state of Ohio? Here is the working of the constitution for a good many years in the state of Ohio. We have had a mechanics' lien law, and that law of course extended to a good many other things than buildings—the erection of bridges, derricks, as well as a host of public works. That law created a right in one who was a direct contractor with the owner to assert a lien on the premises or the thing constructed, and the law left out of consideration altogether for many years all of the rights of one who furnished material to go into that structure or one who furnished labor on that structure, and today we have not any way whatever to protect under the law as it now stands any subcontractor, any material man or any laborer except to the extent of such fund as would remain in the hands of the owner after he got through settling with the original contractor, so that all the lien now that the laborer, material man or subcontractor can assert is a lien on the fund, and that means the residue of the fund after the original contractor and the owner have their settlement. Into that settlement many things creep. Oftentimes the owner of the building finds that the contractor has not lived up to the specifications, that the contractor has not done what he agreed to do. Sometimes he discharges

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the contractor, and takes that fund for the purpose of carrying out and completing the contract, according to his own interpretations, and perhaps correctly, of the terms and stipulations of the contract, and he may use up that fund in adjusting the rights between himself and the original contractor. That is the condition of the law as it is now.

Mr. LAMPSON: Is the owner in any event compelled to pay more than his contract price?

Mr. HALFHILL: Can he now, do you mean?

Mr. LAMPSON: Yes.

Mr. HALFHILL: I apprehend that just laws would not confiscate anything and that the legislature will pass laws only to secure men their just dues.

Mr. LAMPSON: Suppose the contractor has a contract to build a building for \$10,000, but the material and labor put into the building amount to \$12,000. Would the owner be compelled to pay that excess?

Mr. HALFHILL: No, sir, and it is my belief that no law could be passed which would make him do it. No law can be passed which will impair the validity or obligation of a contract. It would be impossible for any state to pass any law in violation of that provision of the federal constitution. But at least the owner may always protect himself by taking a bond from the contractor.

Mr. JONES: Is not that just the very purpose of this amendment to the constitution? Our supreme court held under the present constitution that it would be an impairment of the rights of contract to impose the obligation on the owner of the property, and to require him to pay for material which he did not agree to pay for, although that amount may be in excess of what he agreed to pay.

Mr. HALFHILL: No; I don't understand that that was it at all.

Mr. JONES: Would not—

Mr. HALFHILL: I don't care to enter into any further argument on that point. I have only fifteen minutes.

So the situation that confronted everybody in the early nineties was the situation I now describe. At that time I was consulted and was instrumental in helping frame the law passed by the legislature, which appears in volume 91, page 136, of the laws of the state of Ohio. Permit me to read you that. This is the law that was declared unconstitutional:

Sec. 3193. Any subcontractor, material man, laborer or mechanic, who has performed labor or furnished materials or machinery, or who is about to perform labor or furnish material or machinery for the construction, improvement or repair of any turnpike road improvement or other public improvement provided for in a contract between any board or officer and a principal contractor, and under a contract between any such subcontractor, material man, laborer or mechanic and a principal contractor or subcontractor, may, at the time of beginning to perform such labor or furnish such material or machinery, or at any time thereafter, not to exceed ninety days from the completion of such labor or delivery of such machinery or material, file with the board or officer, or the authorized clerk or agent thereof, a sworn and itemized statement of the amount and value of

such labor performed and to be performed, material or machinery furnished, containing a description of any promissory note or notes that may have been given by the principal contractor or subcontractor on account of said labor, machinery or material, or any part thereof, with all credits and set-offs thereon.

The same sort of statute that applies there to these public boards was passed to apply to the individual landowner, and that is the language that the supreme court in the case of Palmer and Crawford vs. Tingle, 55 Ohio State, declared to be unconstitutional. I quote from the syllabus:

1. The inalienable right of enjoying liberty and acquiring property, guaranteed by the first section of the bill of rights of the constitution, embraces the right to be free in the enjoyment of our faculties, subject only to such restraints as are necessary for the common welfare.

2. Liberty to acquire property by contract, can be restrained by the general assembly only so far as such restraint is for the common welfare and equal protection and benefit of the people, and such restraining statute must be of such a character that a court may see that it is for such general welfare, protection and benefit. The judgment of the general assembly in such cases is not conclusive.

3. While a valid statute regulating contracts is, by its own force, read into, and made a part of such contracts, it is otherwise as to invalid statutes.

4. The act of April 13, 1894, 91 O. L. 135, in so far as it gives a lien on the property of the owner to subcontractors, laborers and those who furnish machinery, material or tile to the contractor, is unconstitutional and void. All to whom the contractor becomes indebted in the performance of his contract, are bound by the terms of the contract between him and the owner.

That was the construction the supreme court of Ohio gave to our bill of rights, and, as has been read here by the gentleman from Cuyahoga, the supreme court of the United States found that it was not necessarily a correct construction. The supreme court of the United States said that was going to the extreme limit of protecting the rights of property, and, as has been said here in debate, it might be if such a case came again before our own supreme court that the court might construe this kind of a statute differently from the way it did in 55 O. S. We want to make it easy for the court to get away from that decision, and we want to pass this proposal; and I submit this is only a proposal in line with common honesty, because it is within the power of every owner of property to make a contract whereby he can protect himself against the faults and shortcomings of his contractors, and whereby he will see to it that the material that goes into his house and covers his head, or the labor that goes into the structure and helps to complete it, is properly paid for. That is only just and right. And if any of you had had the experience that any ordinary attorney has in trying to protect the rights of his clients when called upon by laborers and material men, and had found how very far short of protecting those

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rights he can come under existing laws, you would be in favor of this change, because it is only in favor of justice, right and common honesty.

Mr. ANDERSON: Do you mean that if this proposal is adopted it will correct the decision of the supreme court in 55 O. S.?

Mr. HALFHILL: I mean that if this proposal is adopted it will be entirely competent for the legislature to pass a law similar to the laws that I read here, which the supreme court of Ohio has declared unconstitutional.

Mr. ANDERSON: It was declared unconstitutional because of the federal constitution, was it not?

Mr. HALFHILL: Oh, no. Not on that account, but that it seemed in conflict with the provisions of the Ohio bill of rights. The supreme court of the United States decided expressly that it was not in conflict with the bill of rights of Ohio in the case involving the construction of the Southern Hotel here in Columbus, which was read in debate by the gentleman from Cuyahoga [Mr. STILWELL].

Mr. BOWDLE: The gentleman and Mr. Stilwell have made my speech, and I move the previous question. The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 103, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Norris,
Antrim,	Halenkamp,	Nye,
Baum,	Halfhill,	Okey,
Beatty, Morrow,	Harbarger,	Partington,
Beatty, Wood,	Harris, Ashtabula,	Peck,
Beyer,	Harter, Huron,	Pettit,
Bowdle,	Harter, Stark,	Pierce,
Brattain,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Brown, Lucas,	Holtz,	Riley,
Campbell,	Hoskins,	Rockel,
Cody,	Hursh,	Roehm,
Collett,	Johnson, Madison,	Shaw,
Colton,	Jones,	Smith, Geauga,
Cordes,	Kehoe,	Smith, Hamilton,
Crosser,	Keller,	Solether,
Cunningham,	Kerr,	Stalter,
Davio,	Kilpatrick,	Stamm,
DeFrees,	King,	Stewart,
Donahay,	Knight,	Stilwell,
Doty,	Kramer,	Stokes,
Dunlap,	Kunkel,	Taggart,
Dunn,	Lambert,	Tannehill,
Dwyer,	Lampson,	Tetlow,
Earnhart,	Leete,	Thomas,
Eby,	Leslie,	Ulmer,
Elson,	Longstreth,	Wagner,
Evans,	Ludey,	Walker,
Fackler,	Malin,	Watson,
Farnsworth,	Mauck,	Weybrecht,
Farrell,	McClelland,	Winn,
Fess,	Miller, Fairfield,	Wise,
FitzSimons,	Miller, Ottawa,	Woods,
Floue,	Moore,	Mr. President.
Fox,		

Those who voted in the negative are: Cassidy, Crites, Harris, of Hamilton; Johnson of Williams; Peters, Stevens.

So the proposal passed as follows:

Proposal No. 166—Mr. Stilwell. To submit an amendment to article II, by adding section 33 of the constitution.—Relative to liens.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or furnished material. No other provision of the constitution shall impair or limit this power.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. Nye arose to a question of privilege and asked that his vote be recorded on Proposal No. 241, by Mr. Dwyer. His name being called, Mr. Nye voted aye.

Mr. Peck arose to a question of privilege, and asked that his vote be recorded on Proposal No. 241, by Mr. Mr. Dwyer. His name being called, Mr. Peck voted aye.

Mr. Thomas arose to a question of privilege, and asked that his vote be recorded on Proposal No. 241, by Mr. Dwyer. His name being called, Mr. Thomas voted aye.

Mr. Harter, of Huron, arose to a question of privilege, and asked that his vote be recorded on Proposal No. 241 by Mr. Dwyer. His name being called, Mr. Harter, of Huron, voted aye.

Mr. Harris, of Hamilton, moved that Proposals Nos. 272 and 329 be informally passed on the calendar.

The motion was carried.

Mr. DOTY: So that we may come to a conclusion as to what we desire to do the rest of the week and beginning with Monday, and only for the purpose of bringing the matter to your attention, I desire to move that when the Convention adjourns today it be until two o'clock Monday afternoon.

The motion was carried.

The PRESIDENT: The next business is Proposal No. 322—Mr. Bowdle.

The SECRETARY: You will find the amendment on page 11 of the journal of April 18.

The proposal as amended was read.

Mr. BOWDLE: Mr. President, and Gentlemen of the Convention: I shall speak very briefly for I take it that the value of this proposal is obvious to the professional men here, and those who are not professional men have certainly followed the public prints closely enough to know that it is important, in order to do away with the scandal surrounding criminal trials, that something should be done to regulate the introduction and use of expert medical testimony. The legal profession and the judiciary together have been made the butt of all sorts of jokes because of the introduction and use of expert medical testimony. I take it that it will go without elaboration here that there is nothing in this world more ridiculous than the examination of a medical expert in the ordinary criminal case. We speak of the expert witness—the medical expert witness. The term "witness" as used in that connection is a misnomer. A witness in legal contemplation is merely one who has seen something, or who has heard something about a transaction that is the subject of judicial investigation. A doctor or alien-

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ist in a criminal case involving such testimony is not a witness in any proper legal sense. He is really a purchased special pleader, who has in every case been examined in advance by the lawyer on the side engaging him, and who has been carefully quizzed as to what his answer would be as an expert to a purely hypothetical case, and when he goes into court he goes there under a mysterious kind of employment receiving a fee unknown in size, and while he occupies the stand ostensibly as a witness he is really there in the capacity of counsel, and his business is to combat the cross-examination of the other side and to defend his theory of the case. All sorts of scandals have grown out of this curious situation. The medical profession—and it should be said to the credit of the profession—has endeavored time and time again to get away from this situation, but without success. So long as our jurisprudence is in its present condition, where either side may employ any expert that the side desires to employ, and pay any size fee that it is able to pay, so long will there be doctors who will respond to the demand, and proceed to furnish the evidence expected by the side employing them. The only effort I know of in the United States on the part of a legislature to get away from this scandal was made by the state of Michigan in 1905.

In 1905 the legislature of the state of Michigan passed a law suggested by the medical profession. It was a very excellent law, but it was promptly declared to be unconstitutional by the supreme court of Michigan. I read a part of it:

No expert witness shall be paid or receive as compensation in any given case, for his services as such, a sum in excess of the ordinary witness fees provided by law, unless the court before whom such witness is to appear or has appeared awards a larger sum; and any such witness who shall directly or indirectly receive a larger amount than such award, and any person who shall pay such witness a larger sum than such award, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not to exceed one year, or both, in the discretion of the court, and may further be punished for contempt.

No more than three experts shall be allowed to testify on either side as to the same issue in any given case, except in criminal prosecutions for homicide. Provided, the court trying such case may in its discretion permit an additional number of witnesses to testify as experts.

There was an evident attempt on the part of the state of Michigan to control the number of experts who should be used in a criminal case. I read another provision of the Michigan law:

In criminal cases for homicide where the issues involved expert knowledge or opinion the court shall appoint one or more suitable disinterested persons, not exceeding three, to investigate such issues and testify at the trial.

The value of that is perfectly apparent. It took out of the hands of both parties the power to go out into the

open medical market, and by the use of money bring into court such witnesses as they desired to sustain the issue on their part and placed the whole matter in the power of the court that was trying that case. So when the court saw that the case was approaching a point where it involved the use of medical testimony it could at once appoint this board of medical experts of three persons. I read further:

And the compensation of such person or persons shall be fixed by the court and paid by the county where indictment was found, and the fact that such witness or witnesses have been so appointed shall be made known to the jury.

The excellence of that act is perfectly apparent. What happened to it? The supreme court of the state of Michigan, having due regard to that large body of the common law, under the prescriptions of which, for time out of mind, either party could examine any number of witnesses to sustain the issue on his party, said that this was an effort to depart from that body of the common law which was especially binding in criminal trials and therefore contrary to the constitution of the state of Michigan, and proceeded to denounce it. I shall not attempt to read from the decision. I simply refer to it, *People vs. Dickerson*, 164 Michigan, page 148. The fourth paragraph of the syllabus reads as follows:

Sections 3 of Act No. 175, Pub. Acts, 1905, providing for the appointment of expert witnesses by the court in cases of homicide is unconstitutional since the act of appointment is in no sense a judicial act, is carried out without notice to respondent or the prosecuting attorney, since the names of the witnesses are not indorsed on the information, and the accused is prevented from knowing the names of witnesses who will testify against him, and since the experts receive a certificate of candor, ability, and truthfulness not given to any other witnesses in the case.

And thus that act fell by the wayside.

Now this provision before us provides that the legislature shall have power to provide by law for the regulation and use of expert medical witnesses and testimony in criminal trials. The provision is permissive only. It allows the legislature full power to determine, after the fullest kind of conference with the best experts to be had, on a scheme for the control of medical testimony. The word "medical" was stricken out and the provision here is somewhat broader than that.

Mr. PECK: Why not use the word "civil" as well as "criminal?"

Mr. BOWDLE: The only answer is that in civil cases involving only A and B, the issues tried usually are not of any great interest to the community at large.

Mr. PECK: Do you know of any class of cases in which experts are more used than in will cases?

Mr. BOWDLE: That is true. I do not object to an amendment broadening the power of the legislature and applying it to the ordinary case, but so far as my proposal is concerned, it is designed to reach criminal cases and thus prevent the greatest scandals that surround these trials.

Mr. PECK: I desire to offer an amendment. I want

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to insert the words "civil and" before the word "criminal" in line 5 and also, on the suggestion of Professor Knight, to repeat the word "expert" before the word "testimony" in the same line.

Mr. BOWDLE: I will accept that.

Mr. DWYER: In all civil cases—take, for example, breach of contract in building a house—each side may bring in experts to show whether it has been done according to contract. That should not be eliminated here. In civil cases each party should have that right.

Mr. PECK: It only provides that the number may be limited. It does not exclude the power to call them.

Mr. DWYER: Of course, in criminal cases—I have had a great deal of experience with that character of experts in criminal cases, and I think the court should select experts instead of the parties. Then the jury will get some valuable testimony, but the way it is now it is a travesty.

Mr. PECK: The general assembly has the power to pass an act providing for that.

Mr. DWYER: The court should have the power. The court is disinterested, and if it is put in the hands of the court we may get some valuable testimony. The way it is now it is a farce, and the expert doctors are just as bad as the lawyers.

Mr. ANDERSON: Let us analyze this statement. The amendment authorizes the legislature to pass laws which, if passed, unquestionably will give the court the right to appoint experts in any particular case where medical experts are required in civil cases. If you do that, you give into the power of the judge the right to decide any case where expert testimony must be required and where the issues are predicated upon expert testimony. Let me give you illustrations. Say, for instance, some one brings a suit for injuries, which injuries are of a hidden or obscure nature—for instance, growing out of neurotic conditions, shocks or neurasthenia, or matters of that kind. Medical testimony is very much abused, I know, but that is the basis of your lawsuit. If the legislature acts under this proposed amendment the judge will have a right to appoint any doctor he may see fit, and if the doctor or doctors so designated by the judge testify that there is no injury, that concludes the case against the plaintiff, but if the doctor or doctors would say that the injuries were great, that would conclude the case, so far as the amount would be concerned, against the defendant, for a jury would certainly find with the doctor so appointed. If the question to be decided was whether or not a certain litigant had signed a promissory note and he denied the signature, experts could be appointed by the court and their testimony would equally conclude the matter in controversy. So, you see, you place in the hands of the judge the right to pick the witness or witnesses whose testimony will be conclusive, and thereby give to the judge more power than the law has ever seen fit to place in the hands of one person where the litigants had a right to a jury. I cannot conceive of any more dangerous situation being brought about.

Mr. DWYER: On the other hand, is it not a farce the way the medical experts are called by both parties in criminal cases?

Mr. ANDERSON: I am not talking about criminal cases.

Mr. DWYER: They are just as strong for their side of the case as the lawyers are.

Mr. ANDERSON: I am heartily in favor of the amendment as applying to criminal cases, because there the end sought is different. But in every civil case where an injury has been sustained, or where expert testimony is the basis of the lawsuit, it is in the power of the judge, under a law as here suggested, to appoint experts and thereby make their testimony conclusive, and thereby give to the judge the full power or right to decide the case.

Mr. PECK: I can not agree with the gentleman from Mahoning [Mr. ANDERSON] in his conclusions about this. It seems to me he is drawing on his imagination. In the first place the legislature need not under this pass the power over to the court to select the expert witnesses. It may, as suggested by Mr. Bowdle, create a commission for such purpose, or if the legislature does enact that the judges may select the expert witnesses, it does not seem to me there is any great wrong in it to anybody. It would operate like this: Either party might go to the court before the trial begins and say, "We would like an expert on this, that or any other kind of science. Please designate one for us so that we can have him brought in." The court proceeds to do so. The power of a court in the trial of a case is much greater in the matter of designating an expert. The court is impartial and will endeavor to select an expert who will give a fair opinion. He is not being paid, as at present, to give an opinion on one side. As it is now A and B have a lawsuit. A hires a doctor and he says, "I want you to give an opinion for me and I will give you \$500." Then a doctor comes in as an expert for B. He does the same thing. Their testimony is no more valuable than the argument of a lawyer, but it strikes the jury with a great deal more weight, because they are not so familiar with things going before. But let those experts be designated by the court and come in and give their opinion and the presumption is that they would come much nearer giving an impartial opinion than under the present system.

Now, I don't care whether the case is a civil or a criminal case. It does not seem to me there is any difference at all. The attempt to differentiate between a civil and criminal cases is a flat failure. There is no class of cases in which experts are more used than in the contest over wills. There the question of the sanity of the testator is nearly always the main question. Doctors galore are called to testify about his sanity. Judge Dwyer has indicated another class of cases where experts testified on buildings. There are thousands of kinds of experts who have at one time or another been called into court. What we want is to have experts selected in such a way that you may be sure the testimony when delivered will be something like the verdict of a jury. You take all sorts of precautions to have your jurors impartial. In many cases the jurors may be designated by the judge and you would get your experts more nearly impartial by the court designating them than under the present system. I think the passage of this proposal will facilitate the proper dispatch of justice.

Mr. HOSKINS: Just a word on this proposition. My attention was not called to it until it was read and discussion commenced. I do not see any necessity or any

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demand for submitting a proposal of this kind to the people. It does not seem to me that it is of sufficient importance that we should make it one of the proposals to be voted for. I have never heard any demand for a constitutional provision of this kind. My judgment is that there is not anything in our constitution now that would inhibit or prohibit the legislature from providing against any evil that may have crept into our system under our present constitution. The legislature can provide for the regulation of procedure. We already have a statute limiting the number of witnesses that may be called in a certain character of cases, and in a number of instances the court at all times has control of its procedure and of the witnesses that may be called and of the examination of those witnesses. We are undertaking to write into the constitution a provision against an evil that in my judgment does not exist, and which, if it does exist, can be provided against.

I am opposed to the whole proposition, but I am especially opposed to that part of it that relates to civil procedure. The proposal if passed, in any event ought not to pass other than in its original form. I feel that the present constitution is ample to deal with any evil existing along this line, and I do not think we should appear here as doctors of every imaginable disease the body politic is afflicted with. We are trying to get through with the work. We are using expedition. However, we must not pass these proposals lightly, and unless this proposal is thoroughly discussed and understood we should not vote on it. I think the whole matter ought to be laid on the table or indefinitely postponed, but in any event, whatever may be the judgment of this Convention, I ask especially that you do not incorporate in the proposal the amendment that is proposed, because it is especially dangerous. It is my judgment that the whole proposition, the proposal and amendment, should be defeated. There is no public demand for the same and every evil attempted to be remedied by them can be cured under the present constitution.

Mr. PIERCE: I would like to vote for the original proposal, but I would like to vote against the amendment. Therefore, when the amendment is voted upon I demand the yeas and nays. I will ask for a division and the yeas and nays on both propositions.

Mr. BROWN, of Highland: I had not intended to say anything about this matter because I thought it was so fair that it would appeal to the judgment of every man as being a necessary provision in the constitution. The fact is that expert testimony, so far as medical testimony is concerned, has become a disgrace to our jurisprudence. There are many expert medical men in this state and others who make a business of taking employment as experts. They will take the side of the case that employs them regardless of who employs them, and they will enter in a battle of wits between themselves and the lawyers who are cross-examining them with the view of aggrandizing themselves without a whit's care for the merits of the case. That condition is beyond doubt existing and it should be regulated in some form, so that we would have some respectability and credibility along with that kind of legal procedure. I think the Peck amendment is dangerous on the ground that the judge who sits upon the bench and has the selection of the expert is liable to select a man in whom he has

confidence, and that would most likely be his family physician, who may enjoy his confidence and the confidence of the whole community and may not know very much. One knows whether a lawyer is capable because he has a forum before which he demonstrates his ability, but the doctor has none. Who has the discriminating power to test his ability? He covers up his mistakes in the graveyard and nobody ever knows about them. He may be enjoying a creditable reputation, based upon his personality and his credit in the community, which probably may be a mistaken credit. Many physicians know that there are men who are enjoying large reputations as being great physicians when they really know very little. The judge may have as his physician one of those. I think if the judge appoints one of those expert medical witnesses that would be the most dangerous power that could be given him.

Mr. RILEY: Does this allow the judge to select the expert?

Mr. BROWN, of Highland: I have been informed so.

Mr. RILEY: It does not. It simply applies these regulations to civil as well as criminal cases.

Mr. BROWN, of Highland: I understood under the proposal that would have to be the practice.

Mr. PECK: No; you are adopting Mr. Anderson's talk about that.

Mr. BROWN, of Highland: I believe the original proposal should go through and the Peck amendment should be defeated.

Mr. WINN: We have been discussing this so far as if medical experts were the only ones to which the act, if passed, would apply. We must keep in mind, however, that there are other experts. Let us assume that we are engaged in the trial of a will contest. The lawyers all understand that any person who had any acquaintance with the testator is an expert respecting his mental capacity. Now we give the same sort of regulation respecting the testimony of those persons as we do respecting medical experts.

Mr. PECK: Those persons who knew the testator are not classed as experts. They are testifying as to facts.

Mr. WINN: They are required to give opinion testimony. There are just a few instances in which opinion testimony is given and this is one of them. The witness becomes to that extent an expert. It is opinion testimony and all opinion testimony is expert testimony.

Mr. PECK: Oh, no.

Mr. WINN: There are higher and lower grades of expert testimony. Suppose you were trying a will case and the question is, "Did the testator have mental capacity to execute the instruments?" The legislature, if it passes the act at all must designate some authority to regulate that or there will be no regulation. It may be the court or the clerk of the court. I don't know what. It will be somebody else than the parties or their lawyers.

Mr. ANDERSON: Say it would be the court, the clerk of the court or a board, and that authority designated by the legislature would say that Doctor Smith must be the witness. That ends it so far as medical testimony is concerned in that lawsuit.

Mr. WINN: It might.

Mr. ANDERSON: The act would not allow either

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party to bring in any other expert than the one appointed by the court and that would be an end to the case.

Mr. WINN: Suppose on one side of the case there are witnesses called who would give an opinion one way and another set of witnesses would give a contrary opinion. If some authority could say how many witnesses could be called and who shall be called, he might designate all on one side. I have just been engaged in a trial of an important suit in which the validity of a note was involved. It was claimed by the man who was sued that the note was a forgery. I claimed the same thing because he was my client. Perhaps one of the best experts on handwriting in the country was called as a witness for the plaintiff. He was put upon the witness stand and testified at very great length respecting a long, careful, painstaking examination that he had made of the signature to the instrument and of other writings which he used as a basis of comparison, and when he was through it was found on cross examination his experience extended over a period of fifteen years as an expert on handwriting. Yet he testified that he had been engaged as an expert in a very great number of cases in the fifteen years, and that there had been called on the other side of practically all of those cases other experts who testified exactly to the contrary of what he testified, leaving it entirely for the jury to say whether or not one expert was right or the other.

Mr. ANDERSON: This proposal if carried in reference to civil cases would not leave it to the jury at all?

Mr. WINN: No, sir.

Mr. ANDERSON: Then the court would be deciding the case and jury not.

Mr. WINN: Yes. Now, here we leave it to some court or authority or commission to say who shall be called as a handwriting expert. Suppose in that case this particular expert had been called as a witness and nobody else, the court or the commission assuming that he was altogether disinterested. In that case the other side would be precluded from attacking and breaking him down at all.

Mr. BOWDLE: Would you be in favor of the proposal if the word "civil" were stricken out?

Mr. WINN: I believe I would. I see the difference. It is not because the same rules may not apply, but it is because in the prosecution of criminal cases the state is one of the parties. The state presumably stands disinterestedly between the prisoner at the bar and an unjust verdict, and I believe in a case like that there is no serious objection, but I think this amendment offered by the delegate from Hamilton [Mr. PECK] is dangerous, and I move the previous question upon the amendment offered by the member from Hamilton [Mr. PECK].

Mr. KNIGHT: There are two parts to that amendment.

The PRESIDENT: When the motion is put the division will be made. The question is, Shall debate close on that amendment?

The main question was ordered.

Mr. KNIGHT: I had an amendment and I passed it to Judge Peck and he has included it in his. It has nothing to do with the question of a civil case.

The PRESIDENT: That question will be put first.

The question now is on the adoption of that part of the amendment.

The SECRETARY: That is to insert the word "expert" before the word "testimony" so it will read:

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials.

The amendment was agreed to.

The PRESIDENT: Now the other part of the question.

The SECRETARY: That is to insert the words "civil and" so that it will read:

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in civil and criminal trials.

Mr. WINN: The question is upon laying that upon the table.

The PRESIDENT: The question is upon the adoption of the amendment inserting the words "civil and".

Mr. HOSKINS: I move that the entire matter be tabled.

Mr. DOTY: The Convention is ready to vote upon this amendment. That is before the Convention and nothing else, and the motion is out of order.

Mr. LAMPSON: I think the gentleman from Cuyahoga is correct. The previous question has been ordered on this amendment.

The PRESIDENT: The point is well taken.

The amendment was disagreed to.

Mr. HOSKINS: I now move that this entire matter be laid on the table.

The motion to table was lost.

Mr. PETTIT: I move the previous question on the proposal.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal and the secretary will call the roll.

The SECRETARY [calling the roll]: Anderson—

Mr. BROWN, of Highland: I would like to have that read.

Mr. DOTY: A point of order. The roll call has begun.

The yeas and nays were taken, and resulted—yeas 65, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	FitzSimons,	Okey,
Antrim,	Hahn,	Peck,
Baum,	Halenkamp,	Pettit,
Beyer,	Harbarger,	Pierce,
Bowdle,	Harris, Hamilton,	Read,
Brown, Highland,	Harter, Huron,	Redington,
Cassidy,	Hoffman,	Riley,
Cody,	Hursh,	Shaw,
Cordes,	Johnson, Williams,	Smith, Geauga,
Davio,	Jones,	Solether,
DeFrees,	Kehoe,	Stalter,
Donahay,	Keller,	Stamm,
Doty,	Kilpatrick,	Stewart,
Dunlap,	Kunkel,	Stilwell,
Dunn,	Lambert,	Stokes,
Dwyer,	Leete,	Tetlow,
Eby,	Leslie,	Thomas,
Elson,	Longstreth,	Ulmer,
Fackler,	Ludey,	Watson,
Farnsworth,	McClelland,	Winn,
Farrell,	Miller, Crawford,	Woods,
Fess,	Moore,	

Regulating Expert Testimony in Criminal Trials—Limiting Time of Operation of Laws.

Those who voted in the negative are:

Beatty, Morrow,	Harris, Ashtabula,	Mauck,
Beatty, Wood,	Harter, Stark,	Miller, Fairfield,
Brattain,	Henderson,	Miller, Ottawa,
Brown, Pike,	Holtz,	Nye,
Campbell,	Hoskins,	Partington,
Collett,	Johnson, Madison,	Peters,
Crites,	Kerr,	Stevens,
Cunningham,	King,	Taggart,
Earnhart,	Knight,	Tannehill,
Evans,	Kramer,	Wagner,
Fluke,	Lampson,	Walker,
Fox,	Malin,	Wise.
Halfhill,		

So the proposal passed as follows:

Proposal No. 322—Mr. Bowdle. To submit an amendment to article II, of the constitution.—Relative to the use of expert medical witnesses and testimony in criminal trials.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows.

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. Watson arose to a question of privilege, and asked that his vote be recorded on Proposal No. 241, by Mr. Dwyer. His name being called, Mr. Watson voted in the affirmative.

Mr. Lampson arose to a question of privilege, and asked that his vote be recorded on Proposal No. 322, by Mr. Bowdle. His name being called, Mr. Lampson voted in the affirmative.

Mr. HOSKINS: I now move that we recess until 1:30 o'clock p. m.

The motion was carried and the Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Leave of absence for the remainder of the day was granted to Messrs. Pettit, Rockel and Harter, of Stark.

Leave of absence for Monday and Tuesday was granted to Mr. Marshall.

By unanimous consent the following proposal was read by its title and referred as follows:

Proposal No. 334—Mr. Jones. To the committee on Judiciary and Bill of Rights.

Mr. Donahey arose to a question of privilege, and asked that his vote be recorded on Proposal No. 241, by Mr. Dwyer. His name being called, Mr. Donahey voted in the affirmative.

The PRESIDENT: The next business is Proposal No. 232—Mr. Doty.

The proposal was read the second time.

Mr. DOTY: The principle involved in this proposal is probably new to most of you laymen and all of the lawyers. That a very prominent lawyer, vice president of the United States and afterwards president of the

United States, and one of the greatest lawyers of his time is the originator of the idea is neither here nor there so far as the lawyers are concerned, for they never heard of it before. So that you may not think I am tremendously original and got up this myself I will tell you that the name of the man who originated this idea was one Thomas Jefferson, who came from Virginia and who was vice president of the United States and president of the United States and a few other things too numerous to mention. Those of you who have the idea that this is a brand-new proposition get over it, for it is about one hundred and fifteen or twenty or thirty years old. Thomas Jefferson was the greatest progressive of his time. I presume if he were living now he would be a conservative. You always get conservative as you grow older. This Convention is an illustration of that. When we started on January 9 it was heralded as the progressive convention of all time. I do not know whether some of the rest of you have reached the conclusion that I have, that this Convention is not a progressive Convention, but it is a reactionary Convention. Just look at the votes. The last vote we had that gave the line of demarkation between the progressive and the reactionary, showed we had just exactly twenty-nine progressives left. When this proposal of mine comes to a vote I want to see how the twenty-nine hold out.

Mr. HOSKINS: What is your definition of a progressive? What must the Convention do to be progressive?

Mr. DOTY: It should have been progressive enough to adopt the short ballot and it may do it yet, notwithstanding the member from Auglaize [Mr. HOSKINS] is not yet progressive enough to vote for the short ballot.

Mr. WINN: Is it progressive to go back and adopt the theories of Thomas Jefferson?

Mr. DOTY: It is progressive to go back and adopt the theories of Thomas Jefferson if the theories he founded then are still progressive in their tendency.

Mr. WINN: That would be progressive like —

Mr. DOTY: —like the democratic party, and Thomas Jefferson was a democrat, too.

Mr. LAMPSON: Don't you know that was a piece of satire on Jefferson's part?

Mr. DOTY: No; I think he put it in as a "safe-guard." Now, I really want to say something about my proposal.

Mr. ANDERSON: Does not the gentleman think if we had just adopted the initiative and referendum and quit that then we would have been progressive?

Mr. DOTY: When I look over the things that we have adopted since the initiative and referendum and size them up it strikes me if we had stopped at the initiative and referendum we would not have been so far wrong. Anyway we have gotten away with the idea that we are progressive. Some of us have had to change our minds since.

Mr. HALFHILL: May I ask a question?

Mr. DOTY: Yes; I was wondering where you were, you were quiet so long.

Mr. HALFHILL: Did your people complain any about the initiative and referendum we adopted?

Mr. DOTY: No, sir; our constituents haven't had any mass meetings of more than three of them together

Limiting Time of Operation of Laws—Contempt Proceedings and Injunctions.

Mr. LAMPSON: Will you allow me to present to you a progressive card [presenting a card entitling one to a free shampoo at a certain barber shop in town].

Mr. DOTY: This is a card that the member from Ashtabula [Mr. LAMPSON] seems from his appearance to have been in the habit of using—"One extra shampoo free."

Now, before I retire from the floor I propose to offer an amendment correcting a typographical error or two.

The amendment was read as follows:

In line 9 strike out "for ten" and insert "twenty-one," and change "from" to "after".

That increases the life of a law to twenty-one years, and that is all the time that Thomas Jefferson, one of the greatest democrats that ever lived, said that a law should last, and as I am in a convention of democrats, I think this ought to pass.

Mr. WINN: Do you think any lawyer would ever draw a bill like that?

Mr. DOTY: No, sir; I don't think he would. Having sat at the desk there and having seen a good deal of the bills that lawyers draw, I know they could not. Let me tell you something about lawyers trying to draw bills. It is a well-known fact that never in the history of legislation has any lawyer been able to draw a bill correctly. I state that from an experience of five years at that desk and never yet was any lawyer that ever came down here able to draw a bill correctly.

Mr. TANNEHILL: And nobody else.

Mr. DOTY: Yes; I can draw one.

Mr. HOSKINS: We don't send our best lawyers down to the legislature.

Mr. DOTY: Nor to this Convention either. Now I am going to have a yea and nay vote on this proposal. If the Convention will accord me a yea and nay vote on the main proposition well and good, but we are going to have a yea and nay vote on this and if the Convention will amend the proposal as I have asked and have a vote on the proposition that is all I want. Those who vote for it will be really and truly progressive. I have nothing further to say.

The amendment offered by the delegate from Cuyahoga [Mr. DOTY] was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 23, nays 63, as follows:

Those who voted in the affirmative are:

Baum,	Farrell,	Pierce,
Beatty, Wood,	Hahn,	Read,
Bowdle,	Halenkamp,	Stamm,
Crosser,	Harter, Huron,	Stilwell,
Davio,	Hoffman,	Thomas,
Donahey,	Hoskins,	Ulmer,
Doty,	Leete,	Mr. President.
Eby,	Moore,	

Those who voted in the affirmative are:

Anderson,	Colton,	Fackler,
Antrim,	Cordes,	Farnsworth,
Beatty, Morrow,	Crites,	Fess,
Beyer,	Cunningham,	Fox,
Brattain,	Dunlap,	Halfhill,
Campbell,	Dunn,	Harbarger,
Cassidy,	Earnhart,	Henderson,
Cody,	Evans,	Holtz,

Johnson, Madison,	Malin,	Smith, Hamilton,
Johnson, Williams,	Mauck,	Stalter,
Jones,	McClelland,	Stevens,
Kehoe,	Miller, Crawford,	Stewart,
Keller,	Miller, Ottawa,	Taggart,
Kerr,	Norris,	Tannehill,
Kilpatrick,	Nye,	Tetlow,
King,	Okey,	Wagner,
Knight,	Partington,	Walker,
Kramer,	Peters,	Watson,
Kunkel,	Redington,	Winn,
Lampson,	Riley,	Wise,
Longstreth,	Smith, Geauga,	Woods.

So the proposal, not having received the required majority, was lost.

Mr. DOTY: The progressives have gone down from twenty-nine to twenty-three. There are only a few of us left.

Mr. BEATTY, of Wood: I move that Proposal No. 252 be informally passed on the calendar.

The motion was carried.

Mr. DOTY: I make the same motion with reference to Proposal No. 170.

The motion was carried.

The PRESIDENT: The next is Proposal No. 134, Mr. Halenkamp.

The proposal was read the second time.

Mr. HALENKAMP: This proposal has come at a time when I did not expect it. Looking over the calendar the other day I noticed it was behind taxation, municipal government and a few others, and I naturally did not think the proposal would come up until some time next week. I am not really prepared to come before the Convention with the argument I had hoped to make in favor of it, so if the Convention will permit I would ask that the proposal be informally passed and retain its position on the calendar.

Mr. DOTY: Is there any opposition to the proposal that you know of? Would it not be well to go on with it for a time and pass it without your argument if there is no opposition.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 33, nays 52, as follows:

Those who voted in the affirmative are:

Anderson,	Elson,	Leete,
Beatty, Wood,	Farrell,	Miller, Crawford,
Beyer,	Hahn,	Moore,
Bowdle,	Halenkamp,	Pierce,
Cordes,	Harbarger,	Read,
Crosser,	Harter, Huron,	Smith, Geauga,
Davio,	Hoffman,	Stamm,
DeFrees,	Johnson, Williams,	Stilwell,
Donahey,	Kilpatrick,	Tetlow,
Doty,	Kunkel,	Thomas,
Earnhart,	Lambert,	Mr. President.

Those who voted in the negative are:

Antrim,	Evans,	Keller,
Beatty, Morrow,	Farnsworth,	Kerr,
Brattain,	Fess,	King,
Brown, Lucas,	Fluke,	Knight,
Campbell,	Fox,	Kramer,
Cassidy,	Halfhill,	Lampson,
Cody,	Harris, Ashtabula,	Longstreth,
Colton,	Henderson,	Ludely,
Crites,	Holtz,	Malin,
Cunningham,	Johnson, Madison,	Mauck,
Dunn,	Jones,	McClelland,
Eby,	Kehoe,	Miller, Fairfield,

Contempt Proceedings and Injunctions—Abolition of Divorce.

Miller, Ottawa,
Norris,
Nye,
Okey,
Partington,
Peters,

Riley,
Smith, Hamilton,
Stalter,
Stevens,
Stewart,
Taggart,

Tannehill,
Watson,
Winn,
Wise.

So the proposal, not having received the required majority, was lost.

Mr. FESS: I do not believe any of us want this matter to be passed over in that manner. I voted on the prevailing side and I move to reconsider the vote by which the proposal failed to pass.

The motion was carried.

Mr. DOTY: I move that the further consideration of this proposal be postponed until tomorrow and that it retain the position it has now on the calendar.

The motion was carried.

The PRESIDENT: The next is Proposal No. 227.

Mr. MILLER, of Crawford: I have to look after all the Millers in the Convention and I asked for indefinite leave of absence for Mr. Miller, of Fairfield, for the rest of this week and it was granted. Now he is here and I withdraw that request.

Mr. HARRIS, of Ashtabula: I do not know any reason why the informally passing of other measures does not obtain in regard to this. I have met several men on the way out who are somewhat interested and who requested that it be informally passed retaining its position, and I so move.

The motion was carried.

Mr. TANNEHILL: I move that the Convention adjourn.

The motion was lost.

Mr. DOTY: The next proposal is the so-called short ballot. I move that that be informally passed and retain its position on the calendar, which will give Mr. Bowdle a chance to make his anti-divorce speech.

The motion was carried.

The PRESIDENT: Proposal No. 25 is the next business in order. The committee on Judiciary and Bill of Rights recommends the indefinite postponement of this proposal.

Mr. DOTY: Under the present rule the gentleman is limited to five minutes and as I think he has at least half an hour's speech there, I move that Mr. Bowdle's time be extended sufficiently to allow him to read his paper.

The motion was carried.

Mr. BOWDLE: I fear that after I have read my paper you will promptly decapitate my proposal, but I shall have no feeling against you whatever.

This minority report is signed by Mr. Johnson, of Williams, and myself. If, when I finish, there are any other members of the Judiciary committee sharing the sentiments of this report, those persons are cordially invited to sign this report.

After full consideration by the Judiciary committee of Proposal No. 25—Mr. Bowdle, providing for the abolition of divorce in this state, we, constituting a minority of the committee, beg leave submit the following:

1. It seems wise to us that this Convention should take cognizance of this evil, which has now become a national peril, benumbing the nation's moral sense, and destroying the integrity of society's most sacred institution—that of monogamous marriage. While the legislature has power to deal with this question, yet its course

for a half century, and the course of all our state legislatures (except one, to be mentioned) has been toward greater and greater laxity. The legislature, by reason of its very closeness to the people, has proven responsive to the demands of that evil, egoistic spirit that is so deplorably active in modern life, while the great inactive mass of men, who still cherish the old ideal of indissoluble monogamous marriage, remain unheard. It is, therefore, evident to us that the protection of this ideal, which is the foundation of human society, is very properly a constitutional matter, and well within the scope of this Convention's work. To a convention which has debated for two weeks on the initiative and referendum and whether or not the saloon should be licensed or taxed, or whether it is desirable or undesirable for the new court of appeals to see the witnesses personally, it should not be necessary to elaborately prove that the Divine institution, which is responsible for our existence, and the state's integrity, has a claim for constitutional consideration superior to the claim of any other subject pressed upon our attention. Moreover, we have a variety of precedents, in that many state constitutions of this Union are not content to leave the matter of divorce wholly to the legislature. These constitutions limit the power of the legislature in many ways and that of South Carolina undertakes to abolish divorce altogether. All this justifies the view that this Convention on principle and precedent should take jurisdiction of this grave subject.

2. At the outset of our constitutional history, as an assemblage of states, the legislatures assumed the power of granting divorce. This scheme of things, like the present, led to vast abuses; and, accordingly, later constitutions deprived many of our state legislatures of this power, and, thinking to cure the evil, conferred this power on the courts. This course, it was supposed, would at least eliminate politics from the trial, would surround the hearing with the strict rules of proof not applicable to legislative hearings, and would impart a degree of seriousness and solemnity to the proceeding which would deter parties from lightly entering the divorce court. Precisely the reverse has been the ironical result; it is simply notorious that the getting of a divorce is the lightest thing of modern life; entering the divorce court is now catalogued by the individual and the public with jocular happenings. Moreover, the proof required is of the lightest character, many courts being already under the spell of that menacing spirit which obligingly "looks to the happiness of the parties," overlooking utterly the institution of marriage, which has today received its all-but-death wound at the hands of that lustful egoism which, in America, is the pestilence that walketh in darkness. The Fathers, in taking this power from the legislature and conferring it upon the courts, overlooked an interesting merit (?) in their scheme—the element of cheapness. Today, in Ohio, a man may be fully divorced for \$10.35, with \$5 additional to some impecunious attorney, who will attend to the perfunctory details of the formal proof. Thus, the system being evil, every evolution of the system has been evil, until today under the blight of it all the condition of family life in America is but little better than domestic life in the days of Rome's decline.

3. In the loosening of the family tie nothing now remains but the allowance of divorce by "mutual consent." The apostles of the present system see this to be a logical

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step, for it has the splendidly utilitarian features of allowing full and immediate expression of sexual desire, and likewise saves the parties from the annoyance and embarrassment of even a formal public hearing of their real or fancied differences. That this scheme may result from the present carnal program is well within the range of probability. Already one may see in current literature numerous suggestive articles having such titles as "Why not Freer Divorce?", "Shall Divorce be Made Easier?", "Impurity of Divorce Suppression," "A Defense of Divorce," "Divorce by Mutual Consent, Why Not?" These articles—and they are very numerous—should arouse us to a sense of the profound peril that menaces us.

4. The divorce system, being immoral, the whole drift of it is toward the extinction of the marriage tie by common consent.

M. Emile Durkheim, a distinguished professor of Paris, in writing on "suicide" deals with the moral aspects of the divorce problem, particularly with relation to its bearing on his subject. He says:

Marriage gives a man the strongest moral standby, as it places a wholesome check on promiscuous desires, which are mentally and physically so enfeebling, as well as destructive of the moral fibre. In proportion as the marriage tie is fragile the continence of married persons become less reliable. A check from which it is possible to free one's self with conventional ease is no longer a check that will moderate the desires, and, by moderating, appease them. There is consequently little need to show that in instituting divorce by mutual consent further facility would be given to couples who were the victims of illicit desires; the salutary check, in fine, would cease, more than ever, to exist.

Answering the proposition that marriage, being a contract, should be rescindable at the wish of the contracting parties, this distinguished sociologist says:

Every contract is susceptible of affecting other parties than the principals. In the case of marriage the contracting parties are bound by ties which are no longer subject to their own will, but involve the interests of third parties. Marriage modifies the material and moral economy of two families, the relationship of persons and things after marriage entirely changing. This holds even where no children have been born. As soon as the children are born the physiognomy of marriage changes entirely. Each parent has become a functionary of domestic society bound to fulfill a specific function; neither can be allowed to withdraw from the obligation because of any personal dissatisfaction occurring. The institution of marriage is the best safeguard of the interest of both men and women, promoting, as it does, the utmost amount of normal happiness to be expected. The regulation and discipline of natural desires is the end of marriage. To permit promiscuous divorce is to enfeeble the principle on which marriage is based, with the result that those who benefit by it will be the first to suffer.

As showing that divorced persons, while seeming to find their own "happiness," are in fact the first to suffer, this clear thinker points out that it is "statistically a fact that divorced persons commit suicide much more frequently than married persons—the exact ratio being four to one."

Mr. Durkheim quotes Bertillon approvingly, the latter showing that "divorce varies in degree in every country in proportion to the character and mental stability of its inhabitants." What shall be said of our national character and stability?

The increase of divorce in America is most astonishing. Mr. Stevens in the Outlook for June 1, 1907, says: "More divorces are granted in the United States each year than in all the rest of the Christian world." The statistics on this subject show an amazing situation here in America. It would be a waste of time simply to more than allude to this notorious fact. Professor Ross, of the University of Wisconsin, says, writing in volume 78 of the Century:

Twenty years ago an investigation by the Department of Labor showed that 328,716 divorces had been granted in the United States between 1867 and 1886 [20 years] and that divorces were increasing two and one-half times as fast as population. The recent census for 1887-1906 brings to light 945,625 divorces, and demonstrates that the movement certainly gains in velocity. * * * The fact that accelerated divorce is produced by the modern social situation, rather than by moral decay, does not make it any less the symptom of a great evil.

5. The evidence of our moral breakdown in this prime matter is on every hand.

(a). In family life young women of marriageable age freely speak of the ease with which divorce may be obtained, when older persons happen to utter some cautionary word about entering into the marriage engagement. (b). The stage constantly parodies marriage and its old-time sanctity and deftly glorifies free-love. (c). The modern novel cannot sell unless it exhibits a "situation" in which the old-time purity is placed in antagonism to the modern "freedom" from conventional restraints.

And this—all this—is seconded by the divorce laws of Ohio, and by the laws of all our states, except one.

The exception is the state of South Carolina. In 1895 that state, by its constitution, article 17, abolished divorce. The writer of this report has a letter from his excellency Governor Blease saying that the scheme works so well that "the state would not think of returning to the old practice."

6. It is often naively urged by advocates of freer divorce that it is in the interest of the race unborn to allow freedom in this respect. The fact is that divorce is not sought in the interests of the race born or unborn. The race gains nothing in quantity or quality by divorce or the remarriage that often follows it. The selfishness which usually brings on divorce is not interested in children.

7. It is well known by lawyers of experience that our divorce litigation is productive of nothing but evil. Rarely does the truth reach court or counsel. While the

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law dismisses cases in which there are symptoms that the parties have agreed, yet it is impossible for court or counsel to discover such agreement, when it exists; and, in many cases where it does exist, it is freely winked at. Perjury abounds in such cases and it is absolutely undetectable. Thousands of men and women have taken their first lesson in perjury in our divorce courts.

8. There are those who dispose of this great question by simply saying, "Oh, the law can't make the married live together if they don't want to." This superficial popular utterance obscures the issue. To allow the married to separate, and to allow them to divorce and remarry, are vastly different things. Separations however unfortunate, occur daily and without legal intervention. These inflict no damage upon the institution of marriage, and the maintenance of the bond allows of sober second thought and reconciliation. Divorce allows, usually, no repentance, inflicts irreparable damage to the institution of marriage, sets its parties adrift in society, and subjects both parties, and particularly women, to altogether peculiar temptations. The report of the Chicago Vice Commission contains pitiful statistics as to the large number of divorced women who are driven to evil lives because of their uncertain social status. With this fact before us, Durkheim's figures as to the large ratio of suicides among divorced persons are explicable. It is evident to all who have carefully studied this subject that once the affections of two persons are solemnly blended the severance of them involves necessarily a profound tragedy. In that tragedy the state should take no part.

9. The adoption of this proposal would tend to strengthen the moral stamina of our people. There would be fewer hasty marriages. It would tend to the adoption of much-needed medical-examination laws, and thus prevent fraud in marriage. It would tend to check the carnival of free-love now in full sway in America—at least, it would put the state out of partnership in it. It would save our courts from grave misuse and take from them a filthy class of cases, the trial of which tends to break down the moral sensibilities of the parties. Our divorce laws are but a dangerous sop to weakness. They increase the evil. They do not allay it. With the frequency of post, ease of transportation, and the telephone, those intending marriage may know more of each other than in former days. There is no reason for ignorance. Weakness here needs no comfort. The oath should mean what it says. The institution of marriage is greater than any weak man or silly woman.

The national government has compiled the statistics of marriage and divorce throughout the entire nation, from January 1, 1867, to December 31, 1906. The compilation is most complete. The figures and comparative tables are astonishing. At page 19 of the government report there is shown diagrammatically that, taking 100,000 of the population as the unit, the United States grants more than twice as many divorces as Switzerland, which country leads Europe in this regard. These two governments, the most democratic of the world, stand far and away beyond every other government except Japan (p. 19, Gov. Report). This latter nation is the most immoral nation, maritally. Our nation stands next to Japan. It is instructive to observe that for 100,000 of the population the United States grants sixty times as many divorces as Ireland. Within our own country the comparison be-

tween our states is startling. Thus, taking 100,000 of its married population as the unit, the state of Washington granted twelve times as many divorces in 1900 as did the state of Delaware.

Washington, as a state, is far more advanced in democracy and liberal thought than is Delaware. This relation between democracy and marital looseness bears out the theory of Montesquieu, that democracy has its dangers, and that it requires a high decree of virtue to permanently support it. Unless carefully guarded it is evident that a degenerate egoism is liable to vitiate and destroy the best institutions of a democracy, and this spirit is threatening our civilization. Montesquieu's truth is gravely thrust upon the attention of the people of America, for it is daily more evident that our complex national structure requires a greater and ever greater influx of virtue and honor to sustain it. The assault upon the foundations of our national life is now insidious, satanically cunning and destructive. Truly, as said St. Paul, "We war not against flesh and blood, but against principalities and powers, against the rulers of the darkness of this world, against spiritual wickedness in high places."

The situation entails upon us, who are apostles of democracy, an unspeakable responsibility in this matter of divorce. If democracy is to be maintained—and it must be—we must pay a price for it, a price of increasing sense of moral responsibility, increasing in direct ratio to our wealth and intelligence.

We hold that the function of law should be to invite men to higher ethical levels rather than to facilitate their descent to lower. This is actually facilitated by our present divorce laws. Unless this descent can be arrested the outlook in America is far from reassuring. We accordingly recommend the adoption of Proposal No. 25.

Mr. DOTY: Do I understand that the member is offering some kind of a report?

Mr. BOWDLE: I offer this minority report.

Mr. DOTY: I don't object to a minority report, but I object to that speech going in.

Thereupon Mr. Bowdle reduced to writing and offered the minority report which was read as follows:

The minority of the standing committee on Judiciary and Bill of Rights to which was referred Proposal No. 25—Mr. Bowdle, having had the same under consideration, reports it back and recommends its passage.

STANLEY E. BOWDLE,
SOLOMON JOHNSON.

Mr. WINN: I move that the minority report be laid on the table.

Mr. WALKER: I offer an amendment.

Mr. DOTY: To what? This is the report of a committee. It has not reached the stage for amendment yet. The minority report has to be voted on and presented. We have not come to the stage where amendments are permissible.

The PRESIDENT: The question is on the substitution of the minority report for the majority.

Mr. OKEY: I demand the yeas and nays.

Mr. DOTY: I second it.

Abolition of Divorce—Petitions and Memorials.

The yeas and nays were taken, and resulted—yeas 39, nays 46, as follows:

Those who voted in the affirmative are:

Baum,	Halfhill,	Longstreth,
Beatty, Wood,	Harbarger,	McClelland,
Bowdle,	Harris, Ashtabula,	Miller, Fairfield,
Brown, Lucas,	Harter, Huron,	Partington,
Cody,	Hoffman,	Peters,
Crites,	Johnson, Williams,	Riley,
Donahey,	Kehoe,	Solether,
Dunn,	Keller,	Stilwell,
Eby,	King,	Taggart,
Elson,	Kramer,	Tetlow,
Farrell,	Kunkel,	Thomas,
Fox,	Lambert,	Walker,
Halenkamp,	Leete,	Watson.

Those who voted in the negative are:

Anderson,	Fess,	Nye,
Antrim,	Hahn,	Okey,
Beatty, Morrow,	Henderson,	Pierce,
Beyer,	Holtz,	Read,
Brattain,	Hoskins,	Smith, Geauga,
Cassidy,	Johnson, Madison,	Smith, Hamilton,
Collett,	Jones,	Stevens,
Colton,	Kerr,	Stewart,
Cordes,	Kilpatrick,	Tannehill,
Crosser,	Knight,	Ulmer,
Cunningham,	Lampson,	Wagner,
Davio,	Ludey,	Winn,
Doty,	Mauck,	Wise,
Earnhart,	Miller, Crawford,	Woods,
Evans,	Moore,	Mr. President.
Fackler,		

The minority report was disagreed to.

The PRESIDENT: The question is on agreeing to the report of the majority, which is the indefinite postponement of the proposal.

The motion to indefinitely postpone was carried.

Mr. MILLER, of Fairfield: I want to ask that the committee on Labor be relieved of Proposal No. 131, offered by myself, and I call up that proposal before the Convention.

Mr. DOTY: I move that Proposal No. 131 be re-committed to the committee on Labor.

The motion was carried.

Mr. ANDERSON: If there is no objection I would like to move that Proposal No. 240 be taken from the table. In the conclusion I do not think we got proper consideration upon that and so that we can have a vote properly recorded I would like to have it taken from the table.

The PRESIDENT: By unanimous consent the motion to take from the table Proposal No. 240 will be put.

The motion was carried.

The PRESIDENT: The question is "Shall the proposal pass?"

Mr. ANDERSON: I would like to have a full vote and I move that that be informally passed.

Mr. KING: I second the motion.

Mr. DOTY: I move that further consideration of the matter be postponed until tomorrow and that it be placed at the foot of the calendar.

The motion was carried.

PETITIONS AND MEMORIALS.

Mr. Fess presented the petitions of four hundred members of the W. C. T. U. of Sherwood; of the W. C. T. U. of Beallsville; of the members of the W. C. T. U. of Brookfield; of the members of the W. C. T. U. of Edon; of E. Knox, of Oak Hill; of R. N. Edwards, of Oak Hill; of A. E. Arthur, of Oak Hill; of the Rev. R. O. Williams, Oak Hill; of Geo. E. Jaynes, Oak Hill; of Lewis C. Foster, Oak Hill; of the Rev. J. R. Fields and many other citizens of Oak Hill; of the Rev. Chas. P. Cornet and many other citizens of Oak Hill; of the members of the Loudonville W. C. T. U.; of thirty thousand adherents of the Maumee Presbytery; of the Rev. D. Thomas and other citizens of Oak Hill; of the members of the W. C. T. U. of New Lexington; of the members of the W. C. T. U. of Millersburg; of the members of the W. C. T. U. of Cuyahoga county; of the ministers union of Toledo; of E. J. Jones and many other citizens of Oak Hill, asking for the passage of Proposals Nos. 65 and 321; which were referred to the committee on Education.

Mr. Stilwell presented the petition of the council of the city of Cleveland, to establish home rule for cities liberal enough to permit cities to establish a double platoon system in the fire department in cities; which was referred to the committee on Municipal Corporations.

Mr. Miller, of Fairfield, presented the petition of the Rev. Hugh Leith, and twenty-two other citizens of Lancaster, asking for the support of Proposal No. 321; which was referred to the committee on Education.

Mr. Cassidy presented the petition of E. P. Ames, of Wauseon, relative to salaries; which was referred to the committee on County and Township Organization.

Mr. Weybrecht presented the memorial of W. L. Ringwald and many other citizens of Alliance, representing Stark Lodge No. 630, Brotherhood of Locomotive Firemen and Engineers, requesting the passage of Proposals Nos. 24, 34, 122 and 209; which was referred to the committee on Labor.

Mr. Ulmer presented the petition of Isaac Taylor and twenty-three other citizens of Toledo asking that the legislature be abolished; which was referred to the committee on Legislature and Executive Departments.

Mr. Bigelow presented the petitions of F. H. Schoonard, of W. L. Dulin, of Cleveland, asking for the passage of Proposal No. 4; which were referred to the committee on Liquor Traffic.

Mr. Bigelow presented the memorials of the Rev. W. H. Walden, of Clyde; of the Rev. C. T. Redfield, of Springfield; of the Rev. Todd Forker, of Pleasant Hill; of the Rev. C. H. Wolcott, of Chagrin Falls; of the Rev. G. C. Quillin, of Coshocton protesting against the passage of Proposal No. 321; which were referred to the committee on Education.

Mr. DOTY: I now move that we adjourn.

The motion was carried and the Convention adjourned.

SIXTY-FOURTH DAY

AFTERNOON SESSION.

MONDAY, April 29, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Clermont [Mr. DUNN].

The journal of yesterday was read and approved.

MOTIONS AND RESOLUTIONS.

* Mr. THOMAS: I offer a resolution.

The resolution was read as follows:

Resolution No. 110:

Be it resolved by the Constitutional Convention of the state of Ohio, That the congress of the United States be, and it is hereby requested to make proper and suitable provisions by law for the loan, to states, counties and municipalities within the United States of the moneys or funds deposited in the postal savings banks of the United States, at two and one-half per cent. interest, upon the said states, counties and municipalities depositing with the treasurer of the United States bonds of said states, counties or municipalities in a sum equal to the amount so loaned.

The PRESIDENT: The resolution will go over under the rule.

Mr. KNIGHT: The select committee created some time ago to have supervision over the official reporter desires to call one matter to the attention of the Convention and follow it with a request from the committee. As we are presumptively approaching the closing days of our discussion, we desire that the material of the reporter shall be in shape to be at the future disposition of the Convention and we find that there are some twenty or thirty speeches delivered to the members, some of them five weeks ago, that have not been returned, and the committee feels that a simple statement of the fact, and perhaps the suggestion for their return, is all that is necessary. That can be done this week in order that our records may be complete before we take the recess.

Mr. DOTY: If they are not returned will they be omitted from the record? If they will, there is no use in anybody returning them.

Mr. KNIGHT: The committee has no power to make the members speak over again.

The PRESIDENT: Motions and resolutions are still in order.

Mr. MILLER, of Crawford: I offer a resolution.

The resolution was read as follows:

Resolution No. 111:

WHEREAS, The deliberations of the Convention have been so much disturbed by loud talk and unnecessary moving about of the members in the hall and lobby; therefore

Be it resolved by the Convention, That members and employes be requested and required to refrain from talking or moving about in the hall or lobby, while any member is speaking or while the clerk is reading or calling the roll.

Be it further resolved, That the president and the sergeant-at-arms be required to strictly enforce the requirements of this resolution.

Mr. FESS: I move a suspension of the rules and that the resolution be put upon its passage.

The motion to suspend the rules was carried.

Mr. DOTY: This is the first resolution of censure that has been offered upon the officers—

Mr. MILLER, of Crawford: It is not a censure upon the officers, but upon the members. The officers are trying to do all they can.

Mr. DOTY: I am in favor of the purpose of the resolution, but I do not think the resolution itself is proper.

Mr. KRAMER: I think it is exactly right if we will only meet on Friday. We solemnly resolved to keep order and we don't keep it, just as we solemnly resolved to meet on Friday and haven't met. We only have one or two weeks left and I am sure the president and sergeant-at-arms will keep order.

Mr. ANDERSON: I will offer this amendment that all delegates be required to give strict attention to the speeches being made by any other delegate and the delegates must refrain from reading any documents or newspapers while speeches are in progress.

The amendment offered by the delegate from Mahoning [Mr. ANDERSON] was disagreed to.

Mr. LAMPSON: I think inasmuch as public attention has been called to this situation members ought to take it upon themselves to abide by the rules. The rules already cover what is involved in this resolution and it will not look in the record exactly as it sounds when it is read here before the full Convention, all of us understanding the evil that we are seeking to cure. I therefore move to lay the resolution on the table.

The motion was carried.

INTRODUCTION OF PROPOSALS.

The following proposals were introduced and read the first time:

Proposal No. 335 — Mr. Dunn. To submit an amendment to article XII, section 2, of the constitution. — Relative to taxation.

Proposal No. 336 — Mr. Read. To submit an amendment to article I, section 7, of the constitution. — Relative to moral training.

REPORTS OF STANDING COMMITTEES.

Mr. Knight submitted the following report:

The standing committee on Education, to which was referred Proposal No. 321 — Mr. Miller, of Fairfield, having had the same under consideration, reports it back, and recommends its indefinite postponement.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report was agreed to.

Reports of Standing Committees—Resolutions Laid Over—Second Reading of Proposals.

Mr. WALKER: I submit a report.

The standing committee on Public Works, to which was referred Proposal No. 331—Mr. Walker, having had the same under consideration, reports it back, and recommends its passage.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report was agreed to.

The PRESIDENT: If there is no objection the reports will be engrossed.

Mr. KRAMER: I offer the following report;

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 310—Mr. Read, having had the same under consideration, reports it back, and recommends that it be indefinitely postponed.

The PRESIDENT: The question is on agreeing to the report of the committee.

Mr. READ: I believe this question ought to be debated. While of course I bow to the superior wisdom of the committee, I was led to believe that that committee was going to report that without recommendation, but in their wisdom they have deemed to do it differently. They treated it very cordially. I only asked that they might give me an opportunity to argue it before the Convention, and when I left them a few days ago I felt quite good because they were going to allow that to be done, but the next thing I know they handed me one in the solar plexus. Now I am a little disfigured, but I am still in the ring, and I want to ask the Convention to be kind enough to allow me to present it to the body and see if the Convention can not see some merit in it. I hope, therefore, that this report to indefinitely postpone will not be carried. I think I at least should have the privilege of presenting it to the Convention.

Mr. DOTY: This proposal in its present form is not one I would care to vote for, but it has in my judgment some principles involved in it that are worthy of consideration by this Convention. The whole question of when our legislature shall meet and how it shall perform some of its duties is involved in some of the proposals. While I do not agree with Mr. Read upon some parts of the proposal, I think it is one that is worthy of earnest consideration. I hope the recommendation of the committee will be voted down and the proposal will be engrossed and put upon the calendar.

Mr. KRAMER: The committee ought to say just a word or two on that. We had this proposal or one like it before us three different times. We heard from Mr. Read three different times. The proposal provides for a session of legislature each year. The first session of the legislature does nothing but put in bills and refer them to committees. The second year they may consider bills already presented at the first session. While it may have some merit in it, the committee didn't think it had sufficient merit to take up the time of the Convention in discussion. We have had the idea that the people of the state would rather have a session of the legislature every four years than every year. I think that is pretty much the sentiment of the committee.

Mr. DOTY: Does not the member know that the evil came down from the time when the legislature was,

in addition to what an ordinary legislature is, a board of county commissioners for eighty-eight counties, a city council for seventy-one cities and a board of education for seven or eight thousand school districts in the state of Ohio? Don't you know that is true?

Mr. KRAMER: No.

Mr. DOTY: It is a fact, just the same.

Mr. KRAMER: If you say it is a fact, it is. I just wanted to make that statement so that the Convention would know.

The motion to indefinitely postpone was carried.

Mr. WATSON: I did not have time to introduce a proposal during the regular hour and I would like to introduce it right now.

Mr. DOTY: A proposal at this time?

By unanimous consent the following proposal was introduced and read the first time:

Proposal No. 337—Mr. Watson. To submit an amendment to the constitution.—Relative to the recall.

Mr. WATSON: Some gentleman has suggested that I may have a speech, but I have not. I have just one new idea.

RESOLUTIONS LAID OVER.

The PRESIDENT: The order is still reports of committees. If none, resolutions laid over. The first is Resolution No. 109—Mr. Stilwell.

Mr. DOTY: That is a resolution of my colleague, who is not present. I therefore move that this resolution be informally passed upon the calendar.

The motion was carried.

SECOND READING OF PROPOSALS.

The PRESIDENT: The next order of business is proposals on their second reading and the first is Proposal No. 272—Mr. FitzSimons.

Mr. KNIGHT: As the chairman of the committee on Municipal Government, who expected to be here for this session, is evidently delayed by a late train, and it is the desire of the proponent as well as the committee that this proposal and the proposal following it on the calendar be informally passed until the chairman of the Municipal committee is here, I move that this be done.

Mr. DOTY: There are about one hundred and sixteen members here who came in for this two o'clock session. They came in to take up this matter of municipal government. The author of the proposal and a very influential part of the committee are here. Why can we not read it the second time and proceed with the debates? There are a lot of people who want to make speeches on the proposal. The rest of us got here at two o'clock, as we agreed on Thursday we would do, and I do not see why we should informally pass anything. I am willing to do this, as agreeable all around, to transfer the fourth item on the calendar up in the place of the first two.

Mr. KNIGHT: It is evident from the fact that none of the delegates from Cincinnati who were to come up on that train have arrived, that the train is delayed in some way. They expected to be here. That is the reason for the suggestion, but if the Convention insists, rather than make the change in the order proposed, we will take up Proposal No. 272.

Suits Against the State.

The PRESIDENT: Does the member from Franklin make a motion?

Mr. KNIGHT: I move that Proposals No. 272 and 329 be informally passed and retain their places on the calendar.

The motion was carried.

The PRESIDENT: The next is Proposal No. 252 — Mr. Weybrecht.

The proposal was read the second time.

Mr. WEYBRECHT: Mr. President and Gentlemen of the Convention: The proposal, which has been recommended by the Judiciary committee, recognizes the right of the individual to seek redress for claims against the state in such courts as may hereafter be designated, without petitioning the legislature as is now the custom.

It is probably one of minor importance in comparison with many of the proposals introduced and considered by this Convention, yet in its denial of the old-time notion that the state or sovereign can not be amenable to the suit of a citizen without its consent, it is in line with the recommendation of constitutional writers for the past sixty years and in accord with the practice that during the same time obtains in every European country, with the possible exception of Russia.

In our national government this ancient attribute of sovereignty was overthrown many years ago when congress conferred on a special court the adjudication of all claims of the individual against the general government.

Today the states of Pennsylvania, New York and Connecticut, through their constitutions, confer on the legislature, as does this proposal, the right to designate the tribunal in which redress may be sought.

I understand that in Virginia and North Carolina such courts have been named by legislative enactment, and on this point I desire to quote Judge Cooley in his admirable "Constitutional Limitations," in which he decries the tendency of state legislatures to abrogate to themselves the right to enact laws that seek to nullify the immemorial rights of sovereignty, among which privileges he names this very proposition, the inviolability of the state in denying claimants (without its consent) judicial redress for private grievance.

From the reading of this section one would infer that Judge Cooley takes the position that any interference with what he calls the right of sovereignty is incompatible with good government yet further along in another section, in speaking of the action of congress in establishing the United States court of claims, he approves the creation of this court by saying that "it was clearly within the constitutional authority of congress to do so."

From Judge Cooley's analysis I believe that the proposal is eminently a constitutional question, and not, as in the case of Virginia and North Carolina, a proper subject for legislative enactment.

It will no doubt, be argued that the citizen has now, and always has had, the right to submit his grievance to the legislature, and supplicate that body for the privilege of making the state a party to a suit in some court in which he might judicially establish his claim.

Our year books contain innumerable laws of this nature passed by former legislatures. They also contain laws appropriating money for the settlement of claims, as determined by some committees of the legislature with-

out the formality of court procedure. In this method of disposing of such claims we might well ask the question, Why should the state demand of her citizenship a certain line of conduct in the settlement of disputes between individuals, partnerships or corporations, and hold herself aloof from the operation of her own laws? Is the pecuniary loss of such a creditor any less because the state arrogates to herself an immunity founded on the fetish that the sovereign is sacred and therefore not amenable?

Why should the humble claimant against the state be obliged to abjectly supplicate the legislature for the privilege of entering the court of justice?

On the other hand, why should the legislature appropriate the people's money in settlement of claims against the state of dubious and uncertain origin and without the intervention of courts?

Let the state exemplify by this constitutional provision her willingness to submit to every enactment she imposes on the citizen. Let the state indicate by the adoption of this proposal that the same restrictions — the demands of the industrial establishments within her borders — must apply to the numerous charitable and penal institutions under her management. The thousands of employes in these institutions are entitled to the same protection of life and limb in their various avocations — many of them hazardous — as are the workmen in any manufacturing plant in the state, and, in case of injury, to just compensation determined after a fair and impartial trial, and not as such cases are usually disposed of by the legislature — a settlement based upon charity and doubt.

If we want to get the government back to the people, make it responsive to their ideals of equal and exact justice. Let the humblest citizen feel that while the state can impose on him all the duties of citizenship, taxation, obedience to law and the common defense, he is the equal of the sovereign before the law.

In closing I want to read, at the suggestion of the member from Marion [Mr. NORRIS], sections 1677 and 1678 of Story's Federal and State Constitutions. When we consider that this was written many years ago, we must conclude that the argument adduced therein has had its influence in shaping both national and state legislation on this subject:

Section 1677. As to private injustice and injuries, they may regard either the rights of property or the rights of contract, for the national government is per se incapable of any merely personal wrong, such as assault and battery, or other personal violence. In regard to property, the remedy for injuries lies against the immediate perpetrators, who may be sued, and cannot shelter themselves under any imagined immunity of the government from due responsibility. If, therefore, any agent of the government shall unjustly invade the property of a citizen under color of a public authority, he must, like every other violator of the laws, respond in damages. Cases, indeed, may occur in which he may not always have an adequate redress without some legislation from congress; as, for example, in places ceded to the United States, and over which they have an exclusive jurisdiction, if his real estate is taken with-

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out or against lawful authority, here he must rely on the justice of congress, or of the executive department. The greatest difficulty arises in regard to the contracts of the national government; for, as they cannot be sued without their own consent, and as their agents are not responsible upon any such contracts when lawfully made, the only redress which can be obtained must be by the instrumentality of congress, either in providing (as they may) for suits in the common courts of justice to establish such claims by a general law, or by a special act for the relief of the particular party. In each case, however, the redress depends solely upon the legislative department, and cannot be administered except through favor. The remedy is by an appeal to the justice of the nation in that forum, and not in any court of justice, as a matter of right.

Section 1678. It has been sometimes thought that this is a serious defect in the organization of the judicial department of the national government. It is not, however, an objection to the constitution itself; but it lies, if at all, against congress, for not having provided an adequate remedy for all private grievances of this sort in the courts of the United States. In this respect there is a marked contrast between the actual right and practice of redress in the national government, as well as in most of the state governments, and the right and practice maintained under the British constitution. In England, if any person has, in point of property, a just demand upon the king, he may petition him in his court of chancery (by what is called a petition of right), where the chancellor will administer right, theoretically as a matter of grace, and not upon compulsion, but, in fact, as a matter of constitutional duty. No such judicial proceeding is recognized as existing in any state of this Union as a matter of constitutional right, to enforce any claim or debt against a state. In the few cases in which it exists it is a matter of legislative enactment. Congress has never yet acted upon the subject so as to give judicial redress for any nonfulfillment of contracts by the national government. Cases of the most cruel hardship and intolerable delay have already occurred, in which meritorious creditors have been reduced to grievous suffering, and sometimes to absolute ruin, by the tardiness of a justice which has been yielded only after the humble supplication of many years before the legislature. One can scarcely refrain from uniting in the suggestion that in this regard the constitutions, both of the national and state governments, stand in need of some reform to quicken the legislative action in the administration of justice; and that some mode ought to be provided by which a pecuniary right against a state or against the United States may be ascertained and established by the judicial sentence of some court; and when so ascertained and established, the payment might be enforced from the national treasury by an absolute appropriation. Surely it can afford no pleasant source of reflection, to an American citizen, proud of his

rights and privileges, that in a monarchy the judiciary is clothed with ample powers to give redress to the humblest subject in a matter of private contract or property against the crown, and that in a republic there is an utter denial of justice in such cases to any citizen through the instrumentality of any judicial process. He may complain, but he cannot compel a hearing. The republic enjoys a despotic sovereignty to act or refuse as it may please and is placed beyond the reach of law. The monarch bows to the law, and is compelled to yield his prerogative at the footstool of justice.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 79, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beatty, Wood,	Holtz,	Pierce,
Beyer,	Hoskins,	Read,
Cassidy,	Hursh,	Redington,
Cody,	Johnson, Madison,	Rockel,
Colton,	Johnson, Williams,	Roehm,
Cordes,	Keller,	Shaffer,
Crites,	Kerr,	Shaw,
Crosser,	Kilpatrick,	Smith, Geauga,
Cunningham,	King,	Solether,
Davio,	Knight,	Stalter,
Donahey,	Kramer,	Stewart,
Dunn,	Lambert,	Stilwell,
Dwyer,	Lampson,	Stokes,
Earnhart,	Leete,	Tannehill,
Eby,	Longstreth,	Tetlow,
Elson,	Ludey,	Thomas,
Evans,	Mauck,	Ulmer,
Farrell,	McClelland,	Wagner,
Fess,	Miller, Crawford,	Walker,
FitzSimons,	Miller, Fairfield,	Watson,
Fox,	Moore,	Weybrecht,
Hahn,	Nye,	Winn,
Halenkamp,	Okey,	Wise,
Halfhill,	Peck,	Mr. President.
Harris, Ashtabula,		

Those who who voted in the negative are: Antrim, Brattain, Collett, Doty, Stevens, Woods.

So the proposal passed as follows:

Proposal No. 252 — Mr. Weybrecht. To submit an amendment to article I, section 16, of the constitution. — Providing for redress of claims against the state.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Suits may be brought against the state, in such courts, and in such manner, as may be directed by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Leave of absence was granted to Mr. Riley and Mr. Marriott.

Mr. KNIGHT: At the request of the proponent of Proposal No. 272, which was informally passed a moment ago, and by the desire of members of the committee, I wish to call up Proposal No. 272.

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Mr. DOTY: We have gotten to Proposal No. 170. That is the regular order of business. Regularly Proposal No. 272 does not come up until tomorrow, when we are going to take up municipal government and when we are going to take up taxation. I now have my desk full of papers thinking we were going to start on something else. What are we going to do? The next thing before the Convention is Mr. Worthington's taxation proposal.

Mr. KNIGHT: The motion before the Convention is to take up the proposal about municipal home rule, and I want to take it up and have it discussed. Then we will follow right on with the calendar.

Mr. DOTY: Well, what is the question?

The PRESIDENT: That Proposal No. 272 be taken up.

Mr. KNIGHT: I would like, in behalf of the chairman of the committee, to explain the proposal and then the discussion can proceed.

The motion was carried.

The PRESIDENT: Proposal No. 272—Mr. Fitz-Simons, is up for its second reading.

The proposal was read the second time.

Mr. Leete here assumed the chair as president pro tem.

Mr. KNIGHT: Gentlemen of the Convention: In the absence of the chairman of the committee I desire to explain this proposal somewhat in detail.

The proposal undertakes to accomplish three things not now possible under the present constitution:

First, to make it possible for different cities in the state of Ohio to have, if they so desire, different forms and types of municipal organizations.

Under the present constitution it seems that it is not competent for the lawmaking body to classify municipalities, save in the two classes mentioned in the present constitution, namely, cities and villages; and the further provision which requires uniformity of laws for corporations makes it necessary that the legislature in enacting laws shall provide for one general uniform type of government for all cities and another general uniform type of government for all villages. With cities in the state varying in population from five thousand to half a million, it is obvious that either the large city must get along with crude machinery inadequate for its needs, or the small cities must have all the machinery of government adequate to a city of half a million. In either case the awkwardness is apparent and the burden of expense upon the smaller municipality is needlessly large. Therefore, the first thing that this proposal undertakes to do is to provide that municipalities shall—and I shall go into the details of that a little later—have the right, if they so desire, to frame charters for themselves, to provide each for itself such type or form of organization for municipal business as it desires.

The second thing, and the main thing, which the proposal undertakes to do is to get away from what is now the fixed rule of law, seemingly also required by the constitution, that municipal corporations, like all other corporations, shall be held strictly within the limit of the powers granted by the legislature to the corporation, and that no corporation, municipal or otherwise, may lawfully undertake to do anything which it has not been given specifically the power to do by the constitution

or the lawmaking body. It has often been found under our present system, and undoubtedly would be found also in the future, that many things necessary from the standpoint of city life, which the city may need or urgently desire to do, can not be done because of the lack of power specifically conferred on the municipality itself. Therefore, this proposal undertakes pretty nearly to reverse that rule and to provide that municipalities shall have the power to do those things which are not prohibited, that is, those things with reference to local government, with reference to the affairs which concern the municipality, which are not forbidden by the lawmaking power of the state, or are not in conflict with the general laws of the state under the police power and the general state regulation. So the presumption would now become a presumption in favor of the lawfulness of the municipalities' act, and that presumption would only be overcome by showing that the power had been denied to the municipalities or that it was against the general laws of the state.

In the third place the proposal expressly undertakes to make clearer or make broader the power of municipalities to control, either by leasing, constructing or acquiring from corporations now owning or operating the public utilities within the corporation and serving the corporation, the water supply, the lighting and heating supply and the other things—without specifying—which come within the purview of municipal public utilities, thus removing once and for all, all legitimate questions as to the authority of municipalities to undertake and carry on essential municipal activities.

These three things are the fundamental things which are undertaken by the proposal, and these three things taken together certainly constitute what may be termed, and rightly termed, municipal home rule.

The proposal does not undertake, your committee believes, to detach cities from the state, but it does undertake to draw as sharply and as clearly as possible the line that separates general state affairs from the business which is peculiar to each separate municipality, be it a city or a village, in the state, and to leave the control of the state as large and broad and comprehensive in the future as it has been in the past with reference to those things which concern us all in the state of Ohio, whether we live in cities or in rural districts, and, on the other hand, to confer upon the cities for the benefit of those who live in the cities control over those things peculiar to the cities and which concern the cities as distinct from the rural communities. I repeat, to draw as sharply and as definitely as possible, a line between those two things and to leave the power of the state as broad hereafter with reference to general affairs as it has ever been, and to have the power of the municipalities on the other hand as complete as they can be made with reference to those things which concern the municipalities alone, always keeping in mind the avoidance of conflict between the two so far as possible.

Now, I will take up the proposal somewhat in detail. In the first place, as a matter of form, there are only two or three sections of the present constitution which either directly or indirectly touch the subject of municipal corporations. Therefore, it seemed to the committee desirable to embody this in a new article to the constitution. The present constitution has seventeen articles,

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and therefore it is proposed that this shall be article XVIII, devoted solely to municipal corporations. The first section speaks so obviously for itself that it needs no explanation beyond the statement that it recognizes what has been the rule and custom for years in Ohio that there are two kinds of municipal corporations, differing from one another on the basis of population, known as cities and villages. It preserves the same line between those cities and villages that is now observed, and distinctly confers the right upon the lawmaking power to determine the method of transition.

Mr. HOSKINS: Why did you select five thousand as this basis?

Mr. KNIGHT: The municipal code adopted that, and as there has to be some division somewhere this would work the least possible change with the present code, and we kept the same line of division.

Mr. HOSKINS: Without desiring to break up your remarks in anyway, with this proposal conferring those powers of municipal local government is it necessary to leave the dividing line between the villages and cities as it has been in the past?

Mr. KNIGHT: Yes, and no. Principally yes, because this proposal, as I shall attempt to explain in a moment, provides that the general assembly may enact general laws for the government of cities and general laws for the government of villages, one type of government, and unless a city or village chooses to exercise its option under one or the other it has no charter; it just continues as now. Therefore, if there were no differentiation between the cities and the villages, those cities that choose to remain as they are now would be obliged to have a form of government necessary for the large city.

Mr. HOSKINS: Under this provision a city, no matter what the size, could form its own charter?

Mr. KNIGHT: Yes, but there must be a general law to take care of cities until and unless they form charters for themselves. It is not mandatory upon any city to form its charter.

Mr. HOSKINS: My reason for asking you this is that a number of municipalities very much object to the arbitrary limitation of five thousand and think that the limitation should be higher in number, so that a city of five or six or seven thousand could be governed as a village instead of as a city if it chose.

Mr. KNIGHT: Under this a city of six thousand could choose its own form of government and continue until it gets one hundred thousand, but we must take care of the present villages which do not choose to exercise their rights for framing a charter for themselves. The present code would continue and the present type of city government would continue until any city exercising its right under this proposal should frame a different charter. It could simplify its government if it wants to. If Cleveland wanted to have the government of Canal Winchester it could, or Canal Winchester could have the form of Cleveland.

Mr. DOTY: Is it possible for the legislature to pass a law under this to allow a village to have ten thousand people in it?

Mr. KNIGHT: I didn't catch your question.

Mr. DOTY: Could not they so frame the law that a village can maintain itself as a village although it went

over the five thousand? In our county that would be quite an advantage. A village like Dexter, with a city population, wants a village government.

Mr. KNIGHT: I do not think the legislature would have the power to continue a village as a village. It must provide one type of government for the city and one for the village. Then the village can choose its form.

Mr. DOTY: Suppose the legislature passed the law that no city in Ohio could pass from one grade to the next higher grade except by a resolution passed by its own city council. If such provision were passed and a village did not pass such a resolution would it not under this proposal remain in the lower class?

Mr. KNIGHT: It is possible that this is susceptible to that construction. What the committee had in mind was that it must devolve upon some one to decide whether a village has passed the type in which it is, at other periods than the census period, for if it depended on the census a village having five thousand in 1910 must remain as a village until 1920, even though it has double the population.

Mr. DOTY: You see here is our difficulty: In the larger counties we have villages that are cities in population, but want to retain the village form of government.

Mr. ANDERSON: How do you get around section 1 where it says, "All such corporations having a population of five thousand or over shall be cities; all others shall be villages?" Do you think the legislature would pass a law that would permit a municipal corporation of over five thousand to remain as a village?

Mr. KNIGHT: Beyond the decennial period of the census. I think it would be proper for the legislature to pass laws that they should take their place only at decennial periods.

Mr. ANDERSON: That is, if they were under five thousand at one census they could continue that until the next census?

Mr. KNIGHT: Yes.

Mr. ANDERSON: What is the use of putting five thousand in there? Why not put that entirely in the hands of the legislature to do as it pleases and to say where the line of demarkation shall be between the village and the city?

Mr. KNIGHT: One legislature might make it four thousand and the next legislature might make it three thousand. The next one might say it shall be some different number.

Mr. ANDERSON: In article XIII, section 2, the constitution provides: "Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed." Now the word corporation has been held to mean municipal corporation?

Mr. KNIGHT: Yes.

Mr. ANDERSON: Now, without any change of section 2 of article XIII there would be a conflict.

Mr. KNIGHT: I think before the proposal is passed finally there will be a modification in the last section.

Mr. ANDERSON: Again in section 1 of article XIV there is mentioned—

Mr. KNIGHT: You mean section 6 of article XIII?

Mr. ANDERSON: Yes, and the adoption of this article would repeal section 6 of article XIII. Don't you think so?

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Mr. KNIGHT: There is no trouble there.

Mr. ANDERSON: Would you as a member of the committee on Arrangement and Phraseology recommend the leaving of both of those two sections as they are?

Mr. KNIGHT: I can not see any objection to it.

Mr. WINN: The question in my mind has reference to section 4—

Mr. KNIGHT: If the gentleman withhold, I am going through this, explaining each section, and I will reach section 4 directly. Through the generosity of the rules of the Convention there is no time limit on this debate.

Mr. DOTY: No; you can take a week.

Mr. KNIGHT: With permission of the Convention I want to go through section by section, and perhaps this is as good a place as any to say the committee on Municipal Government held between twenty-five and thirty meetings, and that every proposal and every word of the proposal was gone over, and most of them more than once, before this proposal was reported. We are perfectly willing that any "i" should be dotted and any "t" shall be crossed, but we think we have saved the Convention some trouble by the careful manner in which the proposal has been gotten up and considered in the committee.

Mr. STOKES: The demarkation between cities and villages of five thousand has reference to those organized under general law only, has it not?

Mr. KNIGHT: No, sir; any kind. A village under that would be less than five thousand. However, a municipality with more than five thousand can adopt a village form of government.

Mr. STOKES: It would be a city with a village form of government?

Mr. KNIGHT: It would be technically a city, but it could decide its form of government. There is no crystallized type.

Mr. STOKES: The form of government could be that of a village?

Mr. KNIGHT: Yes, and a city in point of law.

Mr. STOKES: But a village as a matter of fact?

Mr. KNIGHT: No.

Mr. STOKES: In its form of government it would be?

Mr. KNIGHT: No. It would be like a village.

Mr. HOSKINS: If this proposal is adopted all the present statutes relating to cities and villages remain in operation just as they are until a municipality seeks to take advantage of this and change its form?

Mr. KNIGHT: I do not mean to put it that broadly, because there are some provisions that would modify some features of the code.

Mr. HOSKINS: Everything else remains as it is until they take advantage of it?

Mr. KNIGHT: Yes; it does not force the next general assembly to adopt any new municipal code for all the cities and villages, but it would have the effect to strike out some items. It would not, however, affect this line between the city and the village.

Mr. DOTY: May I ask a question about section 1?

Mr. KNIGHT: Yes.

Mr. DOTY: Don't you think, after all, inasmuch as we are attempting to give villages and cities in the state the right to form their own charters, that it would be just as well that section 1 be omitted altogether?

Mr. KNIGHT: No, sir.

Mr. DOTY: Why?

Mr. KNIGHT: Because there must be a line of division between the cities and villages that choose to operate under the general law.

Mr. DOTY: I see; but the question was whether the bulk of the laws on the books will now stand until the villages and cities do away with them.

Mr. KNIGHT: They will stand and be effective as controlling the organization of all cities and villages in the state until and unless such villages or any one of them, or such cities or any one of them, choose to form a charter for themselves providing for a different form of government, save where this proposal, if adopted, repeals certain items of the present code because they would be inconsistent with this new constitutional provision; but it does not affect the line between cities and villages, nor does it affect the question of the form of government now provided for cities in general, or now provided for villages in general.

Mr. HALFHILL: Do I understand this correctly? You attempt this classification because you want to have general laws that apply to both cities and villages and also special laws that, if adopted by municipalities, may apply to cities and villages, and also further special charters?

Mr. KNIGHT: Yes; there are three ways provided here for city organizations.

Mr. HALFHILL: And your classification of villages and cities in the first instance is necessary in some form to have a line of demarkation to apply these three several things?

Mr. KNIGHT: No; not necessarily to apply these three several things. If I may restate it, we are most all of us familiar with the fact that under the present constitution the general municipal code of the state provides for cities, namely, municipal corporations having more than five thousand population, and also villages, namely, municipal corporations having less than five thousand population, and the municipal code provides one single form of government for all cities and one single form of government for all villages. It is not presumed that all cities in the state will at once take advantage of their right to form for themselves charters. It may be presumed also that there always will be some villages and cities that will be satisfied with the general type of government provided for by the general law, and, therefore, it is necessary, unless we abandon cities and villages altogether and have one form of government for all municipal corporations that do not choose to form their own charters, to have a fixed line of demarkation for the cities, because if the cities ever need a larger or more extensive form of government than do the villages it is necessary to have a provision for it and it is also necessary to have another type simpler and less extensive for less than five thousand population, namely, villages.

Now, passing on to section 2, it reads, "The general assembly shall, by general laws, provide for the incorporation and government of cities and villages". That is the present power. If this proposal stopped right there, there would be nothing new in it compared with what we now have in Ohio. That is, the present municipal code would remain or could remain without the general

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assembly having to adopt a new municipal code for cities and villages. The general law will be applicable to all cities and villages that have not by their own action taken themselves out from under it.

"And it may also enact special laws for the government of municipalities adopting the same". The meaning of that is this: We may assume that the present municipal code stands. Take that as an hypothesis to work upon. If it stands, then no city can get, for example, a commission form of government were it not for the last lines I have read, namely, lines 11 and 12, unless it further by special election chooses a charter commission and that charter commission provides a charter form of government. Under the provision of lines 11 and 12 the general assembly may enact a special law providing for a commission form of government which may, by a vote of the people of any municipality, be adopted for that municipality without having resort to the charter commission itself to frame it. In other words, a ready-made form for each city to adopt if it wants to, or it may adopt a separate plan applicable to all cities, and such cities as choose by referendum to adopt it.

Mr. HOSKINS: I am at a loss to understand the word "same" in line 12. It reads "The general assembly shall, by general laws provide for the incorporation and government of cities and villages; and it may also enact special laws for the government of municipalities adopting the same".

Mr. KNIGHT: That is analogous to the local option feature—that is, it may provide an alternative form of government for any city that chooses to adopt it. If the city doesn't choose to adopt it, it remains under the general law.

Mr. HOSKINS: Does it mean that the legislature may provide a system of general laws for the government of municipalities that any one municipality, if it sees fit, may avail itself of?

Mr. KNIGHT: In addition to the code. It provides the present form of government in the code, and then it might enact a statute providing a ready-made commission form or federal form of government in the alternative, to go into effect only where they see fit to adopt that in place of being governed under the municipal code.

Mr. HALFHILL: Would that be adopted as a general law—it says a special law?

Mr. KNIGHT: Yes.

Mr. HALFHILL: Then the legislature would have the right to pass special laws, laws applicable to special cities?

Mr. KNIGHT: Not necessarily. The idea is that the legislature should have the right to pass laws for fewer than all corporations, but only to go into effect when a municipality itself by a referendum vote chooses to adopt it.

Mr. HALFHILL: If my home city wanted to get a special law it could get it by adopting it or ratifying it on a referendum vote?

Mr. KNIGHT: That would take the form of a general law, that any municipality could have anything special by a referendum vote.

Mr. HALFHILL: I think it is important to understand just what the committee means, whether a special law can be passed applying to some particular class.

Mr. KNIGHT: Yes; you can pass a law or a statute

that applies to any municipality that chooses to adopt it. You may pass one that affects only one, but it can not go into effect unless the people of that locality can ratify it.

Mr. STOKES: An enactment of the legislature under general laws would not be applicable to villages or corporations operating under this special act?

Mr. KNIGHT: It would not necessarily affect the form of government. It might vary it at some single point. It would not take it out from under the general law, except so far as the special law covered it. It comes back in another form and is intended to come back to the point where the legislature may enact special laws for municipalities or a municipality, but no such special law shall become effective by mere act of the legislature. It can become effective only upon a referendum vote of the people of the municipality itself. The old danger of the ripper bill is entirely avoided, because a ripper bill would rarely, if ever, be ratified by the people of the municipality. This provides that no special act for any municipality can go into effect in any municipality except by a vote of the municipality.

Mr. DWYER: The word "special" seems to be obnoxious. Why not say a general law of limited application? The word "special" I dislike very much in there, and I think it is an obnoxious word. And "special" as applied to municipalities is very obnoxious.

Mr. KNIGHT: It is often desirable that the law-making power of the state should have the right to enact a law for one municipality alone.

Mr. DWYER: I would object to that, most surely.

Mr. KNIGHT: But it can not be forced upon the municipality without the consent and the ratification of the people of that municipality. No boss or group of bosses can come to the general assembly and get a special law passed and force it upon any municipality until and unless it is accepted by the people of that municipality.

Mr. WATSON: After the people of that municipality have accepted that by a referendum vote could they then at some future time change or modify it, and if so how?

Mr. KNIGHT: By adopting a charter for themselves.

Mr. ROCKEL: Or by the legislature passing another law.

Mr. KNIGHT: Yes, and the people under a referendum accepting it.

Mr. WINN: If I understand this section 2, under its provisions it would be possible for each city of the state to have a government entirely distinct from every other city?

Mr. KNIGHT: Possibly not under this section, but certainly under section 7, if you could find as many forms of government as there are cities.

Mr. WINN: Why not under this one? If the general assembly has a right to enact special laws for the government of municipalities, why can it not enact one special law providing that cities can be controlled by certain boards and commissions and then if that is adopted by any city it is operative; then the legislature may enact another measure providing for another system of government, and if that is adopted by another municipality that is the law, and every city can have a government distinct from every other city? Am I right?

Mr. KNIGHT: Theoretically, yes; but I do not think

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you can find enough forms of government for every city in the state to have a different government.

Mr. WINN: That would be the only limit; the abilities of the different municipalities could concoct different schemes?

Mr. KNIGHT: Not to frame different plans of government.

Mr. DWYER: In 1851 we had municipalities under special act and they were very obnoxious and objectionable.

Mr. DOTY: What is your notion of what would happen after the legislature had passed a special act for the city of Cleveland and the city of Cleveland approved it and it became a law, and also there was a special act passed that had something distinctive about it so that another general law could be passed which would say that all counties in Ohio having a city of thus and so that applied to—could that be done?

Mr. KNIGHT: I doubt whether it could be done under this.

Mr. DOTY: That is exactly the form of all special legislation since 1892.

Mr. KNIGHT: I think all of the gentlemen forget the one fundamental difference between this and anything that has been in the state of Ohio before, and that is that the general assembly had no power under the present constitution to submit a question to a vote of the voters of any municipality, but it has the power to force it upon the municipality at some one's behest. The committee admits that this provides for special legislation, but I submit that is protected when we say that it does not take effect until the people of the municipality vote for it.

Mr. DOTY: That is a principle that I concur in and agree with, but where does it provide that the county of Cuyahoga may have a referendum on such a law as I have indicated—

Mr. KNIGHT: It does not. This does not undertake to legislate for counties.

Mr. DOTY: But it makes it possible to pass special legislation for counties.

Mr. KNIGHT: No, sir; for cities.

Mr. DOTY: Every city in the state?

Mr. KNIGHT: Yes, sir; but a county is not a municipality.

Mr. DOTY: Of course not, but you can pass a law describing the county, saying every county that has a city thus and so—

Mr. KNIGHT: I don't think there will be any trouble on that. You can pass a law that the city of Cleveland could—

Mr. DOTY: I am not talking about Cleveland, but about Cuyahoga county, and I am referring to the kind of special legislation we have had for forty years. If you are sure we are not getting into that I would like to know it.

Mr. KNIGHT: I think the gentleman is confusing things or I am.

Mr. DWYER: That word "special" is very offensive to me and it has been in the past.

Mr. HALFHILL: May I ask a question?

Mr. KNIGHT: I want first to try to answer Mr Doty's question and then I will yield to the gentleman from Allen. This proposal undertakes to deal with

municipalities and does not undertake to impose any authority or to withhold any authority from the lawmaking power with reference to anything else. I don't think I catch exactly the point of Mr. Doty's question.

Mr. DOTY: I would like to make that plain. Suppose this was in the constitution of the state of Ohio and we had a legislature and we had passed a special law which provided that a city may build five viaducts; now Cleveland, being the only city that has five viaducts, why can't we pass another law after the city of Cleveland has accepted that—why can't we pass a special law applicable to every county in Ohio which has a city which has built five viaducts?

Mr. KNIGHT: The supreme court has already knocked that legislation out.

Mr. DOTY: But the supreme court has not passed upon such legislation as that authorized under this constitutional provision.

Mr. DWYER: If you put it in a constitution they can't knock it out.

Mr. KNIGHT: I submit that all of us are inclined to see a thing that we are looking for and not anything else.

Mr. DOTY: I am trying to see a way out. I am not trying to get into trouble, I am trying to get out.

Mr. KNIGHT: I am trying to argue with the gentleman from Cuyahoga [Mr. Doty]. I am trying to show him that he and I agree. The proposal does not confer any authority to enact special legislation to become operative or effective upon anybody except by vote of the people of the municipalities that choose to accept it.

Mr. DOTY: That is plain and I see that.

Mr. KNIGHT: That being the case I still feel that the hypothetical case put by the gentleman from Cuyahoga is not in point.

Mr. DOTY: Would you say it is hypothetical in view of our experience? Both the gentlemen from Ashtabula [Mr. HARRIS] and myself and the gentleman from Williams [Mr. JOHNSON] have voted for laws like this: All counties containing cities that have a population of sixty-four thousand, three hundred and sixty-three and not more than sixty-four thousand, three hundred and seventy-five, shall be able to do thus and so.

Mr. KNIGHT: Oh, no.

Mr. DOTY: Oh, yes.

Mr. KNIGHT: What the general assembly has done is to provide that all cities having a population of not more than sixty-four thousand, three hundred and seventy-five and not less than sixty-four thousand, three hundred and sixty-three—

Mr. DOTY: Now I know what I am talking about. That is not the way of it. We used to pass laws with the provision that in all counties containing a city having the population of thus and so, when there would be only one county in the state having a city of that population, could do so and so. That is the only way the county would be allowed to issue \$1,000,000 of bonds for instance.

Mr. KNIGHT: I can answer your question directly now. This proposal neither confers the right to enact such legislation, nor does it change by the least letter or syllable the present power of the general assembly to enact the kind of law you have named. If it has not such power now this does not give it. If it has that power

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now, this does not take it away. That is not a part of the subject matter of city government.

Mr. CROSSER: This does not give the legislature power to pass a special law for anything but a municipality?

Mr. KNIGHT: I have said so several times.

Mr. HOSKINS: I have been trying to get the very point that you just made and I want to ask a question on it.

Mr. KNIGHT: I was to answer the gentleman from Allen [Mr. HALFHILL], and when I get through with him I will take you next.

Mr. HALFHILL: Your proposal, of course, absolutely repeals the present provision of the constitution which provides for the incorporation of villages by general law, does it not?

Mr. KNIGHT: No; it adds to it.

Mr. HALFHILL: Now, here is a question, but I shall have to read section 29 of article II of the present constitution to put it:

All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

Mr. KNIGHT: Is not the gentleman reading the constitution of 1874?

Mr. HALFHILL: No, sir; the present constitution. I withdraw that. I have not the right section before me. I will put that in a different shape. There is a section which provides that all laws of a general nature shall be of uniform operation throughout the state. Now is not there a conflict?

Mr. KNIGHT: Insofar as any conflict with the present sections of the constitution is concerned, it is the desire of the committee, and it will undoubtedly be done after the proposal has been threshed out, to make such necessary adjustments between it and the other clauses as shall avoid any conflicts. Our proposal provides part of what you have covered: "The general assembly shall, by general laws, provide for the incorporation and government of cities and villages." And then it goes on and says it may pass special laws which will become operative by the vote of the people. If there be conflict between this and the clause you have cited we will modify the final section of this proposal. The difficulty with the present constitution is that under the interpretation that the courts have placed upon the section applying to corporations there is confusion between private corporations and municipal corporations, and it is the intent and, I doubt not, it will be the desire of the Convention to so completely separate those that the provision the gentleman is referring to shall retain its place as applying to private corporations, but shall not apply to municipal corporations in any other way than as provided here in section 2.

Mr. HALFHILL: What I intended to read to you was section 26 of article II. I had the wrong book. Then it would be possible, if I understand your interpretation correctly, for there to be actual special legislation such as we have found to be inimical in this state under

the old constitution. Of course, if you are going to change that it would change the entire theory of it.

Mr. KNIGHT: The gentleman is right. This undertakes to provide authority to the general assembly to pass special legislation, subject to ratification by the municipality before it can go into effect. There is no use for discussion on that. It is intended to have that effect, and the difference between the kind of legislation the gentleman from Montgomery [Mr. DWYER] referred to and the kind referred to by Mr. Halfhill is that the people of the community affected by it did not have anything to say about it. A group of men would come to the legislature and get a bill passed and it would go into effect over night without the people having anything to say about it, but under this no such law could go into effect without a vote of the people, which, in the judgment of the committee, removes the entire evil which has been thought to exist in special legislation.

Mr. NYE: Why would it not obviate all of this difficulty by leaving out the term "special"? Then your provision would read "and it may also enact laws for the government of municipalities adopting the same; but no such law shall become operative in any municipality until it shall have been submitted," etc. Why call it "the special law" at all? Why not have a general law to be adopted by any municipality that may choose to adopt it?

Mr. KNIGHT: So far as I am personally concerned, I see no objection to it. The language, however, was put in by the committee.

Mr. ROEHM: Would not that in effect be a special law even though the word "special" were left out?

Mr. KNIGHT: Yes, but there is something in sentiment, I suppose.

Mr. ROEHM: Suppose a city had about made up its mind for a certain kind of government—for instance, a commission form of government, which many cities desire to adopt. Now, in order to get it they would have to go through the form of an election, electing a commission, which would be expensive?

Mr. KNIGHT: Yes.

Mr. ROEHM: In the committee was it not thought a good thing if the legislature should pass, say for the city of Dayton, a commission form of government, which then could be adopted by any other municipality by a referendum vote without going to the expense of another election? That is all really that this accomplishes; it saves the expense of an election by a municipality for the government that they desire.

Mr. KNIGHT: Just the difference between going to a tailor and having a suit made and going to a ready-made clothing establishment and buying one. You get your individual suit.

Mr. ROEHM: One fits better than the other usually.

Mr. KNIGHT: And one is cheaper than the other usually. We have already discussed lines 13 and 14 which provide that no such special legislation shall go into effect until submitted to the electors and confirmed by a majority of those voting thereon under regulation to be established by law.

It will be noted that in every portion where anything is submitted by a referendum vote it is passed by a majority of "those voting thereon." That is the principle we have adopted, and it goes all the way through.

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Section 3 provides: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state as a whole." That is intended to give general, widespread, complete, local police power to municipalities to enact ordinances coming within the category of the police and other similar regulations, wherever those are not in conflict with general laws that are or may be upon the statute books affecting the welfare of the state as a whole. It is further provided, in lines 19 and 20: "and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon."

They can add to and make more strict the requirements, but no such local police, sanitary and other similar regulations shall be regarded as in conflict with the statutes unless all municipalities have been forbidden to legislate on that particular phase of police regulation. This is the clause which reverses to a degree the present presumption, and the conflict, if a conflict arises, is resolved in favor of the city unless the legislature has forbidden all municipalities to touch that particular subject.

Mr. LAMPSON: What is the primary purpose of that section?

Mr. KNIGHT: To give the municipalities beyond question, the full police, sanitary and regulatory power without the presumption now existing that the exercise of such power is in conflict with or in derogation of state authority. It is simply in furtherance of the general power and general intent of the proposal to make each municipality as nearly autonomous locally as possible.

Mr. LAMPSON: Would not the power granted in this section be sufficient to enable a municipality to set at naught general statutes and put a burden on the people outside of the municipality or the state generally to show that the particular ordinance was against the general laws of the state?

Mr. KNIGHT: I don't think so. Has the gentleman in mind any specific instance of illustration?

Mr. LAMPSON: I have not, but I have been studying over it very carefully and I am very much in doubt as to the power contained in that section. It looks as if it might be very extensive.

Mr. KNIGHT: It is not intended to invade state authority in the least, but to make clear that the municipality has the right to enact such local police, sanitary and other similar regulations as are not in conflict with general laws. It can not take away, however. For instance, take the quarantine laws. A city can not make them less strict than the state, but it can make them more strict.

Mr. PETTIT: In line 18, the first part of it says "In conflict with general laws," and then it adds "affecting the welfare of the state as a whole." Is not that surplusage? Would not "general laws" cover it without "affecting the state as a whole?"

Mr. KNIGHT: Not if the statement made five minutes ago is correct, that we could pass a special law under the form of a general law. If that is so, it would not

be surplusage. This means it shall be a bona fide general law.

Mr. PETTIT: It seems to me those words are surplusage. I think any general law passed would affect the state as a whole.

Mr. HOSKINS: I want to ask a question relative to line 17: What power under "local police, sanitary and other similar regulations" would be conferred on the municipality in addition to what we have now? Have you in mind any concrete instance?

Mr. KNIGHT: At the present time municipalities have only such power under those heads as are specifically conferred by the general assembly in the code; they can not touch a single subject that is not specified by the general assembly in the code. Under this they have all power over those subjects insofar as an ordinance under this head does not attempt to weaken some general law of the state on the same subject.

Mr. HOSKINS: Then the municipality might exercise all authority to put local police, sanitary and other similar regulations not forbidden by the state into effect?

Mr. KNIGHT: Yes.

Mr. HOSKINS: And now they can exercise only those that are granted?

Mr. KNIGHT: Yes.

Mr. HOSKINS: It just exactly reverses the rule on that?

Mr. KNIGHT: That is the intent.

Mr. HOSKINS: The latter part of it, where it refers to "general laws, affecting the general welfare of the state as a whole"—would that have any effect on the law which was in general operation throughout the state and yet in which there was no specific provision denying the right? In other words, is it the meaning of that section that the law must specifically provide that it was denied the municipality, or would the general law be construed to deny it?

Mr. KNIGHT: It would not. It says "specifically deny all municipalities" the right to touch that subject. But the extent of that is qualified in line 17, because it applies only to "local police, sanitary and other similar regulations," and in line 19, "in addition to" those fixed by law—not subtracting from those fixed by law, but in addition.

Mr. WATSON: Is there any danger of the court holding under that provision that the question of local option is not a general law?

Mr. KNIGHT: Personally I do not think so.

Mr. LAMPSON: Suppose a municipality should pass an ordinance enlarging the sanitary powers of a municipality beyond those granted by the general law of the state. Would the municipal law control over the general law?

Mr. KNIGHT: If it goes further than the general law, it would, but if it would fall short of the general law it would not.

Mr. DOTY: Is not that true of all sanitary regulations throughout the cities now?

Mr. KNIGHT: To a degree only, because the general assembly has in the code specifically conferred that. It is contingent on the law remaining as it is.

Mr. DOTY: Is not there such a wide difference between the necessities of different municipalities that it is necessary to have that?

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Mr. KNIGHT: Yes. In one city, for instance, there will be a necessity for very strict laws about sanitary plumbing. That will not apply to a rural district. There may be a law about quarantine, and different sections would be affected differently. For instance, in a thickly populated municipality there would necessarily be more stringent regulations on the quarantine.

Mr. DOTY: Sometimes you would have a quarantine in the city where the state would not?

Mr. KNIGHT: Yes.

Mr. LAMPSON: But the source of power of the municipality now is in the general law?

Mr. KNIGHT: Yes, and this undertakes to reverse that. They will have the right to exercise power so long as it does not detract from the general law. They may make more stringent but not less stringent.

Mr. LAMPSON: Under the police power of the state—I suppose you regard the power of the municipality as coming under the police power of the state—before you can have police power in the municipality it has to be granted by the state, and under the conditions now the municipality in and of itself has no police power?

Mr. KNIGHT: I understand that.

Mr. ANDERSON: Then you take a city and give it all the police power and more too than the state has?

Mr. KNIGHT: You give it supplementary power to meet local conditions. You do not lessen the power. It can not destroy or weaken any statute enacted by the general assembly of uniform application.

Mr. ANDERSON: Under this proposal you do not need any right in the state itself to do anything under the police power. You have it inherent in the cities?

Mr. KNIGHT: Yes, you do.

Mr. ANDERSON: Can you name one instance?

Mr. KNIGHT: The general assembly in behalf of the people not living in the city might enact laws to protect the rural people from infection from the cities.

Mr. ANDERSON: But under this proposal the city itself as such has all the police power, and it makes no difference what the state may do in reference to it?

Mr. KNIGHT: Oh, yes, it does.

Mr. ANDERSON: If the municipalities can go beyond the state in passing laws under this police power, can it not have complete police power without the state acting?

Mr. DOTY: In answer to that—

Mr. ANDERSON: I am asking the professor. I think he knows more about law than you do.

Mr. KNIGHT: I think the objection to the gentleman's point of view, rather than his question, is this: This proposal does not undertake to take the city of Cleveland or Cincinnati or Columbus out of the state of Ohio. There are certain regulations of a police character, many building code regulations and quarantine regulations, and a great many others with reference to drainage into rivers and all that sort of thing, which it is necessary for the general assembly to enact for the welfare of everybody in the state. Now in the absence of this provision the municipality might—

Mr. LAMPSON: Under this provision is not the police power of the municipality found directly in the constitution?

Mr. KNIGHT: Yes, sir.

Mr. LAMPSON: Rather than through the legislature from the constitution?

Mr. KNIGHT: Yes, and it ought to be.

Mr. LAMPSON: And, therefore, would it not be paramount and superior, whatever it might be, if it were within the constitutional authority, to any general law upon the same subject?

Mr. KNIGHT: It can add to what the state has enacted under the police power. The municipality can add to the law because the needs of the municipality are beyond the needs of the state as a whole.

Mr. LAMPSON: But the power of the constitution is greater than the power of the statutes?

Mr. KNIGHT: Of course.

Mr. LAMPSON: And the municipality getting its police power directly from the constitution would not need to be concerned about the state?

Mr. KNIGHT: No; it could go further than the general assembly for the municipality. If the general building code is not sufficient for the needs of a municipality, the municipality can enact a stronger one, but it can not enact a weaker one.

The president here resumed the chair.

Mr. HOSKINS: Referring to the questions asked by the gentleman from Ashtabula [Mr. LAMPSON], would it not be a fact under this proposal, say a municipality undertook to exercise police power for regulations stronger, if I may use that expression, than the police power asserted by the state, yet if thereafter the state undertook to extend and broaden its police power, would the act of the municipality or of the state be supreme?

Mr. KNIGHT: Insofar as the later act of the general assembly went beyond the act of the municipality the state law would be superior, beyond any question.

Mr. HOSKINS: Then by this provision you do not undertake to permit the municipality to limit the police power that may be exercised?

Mr. KNIGHT: Not in the least. It does not subtract a particle from the police power of the state, but does give the municipality unquestioned right for local purposes to go further than the general assembly is willing to use its powers.

Mr. HOSKINS: But the general assembly may subsequently go further?

Mr. KNIGHT: Yes, and that would supersede the local statutes.

Mr. LAMPSON: Wouldn't that furnish an excellent opportunity for a lawsuit to run three or four years to determine that question?

Mr. KNIGHT: Yes; almost anything we do will furnish opportunity for a lawsuit to those seeking it. I do not think it would afford any very excellent one in this case—

Mr. WATSON: Is not this fact apparent, that if we are going to retain our present prohibitory laws that that section will have to be safeguarded?

Mr. DOTY: Safeguarded!

Mr. KNIGHT: I don't catch the "safeguarded." What is the point?

Mr. WATSON: To retain our present prohibitory laws—the local-option laws?

Mr. KNIGHT: Personally I do not think so. If there is anybody able to show that that provision has anything of that character in it—that there are any "sleep-

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ers" in it anywhere—I am ready to vote to strike it out, and to help put it in proper shape.

Mr. PECK: Point out the specific language which provides the exercise of police power that the municipality may go beyond the state but will not diminish the state.

Mr. KNIGHT: The last four words in line 19 and the first three words in line 20.

Mr. PECK: The whole proposition strikes me as being as vague as smoke.

Mr. KNIGHT: "No such regulation shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict" with the general law. That is they can go further than the general law, but if they undertake to weaken any provision of the general law it is in conflict with the general law and therefore inhibited, but if they undertake to make it more stringent it shall not be deemed in conflict with the general law. That is the intent.

Mr. PETTIT: The question I want to ask is this: If the rule works one way, why not the other? If they can pass more stringent laws, why can they not make more liberal laws?

Mr. KNIGHT: This provides against it by six words, and if those six words do not do it I am willing to have put in any other six words or any number of words that will do it.

Mr. WATSON: On the point that I raised a while ago: This gives home rule to each municipality on all questions—

Mr. KNIGHT: Are you asking a question?

Mr. WATSON: Yes—which are not in conflict with general laws affecting the whole state. Is the question of local option a law that is going to be in conflict with the general laws affecting the state as a whole?

Mr. KNIGHT: I am of opinion not. I do not think there is anything in this provision that endangers local option. If there is anything—if this thing is thought to be loaded in any way, then the man who objects to it on the theory that it is loaded must show where it is loaded, and if he can prove his case I for one do not propose to vote for a proposition doubtful on this or any other point.

Mr. ANDERSON: Can it not be remedied—even the doubt—by just a few words offered at the proper time in the way of an amendment, and can not the amendment be so framed that it will in no way interfere so far as home rule in the cities is concerned?

Mr. KNIGHT: I do not know that I can answer it. I have not undertaken to modify the proposition yet. I have no doubt that those who think it needs modification can frame something. I am undertaking to explain the operation and admit any valid objection. I am not here to say this is perfect in every way, though I am sure it has had more care in committee than any other proposal that has come before this body.

Mr. HALFHILL: Did your committee find in any constitution of any state a provision similar to this?

Mr. KNIGHT: The constitution of California.

Mr. HALFHILL: Was that one of recent adoption?

Mr. KNIGHT: I am not certain how long ago it went into effect, but within a few years. It was not one of last fall's adoption, however.

Mr. HALFHILL: It is a fact, I believe, that we con-

cede that the present municipalities get their power by a grant from the general assembly and that they exercise that power and such other powers as the legislature permits them to exercise. Your committee has absolutely reversed that rule; you grant all the police power to municipalities, and that being so, is not the question pertinent that was raised by the gentleman from Guernsey [Mr. WATSON]? Do we not control the liquor traffic by the exercise of the police power?

Mr. KNIGHT: Yes, sir.

Mr. HALFHILL: If you grant all the police power in the first instance to the municipality and only restrict it by special law, is there not danger of a conflict right to start with between the state and municipality, and can that conflict ever be avoided unless the general assembly can restrict the police power of a municipality?

Mr. KNIGHT: I think so. This provision does restrict it in that they can not break down any statute enacted under the police power that is of general application throughout the state. It is so provided in terms in lines 21 and 18, and under this provision the municipality may stiffen within its borders the provision of the general law upon whatever particular subject is within the police power. Let me state what seems to me to be an illustration: The general assembly may enact a law—I would like to use some other illustration, but this comes to mind—providing that all restaurants shall close at ten o'clock at night. No municipality would have a right to say that they shall keep open till eleven, but they would have a right to say they shall close at nine. That illustration occurs to me off hand.

Mr. HALFHILL: Did your committee not consider that this was to a certain extent experimental, to grant all that power to a municipality, to put it on a plane with sovereignty itself?

Mr. KNIGHT: No, sir; it is not experimental at all to those familiar with municipal home rule. That is what it means. It means the people of a municipality shall have the right to control their own affairs.

Mr. PECK: Can you cite a city where they have home rule to that extent?

Mr. KNIGHT: Los Angeles.

Mr. PECK: How long since have they had it?

Mr. KNIGHT: Under the provision of the present constitution of California.

Mr. HALFHILL: Is it not wrong on principle to create the same power of sovereignty in the municipality as exists in the state? The municipality being a creature of a state, is it not wrong on principle to put the municipality in the constitution on a parity in power with the state?

Mr. KNIGHT: We do not put them on a parity, because any time the general assembly of the state sees fit to enact a new regulation under the police power making it more stringent than under the municipal government, then to that extent the state provision immediately supercedes the municipal ordinance. The ultimate authority is in the hands of the state, but the municipality is clothed with the power beyond what the lawmaking power of the state thinks is necessary for the state as a whole. This says that the municipality can do a thing until or unless it thereby undertakes to weaken some exercise of a power established by a law made by a general lawmaking

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power of the state applicable to the people of the entire state.

Mr. HALFHILL: Would not any municipality that framed and adopted a charter have the same right and reach the same end that you intend to grant by this provision?

Mr. KNIGHT: This applies to all municipalities. Your question applies only to those who frame their own charters.

Mr. WOODS: In line 18 you have the words "general laws, affecting the welfare of the state as a whole." Have you any objection to leaving out the words "affecting the welfare of the state as a whole"? You can not have a law unless it does affect the general welfare of the state.

Mr. PETTIT: That was my objection.

Mr. WOODS: Why have you those words in there?

Mr. KNIGHT: The committee felt that under the guise of general laws a good many really special laws are passed that do not affect the welfare of the state, and in order to make sure it would be a general law in fact as well as in form this was put in there.

Mr. WOODS: You mean by that whenever a general assembly passes a law in order to show it is a general law you have to show that it affects the welfare of the state as a whole? Is that what that is put in there for?

Mr. KNIGHT: I know of no purpose except what is given in my answer of a moment ago. The court would be likely to take official knowledge of the provision of the constitution on this point.

Mr. HOSKINS: What words do you want to strike out, Mr. Woods?

Mr. WOODS: I suggest striking out the words "affecting the welfare of the state as a whole." I do not understand what those words are in there for.

Mr. KNIGHT: I have no knowledge of their being in there for any purpose other than that I have just stated.

Mr. LAMPSON: Don't those words limit the words "general law," and with them in there authority would be granted to the municipality to enact some laws that were in conflict with general laws, but they must be not in conflict with general laws affecting the welfare of the state as a whole? That leaves it open as a matter of judgment to the court, as to whether the particular law does so affect?

Mr. KNIGHT: I thought the gentleman was going to ask a question; if so, I didn't hear it.

Mr. LAMPSON: I did ask a question.

Mr. KNIGHT: Then I missed it.

Mr. LAMPSON: My question was do not the words "affecting the welfare of the state as a whole" limit the words "general law"?

Mr. KNIGHT: Obviously.

Mr. LAMPSON: And that being so, can municipalities pass some laws in conflict with general laws provided those general laws are held not to affect the welfare of the state as a whole?

Mr. KNIGHT: Yes; I think so. The general laws must affect the welfare of the state as a whole under the police power in order to defeat the right of the municipality to supplement that or to enact laws of a similar character.

Mr. PECK: I do not know that I undersand the

meaning of the words "affecting the welfare of the state as a whole." Do they mean it is applicable to each and every place in the state?

Mr. KNIGHT: So intended from the discussion of the committee.

Mr. PECK: You are aware that the supreme court has decided that there may be a general law which has application in only a few places? It may be drawn to apply to any place in the state, but as a matter of fact would not apply to any but one.

Mr. KNIGHT: For instance, what?

Mr. PECK: For instance, one city.

Mr. KNIGHT: What kind of a law?

Mr. PECK: Conferring power. Any subject whatever. They may pass a law conferring any sort of power upon any municipality in the state and yet limit it in such a way as to only apply to one particular place.

Mr. KNIGHT: That is an old form of special legislation that is knocked out by the supreme court.

Mr. PECK: The definition of general law has not been knocked out. There might be a general law which would necessarily not apply generally because there was only one place that would be affected by it.

Mr. KNIGHT: The committee was of opinion that a general law was one that in fact and in form touched the subject that affected the state universally.

Mr. PECK: You might have a law that bridges shall be erected in such a way; but some counties have no streams and there are no bridges. That is a general law?

Mr. KNIGHT: Yes.

Mr. PECK: But would not those words "affecting the welfare of the state as a whole" really alter the meaning of such a law as that because the law as to bridges would not affect any county in which there was no stream and did not have any bridges?

Mr. KNIGHT: No.

Mr. PECK: Why not?

Mr. KNIGHT: It is general where there are bridges.

Mr. PECK: But it doesn't operate over the whole state; it doesn't affect the state as a whole?

Mr. KNIGHT: It doesn't say that. It says it must operate throughout the whole state. You wouldn't have a bridge where there was no stream, but wherever you have a bridge anywhere in the state it would apply.

Mr. PECK: I can not understand a good deal of your exposition. A good deal of it is subjective and not objective.

Mr. KNIGHT: I am trying to explain why the committee put this in.

Mr. HARRIS, of Ashtabula: If I understood you, in your reply to Mr. Lampson, you admitted there might be difficulty in making the distinction between an ordinance of a local place or the law the municipality might enact which would not affect the state as a whole. Will you observe the same language is used in the same section at another place?

Mr. KNIGHT: Yes; it is in three places because the proceeding was the same in the three parts of the proposal.

Now, in section 4 we touch on a subject that undertakes to convey the power to construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to

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the municipality or its inhabitants. The acquisition of any such public utility may be by condemnation or otherwise, and the municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or products of any such utility. That has in mind the supply of water and supply of municipal lighting, and therefore the provision confers specifically the power to acquire by condemnation or otherwise. It provides in section 5 the method which must be resorted to and the details which must be resorted to by a referendum vote.

Mr. WINN: I want to ask a question about section 4, down to the first period. The first sentence in section 4 seems to limit the public utility that may be purchased and acquired by the municipality to such public utilities as are in use in the particular municipality. Is that intended?

Mr. KNIGHT: To what exactly do you refer?

Mr. WINN: Let me read that: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to its municipality or its inhabitants."

Mr. KNIGHT: It is possible that it would be improved by substituting "may be" for "is."

Mr. WINN: It seems to me that this language limits application to those utilities now existing.

Mr. KNIGHT: It was not so intended.

Mr. WINN: See if this would express the intention of the committee: "Any municipality may, for the purpose of supplying the product or service thereof to the municipality or its inhabitants, acquire, construct, own, lease and operate, within or without its corporate limits, any public utility; and may contract with others for any such product or service."

Mr. KNIGHT: Simply hearing it once I think that would cover it, but I think it would be more easily covered by inserting two words after "is" and make it read "to be." That would cover it.

Mr. WINN: Under the provision of this section if the municipality is now receiving a water supply from some private corporation the municipality may purchase the plant, but if the municipality has no water supply it could not erect or purchase a plant?

Mr. KNIGHT: It was not so intended.

Mr. HALFHILL: In section 4 you provide for the acquiring by the municipality of any right or rights to operate a public utility. Would there be any objection to saying that those utilities ought to be under the same regulation as may be provided by general law—that is to say, a public utility of a municipality ought not be regulated under ordinances, but should be under general law?

Mr. KNIGHT: That has been covered under section 3. The state has a certain power and the municipality can not do anything else, but may do more.

Mr. HALFHILL: Ought not the municipal utility be subject to all the same general rules?

Mr. KNIGHT: That is a matter of police regulation. The state has that police power. It has a right to say that all public utilities in the state shall conform to certain things, or that no municipality can break that down, but it can be stricter if it wants to. It can go beyond

the state, but not fall short of it. The committee believes that is amply taken care of in section 3.

Mr. HALFHILL: Now the latter part of that same section 4 reads. "The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to any municipality or its inhabitants the service or product of any such utility." Is there any conflict, in the judgment of the committee, between that provision and the limitation of the federal constitution which says no laws shall be passed by a state that in any way impair the obligation of a contract?

Mr. KNIGHT: I think not.

Mr. HALFHILL: Is not a franchise a contract?

Mr. KNIGHT: This undertakes to give a right to the municipality under condemnation proceedings. The question of purchase has no application, because that is not under condemnation proceedings. Condemnation proceedings condemn not only the property but the franchise.

Mr. HALFHILL: The point I want to inquire about is, a franchise being solely a matter of contract, can the corporation under the right of eminent domain condemn that contract?

Mr. KNIGHT: It condemns the value of the contract and pays the value for it, and under this provision any franchise granted in the state of Ohio, hereafter at any rate, will be granted subject to that right.

Mr. HALFHILL: Was that question raised by the committee, or do you recall?

Mr. KNIGHT: At one stage of the proceedings, yes.

Mr. HALFHILL: Can it now condemn as property, under the power of eminent domain a contract right; and is not the grant and acceptance of a franchise purely a matter of contract?

Mr. KNIGHT: This is true. If there be any apparent conflict in so far as there is such, this can not override a provision of the national constitution. I say if there be such a conflict, but I am not sure there is not any.

Mr. HOSKINS: Is it not a fact that the franchise granted to the corporation is a property right which the owner enjoys and which may be condemned as any other property right under the power of eminent domain?

Mr. KNIGHT: That is my understanding, that any property right can be condemned and paid for, and that a franchise is a property right. That was the attitude of the committee.

Mr. HOSKINS: Would that be a similar illustration to the one where the state has obtained title to land property direct—and we have many such deeds on record—and the state or municipality had failed to use that property, would not they have a right to condemn that property?

Mr. KNIGHT: Beyond doubt. A direct provision of our own constitution fully recognizes that.

Mr. HOSKINS: That, like all private property, is subject to condemnation for public use, and if this constitution undertakes to say that the property value of a franchise is needed for public use, that property, like any other property, is held subject to the superior right of the public to take it, and it can be taken under condemnation proceedings, and the municipality can not simply

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abrogate the contract, but it can take over the property value represented without in any way coming in conflict with the provisions of the federal constitution on that subject.

Mr. KRAMER: We have a company that runs a line from Mansfield eight or ten miles out into the country. I was wondering what the rights of the city of Mansfield would be under this provision with reference to that company or any other company that runs outside of the corporation.

Mr. KNIGHT: That is provided for in lines 42, 43, 44, 45, and 46: "—may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality." That is clear, and the committee thought it entirely clear, and that under it no municipality would have the right to have more mileage outside than one-half of the mileage inside.

Mr. KRAMER: Then the municipality can to that extent own an interurban line that would run between two cities?

Mr. KNIGHT: If it did not exceed one-half of the mileage within the city of that same public utility.

Mr. KRAMER: Suppose it did exceed one-half. How would you deal with a railway company like that? Suppose the mileage outside of a city exceeded more than one-half of the mileage within the city?

Mr. KNIGHT: My judgment is you could not take it over under municipal ownership under those circumstances.

Mr. KRAMER: Could you take any of it?

Mr. KNIGHT: That within the corporate limits, I think, but I do not think it would be advisable to do that.

Mr. CUNNINGHAM: I would like for information to inquire, what additional power does the proposal give to villages to acquire public utilities.

Mr. KNIGHT: It is not clear that they now have any power about street railways.

Mr. CUNNINGHAM: What else?

Mr. KNIGHT: Telephones.

Mr. CUNNINGHAM: Also electric lights?

Mr. KNIGHT: Might do it.

Mr. CUNNINGHAM: Those are the only two powers that will be conferred by the proposal in addition to what they have?

Mr. KNIGHT: Those are the only two public utilities now that they can not have.

Mr. KERR: In line 26, "The acquisition of any such"—would it not be better to insert "any property for any such public utility"?

Mr. KNIGHT: Suppose you want the existing plant?

Mr. KERR: If you want to construct such a plant outside of the city you have to acquire the property first.

Mr. KNIGHT: That particular part applies only to public utilities previously in existence, and the power of condemnation here is for the purpose of acquiring them. Section 4 confers specific power on the municipalities to construct; while the condemnation proceeding here was intended to apply to existing public utilities, and therefore it was put in that form.

Mr. DWYER: I would like to know whether under section 4 the municipality could not purchase an interurban street railway by condemnation? Is not that broad enough to permit that, and then could they not extend it thirty miles?

Mr. KNIGHT: I answered that question during your absence from the hall by calling attention to lines 43, 44, 45 and 46, which limit the municipality in such a way that it can not furnish transportation outside of the corporation beyond fifty per cent of what it has within the corporation. Obviously it would not undertake to condemn property that it could not operate afterwards. It is limited in the amount it could operate, and therefore it would be clearly limited by common sense in the amount it could condemn.

Mr. HOSKINS: If a municipality undertook to condemn an interurban line across the state and that line had much more mileage within the city than outside of it and they undertook to condemn just what was in the city, would they have a right to do that?

Mr. KNIGHT: Yes.

Mr. HOSKINS: Then would not the company have an action for the damages resulting in taking the part within the city and not the other; wouldn't that be an element of damage to be considered in fixing the price to be paid?

Mr. KNIGHT: Beyond all question.

Mr. HOSKINS: So if they would largely damage the interurban property it would become a matter of inadvisability for the city to undertake to buy the part within the city?

Mr. KNIGHT: Beyond doubt. The committee thought that was so clear, it didn't need guarding on that point.

Mr. KRAMER: Section 6 doesn't say they can't own it.

Mr. KNIGHT: Has the gentleman any idea that any municipality would undertake to construct a railway line that it couldn't operate afterwards?

Mr. KRAMER: I am just saying you have not put in any restrictions. All it says is that they may sell it.

Mr. KNIGHT: Sell what?

Mr. KRAMER: Sell and deliver to others any transportation service.

Mr. KNIGHT: But go on: "transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

Mr. KRAMER: I do not see anything that prevents the municipality from owning it. Where is there anything that prevents the municipality from owning an interurban line clear to Columbus?

Mr. KNIGHT: What would it do with it? What could it do with it?

Mr. KRAMER: Suppose it wanted to go into the railway service?

Mr. KNIGHT: What for?

Mr. KRAMER: As a matter of profit.

Mr. KNIGHT: It can not do it. It can not furnish service to anybody outside of the corporate limits in any amount exceeding fifty per cent of what it furnishes inside of the limits.

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Mr. KRAMER: What does that mean in section 6, "may also sell and deliver to others"?

Mr. KNIGHT: Go on and finish the line.

Mr. KRAMER: I can not comprehend it.

Mr. KNIGHT: "Sell and deliver to others any transportation service of such utility." It is the service that is sold, not the railroad. The service of a road is transportation. It can not furnish transportation outside of its corporate limits exceeding fifty per cent of what it furnishes inside. Suppose you built a railroad clear across the state. The municipality couldn't operate it.

Mr. DWYER: What are we to understand by this: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits"? It can purchase a public utility outside of its corporate limits. What is that for and what are we to understand by that?

Mr. KNIGHT: There are cities in the state of Ohio that are so far back in the middle ages that their water supply is furnished by a corporation and the sources of that water supply are outside of the limits of the municipality. This simply gives the municipality the right to acquire that and apply it in the same way as I stated a moment ago while the gentleman was out of the room, that in the case of supplying electric lights to a city the era is almost here when a good deal of the water power will be utilized by transforming its electricity to supply heat and power to a municipality, and what use would it be to a municipal corporation to acquire a line inside of the town when it could not get the part that furnishes what the electricians call the "juice"?

Mr. DWYER: Do you think there would be no danger of having another lawsuit such as they had over the Cincinnati Southern? There was an act passed by the legislature authorizing any city of the first class having a population of one hundred and fifty thousand or over to construct a railroad, one terminal of which was to be in the city and the other terminal wherever it saw fit to select it. Under that law they built the Cincinnati Southern from Cincinnati to Chattanooga and issued city bonds, and of necessity the supreme court had to hold them to be constitutional.

Mr. KNIGHT: I am glad you put in that statement.

Mr. DWYER: Would there be any danger that such a thing could be done again?

Mr. KNIGHT: I think not, because of the limitations of lines 43, 44, 45 and 46. They can lease it from a private corporation so as to operate it—

Mr. DWYER: I know that in the presentation of the question to the supreme court the lawyers argued that if the city of New York could go forty miles to bring the water of the Croton river into New York, that by analogy Cincinnati had the right to build a railroad to bring coal to the city of Cincinnati. They put it on the same ground that the city of New York was allowed to get the Croton water, but I think most of us are convinced that there never will be another decision like that. They had to do it.

Mr. HARBARGER: In lines 44 and 45 you say "in an amount not exceeding in either case fifty per centum of the total service." In the case of a municipal lighting plant do I understand they are limited to the amount they can sell in the municipality and that much more?

Mr. KNIGHT: That section applies to selling outside and you can only sell outside one-half as much as inside.

The delegate from Franklin here yielded the floor for a motion to recess.

Mr. DOTY: I move that we recess until seven o'clock this evening.

The motion was carried.

EVENING SESSION.

The Convention was called to order by the president pursuant to recess, and the delegate from Franklin [Mr. KNIGHT] was recognized.

Mr. KNIGHT: At the time of recess an attempt had been made to explain as far as section 6 of the proposal.

Section 7 is in some ways the most important single section in the proposal, for it provides what has been unknown hitherto in the state, the right, already referred to two or three times this afternoon, of any city to frame, adopt or amend a charter for its own government and to exercise under it all power of local self-government.

This is the third of the three ways suggested this afternoon under which and by which cities and villages may be governed, the first under general laws applicable to all the villages and the cities, the second the referendum idea and the third that each city by the machinery provided in the following section 8 may elect a charter commission to frame for the city its own charter, irrespective of the form of government that may prevail in any other city of the state. It may be likened to this body now assembled. Just as this body is seeking to frame or amend a charter for the state of Ohio, so this proposal in section 7, with the details provided in section 8, undertakes to confer on each municipality the right to have its electors choose a charter commission, which charter commission is exactly analogous to this Convention, the charter convention being authorized to frame a charter, which again may be likened to a city constitution, a charter for the city, which, if ratified subsequently by the voters of the city, shall become the charter of that city. Provision is made in this seventh section that under that charter the city may exercise all powers of local self-government, but that under any such charter powers shall be subject to the general law affecting the welfare of the state as a whole.

Mr. WOODS: Back in the same place, that is, over in line 18, I would ask the member from Franklin if he is not willing that that phrase shall come out of those two sections?

Mr. KNIGHT: In the three places in which it occurs?

Mr. WOODS: Are there three places?

Mr. KNIGHT: Yes; it occurs in three places of the proposal, lines 18, 21 and 49 and 50. Now what is the question?

Mr. WOODS: Are you not satisfied that that phrase should be taken out of the three places in the proposal?

Mr. KNIGHT: I may answer that question by stating a fact or two first. The basis upon which this proposal was framed was a draft of a charter formulated by the Municipal League of Ohio. Section 3 as here con-

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tained in the proposal and section 7 now under consideration are substantially as framed there, but the words concerning which the gentleman has asked the question were added in the committee.

Mr. DOTY: By the committee?

Mr. KNIGHT: By the committee in the committee meeting.

Mr. DOTY: Will you please tell us why they did it?

Mr. KNIGHT: So far as I know they were added for reasons undertaken to be explained this afternoon, in order to make more certain that the phrase "general law" should mean what it said. A gentleman has asked me if I would have any objection to their being stricken out, and, not wishing to be understood as in any way binding the committee, I would say in my own personal opinion the clause in question is not necessary to accomplish the purpose intended.

Mr. DOTY: What is that purpose?

Mr. KNIGHT: That is that the general law of the state as mentioned in section 3—and I apprehend the same here—that the general laws of the state shall control. Let me read that to get it clear: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws" on the subject of police regulation of the state. That would be just as formulated in the Municipal League, and the committee added after "general laws" the words "affecting the welfare of the state as a whole." Now, I am answering from my personal opinion only. I do not believe those words add anything to the section. If it is felt by the Convention that there is anything which involves ambiguity, personally I feel that either the language of those few words should be changed or they should be omitted. Again, I am not speaking for the committee on that point.

Mr. DOTY: If you care to give it, the information might throw light on the subject, you might state why this was put in, for what purpose?

Mr. KNIGHT: To strengthen the words "general laws."

Mr. DOTY: Was that the purpose?

Mr. KNIGHT: So far as I know.

Mr. DOTY: Was that the purpose given in the committee?

Mr. KNIGHT: I think so. I do not know of any other purpose. I am subject to correction by any member of the committee, however.

Mr. DOTY: But does it strengthen the words "general laws"? In other words, if you were to put a period after the word "laws" and strike out all the rest of the paragraph, would not the paragraph mean just exactly what you suppose it means now?

Mr. KNIGHT: In my personal opinion it would.

Mr. ANDERSON: As a matter of fact, if you strike out that part that has been referred to by the gentleman from Medina [Mr. Woods] and the gentleman from Cuyahoga [Mr. Doty] would not the section mean more than it does now? Is this not in fact the limitation on general laws? In other words, are there not laws which would come under the definition of "general laws" that will not come under the words as contained here, "general laws, affecting the welfare of the state as a whole"?

Mr. KNIGHT: No; but I do not think the words to

which the gentleman from Medina referred enlarge any powers or the meaning of the phrase "general laws."

Mr. ANDERSON: But what I am after is, do they not limit it to some extent?

Mr. KNIGHT: It might be so interpreted. It seems to have been so interpreted by some on the floor.

Mr. ANDERSON: Then either they were put in from a mistaken notion or for a reason not stated. Is that true?

Mr. KNIGHT: I have stated every reason of which I have any knowledge.

Mr. ANDERSON: If there is any other reason you never heard of it?

Mr. KNIGHT: That is right.

Mr. ROCKEL: In the discussion of this section 7, the original draft had in it "except in municipal affairs?"

Mr. KNIGHT: Yes.

Mr. ROCKEL: Did not the committee find out that the courts had had a great deal of trouble in construing what were "municipal affairs" as used in section 7?

Mr. KNIGHT: That is true.

Mr. ROCKEL: And, therefore, in that place these words were inserted?

Mr. KNIGHT: In what is now section 7?

Mr. ROCKEL: Yes.

Mr. KNIGHT: The words "affecting the welfare of the state as a whole" were inserted.

Mr. ROCKEL: Those words were inserted in place of "except in municipal affairs."

Mr. DOTY: What line is that in?

Mr. KNIGHT: Forty-seven.

Mr. ROCKEL: That is the way these words got in the proposal?

Mr. KNIGHT: Yes, sir.

Mr. ROCKEL: And afterwards, to make the proposal conform, they were also put in the other sections?

Mr. KNIGHT: I am obliged to the gentleman for the statement on that point, which is correct.

Mr. DOTY: I would be glad to have that stated again.

Mr. KNIGHT: I yield to Mr. Rockel to make the statement.

Mr. ROCKEL: In the original draft of section 3, after it was put in section 7, it had the words, "Any city or village may frame and adopt a charter for its own government and may exercise thereunder all powers of local self-government; but all such charters shall be subject to the general law of the state, except in municipal affairs."

Mr. KNIGHT: That was the original proposal?

Mr. ROCKEL: Yes. Judge Worthington examined the decisions of California and of some other state, and I did too, and the judges there said they had very great difficulty in defining what should be included in the words "municipal affairs." Therefore, I think it was suggested by some member of the committee that there should be a change made from the language used in the brief furnished the committee. What they meant there was to convey the idea opposite to "local affairs" and that it referred to what would affect the state at large.

Mr. PECK: Do you think the phrase "local self-government" is any more definite than "municipal affairs?"

Mr. ROCKEL: That is probably true.

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Mr. DWYER: What other power has a city excepting in municipal affairs?

Mr. ROCKEL: Those California courts had a great deal of trouble and there were dissenting opinions from pretty nearly all of the judges. One of the judges said he did not know what it would include. So this term was really meant to include "state affairs" as opposed to "local affairs."

Mr. LAMPSON: Do you not think it would often be very difficult to determine whether a general law affected the welfare of the state as a whole?

Mr. ROCKEL: If anyone can suggest a phrase that would exactly mark the dividing line between local municipal affairs and state affairs we would be glad to have it. We do not want to take the city out of the state. We want to keep the city in the state.

Mr. DOTY: I would ask the same question I asked the gentleman from Franklin [Mr. KNIGHT]. I would ask you, if we were to take the section as it stands, put a period after "general laws" and strike out all the rest of the paragraph, what difference would that make in what you say was attempted to be put in there?

Mr. ROCKEL: I think the idea of this section was to give the city supreme authority—

Mr. DOTY: I am for that, all right.

Mr. ROCKEL: —and that the legislature could not take it away—

Mr. DOTY: Quite right.

Mr. ROCKEL:—unless it were by a law that would affect the state as a whole.

Mr. DOTY: Now will you answer that question?

Mr. ROCKEL: What difference it would make?

Mr. DOTY: Yes. You have laid the groundwork for my question and now what is the answer?

Mr. ROCKEL: Well, I don't know.

Mr. DOTY: Well, I don't.

Mr. ROCKEL: I might possibly conceive that there might be a general law—

Mr. DOTY: Is not the theory of the general law that it is for the welfare of the whole state? Is not that the entire theory?

Mr. ROCKEL: That is general law.

Mr. DOTY: Then general law means for the whole state.

Mr. ROCKEL: I would not have any objection to striking out the words "affecting the state as a whole."

Mr. DOTY: Then you do not think those additional words are of any use at all?

Mr. ROCKEL: I got it from this man's brief. He said that is what they meant; that they did not want to take away from the state the right to pass laws affecting the general welfare of the state as a whole.

Mr. WOODS: I want to suggest to the gentleman from Franklin [Mr. KNIGHT], if everybody seems to agree, I have an amendment taking those words out and we might take them out now and save a lot of trouble.

The PRESIDENT: Does the member yield?

Mr. KNIGHT: I would prefer to go on, not thereby meaning to oppose or obstruct any opportunity to introduce amendments.

Mr. HALFHILL: A question on the same point: In the last analysis who would determine whether or not there was any conflict?

Mr. KNIGHT: Conflict where?

Mr. HALFHILL: Determine whether there was any conflict between the general laws?

Mr. KNIGHT: The courts, I apprehend, would have to determine the conflict, as always.

Mr. HALFHILL: Then the sovereign power in the legislature to legislate and the sovereign power in the municipality to legislate would never be determined until the courts get it?

Mr. KNIGHT: That is true in all cases of conflict between two bodies acting under a constitution which confers powers that may possibly overlap. In the last analysis of it the courts always have to determine that.

Mr. HALFHILL: But is not the controversy much greater in an instance like this than it would be if the grant of the power came from the state to the municipality in the ordinary understanding?

Mr. KNIGHT: I apprehend not, if the proposal is drawn as carefully as we think it is. There is an attempt to provide against conflicts at all points where we can, and to confer in the constitution directly upon the municipalities the right to do certain things; and of course the state has a right under a modified constitution as now through its lawmaking body to legislate for the state, and this attempts merely to increase the local autonomy of the municipality and to avoid the necessity of coming to the legislature for each specific item of power which the municipality may be permitted to exercise. That is the sum and substance of the whole thing.

Section 8 merely provides the machinery for which, by which and under which this charter framing shall be done. In the first place, by a vote of two-thirds of the legislative body of the city or village, without any petition of the voters, or upon a petition of ten per cent of the voters, the ordinance shall be passed providing for the submitting to the electors of the municipality this same question, Shall a commission be chosen to frame a charter?

Mr. DOTY: A question on that point. Suppose in Columbus ten per cent of the electors would file a petition with the council and the council should refuse to pass an ordinance. What would happen?

Mr. KNIGHT: You could only postpone the matter until the next municipal election. The whole of section 8 provides the machinery by and under which the question shall be submitted to the voters whether they want a charter commission, and also the method of electing or selecting the charter commission.

Section 9 provides for a similar procedure with reference to amendments to a city charter at any subsequent time.

Section 10 deals with the question of the acquisition of property by the municipality, that in any proceedings to appropriate or acquire by any means property for public use, municipalities may acquire by either condemnation or other means of acquisition an excess amount of land or property beyond that needed immediately for the improvement or public use of any kind. That is what is known technically as excess condemnation, with the restrictions that bonds issued by the municipality for the acquisition of any such excess over and above the bonds that may be issued upon the general credit of the city must be what may be termed mortgage bonds simply and constitute a lien upon all the property acquired under the particular condemnation proceedings. If, for ex-

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ample, a municipality desires to acquire three hundred acres for a park, and in the process of, or at the time of, that acquisition it seemed to the municipality desirable to appropriate an additional one hundred acres surrounding that park or in connection with the park, but not immediately needed or not intended to be used for park purposes, such excess may be acquired under this condemnation proceeding, but the bonds issued for such excess shall not be a general liability of the municipality—

Mr. PECK: Necessarily it would be as to the interest?

Mr. KNIGHT: Just a moment—but will be a lien upon the entire four hundred acres thus acquired, and any forfeiture or failure to pay the interest upon such bonds at any time would immediately warrant and authorize, as under any other mortgage, the foreclosure and taking possession of the entire property, just as in any other similar proceeding.

Mr. PECK: It would have to be foreclosed?

Mr. KNIGHT: It would have to be foreclosed.

Mr. DWYER: Would not that allow the city to go into the real estate business?

Mr. KNIGHT: Yes, sir; exactly what is done in a large number of European municipalities. In order to make further municipal improvement, property has been acquired for the purpose, for instance, of erecting modern tenement houses for the people in the city and more property was acquired than was desired for the immediate purpose; that property was subsequently sold and a considerable portion of the expense of the original acquisition paid out of the increased value of the excess realty which was acquired in the first instance, the increase being due to the improvement by building on that part which the city wanted to use for its own purpose.

I want to emphasize or restate the proposition that the bonds so issued for this excess amount need not be a general liability of the city, but simply a lien upon the property in question, and, like any other bonds, secured by mortgage and that a default of interest upon them would enable the holders of these bonds to proceed to take possession of the property under foreclosure proceedings.

Mr. DOTY: Now will you explain lines 95, 96, 97 and 98?

Mr. KNIGHT: Lines 95, 96, 97 and 98—I want to call attention to those. I did not intend to pass them—"Any municipality appropriating private property for a public improvement may provide money therefor in part or in whole by assessments upon the abutting property not in excess of the special benefits conferred upon such abutting property by the improvements."

At the present time, under the decisions of the court under our present constitution, the benefit conferred upon the abutting property may not be taken into consideration; consequently may not be made the basis of any special assessment or additional burden for the making of the improvement. This is intended to provide that the abutting property shall bear some share of the burden of improvement in an amount not to exceed the benefits conferred upon that property by the improvement.

Mr. ANDERSON: Say you were to take one hundred acres for a park. Would the owners of the abutting property have to pay for the taking of the park?

Mr. KNIGHT: Not beyond the amount of the bene-

fits conferred on the property by the fact that the park is created.

Mr. ANDERSON: How would you get at that? By taking the people living in the city who were interested—the taxpayers—to determine how much the general taxpayers should pay and how much the abutting property owners should?

Mr. KNIGHT: That is the rule everywhere.

Mr. ANDERSON: That is just the reverse of the situation at the present time.

Mr. KNIGHT: Yes.

Mr. PECK: Do you not know that was a question that was greatly discussed in the constitutional convention of 1851 and that there is a powerful argument against it by Rufus P. Ranney?

Mr. KNIGHT: A good many things were discussed in there.

Mr. PECK: And we haven't learned anything on that subject since, either.

Mr. DOTY: Is it not a fact that what is attempted to be done is what the supreme court decided for forty years could be done, and that suddenly, ten years ago, that was overturned?

Mr. KNIGHT: Yes; under the constitution of 1851 the abutting property was held liable.

Mr. DOTY: Was it abutting or benefited?

Mr. KNIGHT: Benefited. The decisions of the court for forty years were that the benefited property should bear its part. Now, the gentleman from Mahoning [Mr. ANDERSON] assumes a three hundred-acre park, and according to this language the abutting property—that is, the property all the way around—would have to bear a share of the burden, assuming that the burden was not in excess of the benefit.

Mr. ANDERSON: But the benefit of the park is not confined to the abutting property owners. Do you know any park that does not spread its benefits out over the people?

Mr. KNIGHT: Every improvement affects all the property.

Mr. ANDERSON: Oh, no; a curbstone in front of your property does not benefit people on the other side.

Mr. KNIGHT: Oh, no; it depends on how many want to go by that place.

Mr. ANDERSON: What I want to get at is the difference in degree of the spreading of the benefit. Excepting the very minor improvements the benefits spread farther than the abutting property, do they not?

Mr. KNIGHT: I suppose so.

Mr. ANDERSON: For forty-one years the supreme court held that benefited property should bear part of the cost.

Mr. KNIGHT: Yes.

Mr. ANDERSON: Then why, if we are trying to put in the constitution something that will put us back to that same situation, do you not use the word benefited?

Mr. KNIGHT: I have no objection.

Mr. ANDERSON: In your judgment is it not better?

Mr. KNIGHT: I am inclined to think it is as good.

Mr. ANDERSON: I am glad to get you at least up to that point.

Mr. KNIGHT: You didn't have to get me.

Mr. DWYER: I have had a good deal of experience on that in my time. Take the building of streets; they

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put the assessment on the benefited property and they would go out several squares where it was not benefited at all in order to get a larger amount. There is gross injustice done under that idea.

Mr. DOTY: That is not done now.

Mr. DWYER: I have known them to go several squares out, where the property was not benefited at all.

Mr. DOTY: Perhaps I can give an experience there. The city of Cleveland opened a street for the benefit of the whole lower section of the town at a cost of \$1,200,000 or \$1,300,000, and the city attempted under the old decision of the court to spread that out, and that was the case in which the supreme court reversed the decision that had stood for forty-one years.

Mr. KNIGHT: While I have no absolute authority to make a statement, I am of the opinion that the substitution of the word "benefited" for the term "abutting," or a similar equivalent, will be satisfactory to the committee.

Mr. PECK: Would not the word benefited include property not abutting?

Mr. KNIGHT: Certainly.

Mr. MAUCK: In the case of Norwood vs. Baker did not the supreme court of the United States hold that you could not take a street out of a piece of property and assess the rest of the property for that improvement? It has been many years since I have read that decision, but I think that is what the case decided. Maybe Judge Peck or some of the Cincinnati members might be familiar with that.

Mr. PECK: The court did so decide.

Mr. KNIGHT: My knowledge of that case is about as antiquated as that of the gentleman from Gallia [Mr. MAUCK], but my impression is that the extent of the holding of the supreme court was that the abutting property could not be assessed beyond the benefit of the remainder of the property. I may be in error, but that has been my impression as to the limit of that decision.

Mr. MAUCK: That was the Ohio rule under which it was attempted, and the federal court interfered by injunction and restrained the opening up of the street, because you could not take part of a man's property and assess the rest of it for the taking of it. If that is so, it is exactly against your proposition.

Mr. KNIGHT: I am not prepared at the moment to deny that, but my idea is that the decision did not go as far as the gentleman states.

Section 11 applies a similar principle to the issuance of municipal securities in the acquisition of public utilities as provided for in section 10, for the acquisition of excess property in connection with a park and other similar acquisitions, that where the municipality acquired, constructs or extends any public utility, and desires to raise the money for any such purposes, it may issue mortgage bonds therefor beyond the general bonded indebtedness permitted to a municipality, provided, however, that such mortgage bonds beyond this limit shall not impose any liability upon such municipality, but simply be a lien upon the utility itself, including the franchise, the terms of which shall be described, and which may be acquired by the bondholders if it becomes necessary to foreclose upon that mortgage on account of a default in payment of principle or interest.

Mr. KING: Does that mean the municipal corpora-

tion can proceed indefinitely to appropriate or purchase public utilities and proceed with the construction so far as the limit of bonded indebtedness will allow, and when it shall have had half or two-thirds constructed and the limit is reached, that then it is allowed to issue municipal securities binding upon the entire city, which can then proceed to give a mortgage upon the utility for the balance of the cost of construction?

Mr. KNIGHT: Yes; it means just that.

Mr. NYE: I would like to ask this question concerning the indebtedness of the city applying only as a lien on the utility when an individual is required, if the mortgage property does not pay the required debt, to be responsible beyond that. Now why should not the same rule that is applicable to an individual apply to the city or municipality? To illustrate: I have a large tract of land adjoining the city and the city appropriates it at a certain price and gives a mortgage on it and issues bonds to pay for it. Perhaps when they take the property it is of large value. Now the city may go in another direction and by the time the bonds are due the property will not sell for enough to pay the bonds. Why should not the city be liable for the whole indebtedness the same as an individual would be if a mortgage that he gives does not pay the debt in full?

Mr. KNIGHT: The committee in its judgment, which may or may not have been wise—I think it was wise—did not think it well to provide that these mortgage bonds, issued for a specific purpose and for the construction of a specific utility, should constitute a lien upon any of the municipal property other than the property in question.

Mr. PECK: And no obligation on the taxpayers?

Mr. KNIGHT: And no obligation on the taxpayers beyond the general liability of the municipality.

Mr. PECK: Do I understand that the additional bonds are to be no liability upon the taxpayers?

Mr. KNIGHT: No liability except through the mortgage bonds on the utility itself, and nothing else.

Mr. PECK: Then if the city issued in its own name specific mortgage bonds referring to a particular utility, including the franchise which would be granted to the holders of the bonds, and if foreclosure became necessary under it, you say that they might acquire the utility, but could not have any judgment over?

Mr. KNIGHT: Yes; that is what this is meant to do.

Mr. PECK: Do you not think if the individual did that he would be liable over?

Mr. NYE: A further question in connection with that: If the property taken is of great value when the city takes it and it depreciates in value during the time the city has it, and when it comes to be sold it does not pay more than half of the bonds, why should not the city be required to pay the balance of the indebtedness the same as an individual would be if the individual had bought the property and given a mortgage?

Mr. KNIGHT: We have simply provided here to put the municipality upon the same basis as a private corporation which issues a mortgage in which it pledges the utility in question. We put the municipality in no better or no worse shape than that private corporation operating the same utility and we put the holder of the bond in no better or no worse situation. In other words,

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we put the municipality operating a public utility upon the same basis as a private corporation, and the holder of these mortgage bonds when issued by the municipality on the same basis as the holder of mortgage bonds when issued by the private corporation.

Mr. NYE: Why should not the city be as liable as an individual who bought the same property? The individual would be liable for the balance of the indebtedness after the security was exhausted.

Mr. KNIGHT: Because the committee was of opinion that it should not be. This was meant in the first place not to encourage unduly the construction of public utilities by the municipalities until or unless it is evident that the municipality is making a wise municipal undertaking, and in that case there will be no depreciation, and consequently, since the mortgage bonds are a lien upon the entire property of that utility, including the franchise, the bondholder is secure.

Mr. THOMAS: It is a bond issue in the name of the city, but secured upon specific property insufficient to secure it. Would not that operate as a fraud upon innocent holders of the bonds?

Mr. KNIGHT: When the bond states specifically in its face what the lien is upon I do not regard it as a fraud.

Mr. DWYER: A great many years ago the city of Toledo issued bonds to the extent of \$700,000 or \$800,000, or possibly \$1,000,000, to get natural gas into Toledo. Suppose they had issued bonds of the city for that and the gas plant became a failure, which it did in that case. Who would be the loser, the men who held the bonds or the city?

Mr. KNIGHT: I apprehend in a case like that, where the municipality undertook to construct a public utility of that sort and to issue mortgage bonds for the entire cost of the public utility, that the thing would take care of itself, in that those bonds would not be purchased. You will note in this provision, up to the extent of the limitation of the general indebtedness provided by law, the city may issue its general bonds, and presumptively in every case the mortgage bonds would not be for the full value of the utility itself.

Mr. DWYER: I hope the president will allow the broadest discussion to this matter, as it is one of great importance. Now suppose a city wanted to buy an electric plant already in use and issues bonds. The bonds then are a lien on the plant. Suppose by bad management on the part of the city—which is generally the case where cities undertake to manage such things—the value of that plant deteriorated—and a plant of that kind deteriorates very fast unless properly taken care of—suppose the plant originally cost \$1,000,000, and it deteriorates by mismanagement on the part of the agent of the city. Who would suffer in that case? Would the bondholders suffer that loss?

Mr. KNIGHT: I apprehend so, but the Judge omits entirely one consideration which I thought I had explained a moment ago. I apprehend as a business proposition, if your city undertook to buy the electric light plant—I speak now without a definite knowledge of whether your plant now is a municipal plant or not—assuming that it is operated by a private corporation, and the city desires to purchase it and has no margin for the issuance of general bonds at the present time

and is not able to raise any part of it by taxation at the present time, I apprehend it could not float the mortgage bonds, and therefore nobody would be the loser, because the bonds could not be issued in the first instance, and the safeguard—with apologies to the gentleman from Cuyahoga [Mr. Dory]—depends on what margin the city has left of general bonds, that a considerable portion would be provided for by the general bonds and only the remainder over beyond the amount the city could issue of general bonds would be covered by the mortgage bonds.

Mr. DWYER: From my experience of these matters I would be very slow to take any of those bonds—bonds issued by a city for a public utility, with the bonds only on the utility.

Mr. KNIGHT: Then probably you would not lose anything.

Mr. HOSKINS: We are gradually getting the question I wanted to ask answered. I would ask this, however: Is it the idea of this provision that if the city is already bonded up to the limit and desires to acquire a public utility then it can only give a lien upon that public utility itself?

Mr. KNIGHT: That is exactly the intent and exactly the provision, as near as the committee could frame it.

Mr. HOSKINS: Then if the city finds itself in that shape it would be impracticable to acquire a public utility at all—

Mr. KNIGHT: Until it reduced its general bonds so far below the limitation that there would be a margin.

Mr. HOSKINS: Would it not be possible and entirely probable that the city issuing mortgage bonds on a public utility which it might condemn and take over by condemnation proceedings might permit that property to depreciate and retrograde in value so as to destroy the mortgage security?

Mr. KNIGHT: I suppose that is possible. A good many things are possible in American cities.

Mr. HOSKINS: Do you think it possible in the market to float a mortgage of that kind, a mortgage that the city does not put its credit behind?

Mr. KNIGHT: Those whose advice the committee sought, and it has been sought rather widely, were distinctly of the opinion that that would depend altogether on how large a proportion of the original cost could be paid by general bonds, just the same proposition as confronts an individual when he undertakes to place a mortgage on his farm. It depends altogether on what relation the loan bears to the total value of the farm.

Mr. HOSKINS: If the city undertakes to acquire a public utility for the benefit of the public, why should not the city assume the entire responsibility itself and stand behind all of its own obligations the same as an individual?

Mr. KNIGHT: For the simple reason that under the present conditions if you confer upon the municipality power to go into full municipal ownership without this provision or some similar provision you practically destroy the power of limiting the indebtedness of the city, the value of which limitation we all know. That has been one of the greatest evils in connection with city government, and it was the purpose of the committee to guard against that evil and yet give the fullest practicable municipal ownership.

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Mr. HOSKINS: It was the purpose to limit what they might actually be bound for, but to leave no limit as to what the city might hog? They can take everything in the municipality—

Mr. KNIGHT: Provided they can pay for it.

Mr. HOSKINS: Or promise to pay.

Mr. KNIGHT: Or promise to pay in terms that anybody will take.

Mr. PECK: In other words, if they can catch suckers enough to buy those bonds.

Mr. TANNEHILL: If the city has a present limit as to indebtedness and is up to that and the city wants to go extensively into public utilities, your method is the only method by which they could do it?

Mr. KNIGHT: Yes.

Mr. PECK: I want to get back to this question as to general government and local self-government. In section 7 you say that "any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government." What powers do you mean?

Mr. KNIGHT: All the powers of local self-government, subject to the limitations of section 12.

Mr. PECK: You don't say anything about that?

Mr. KNIGHT: There is a specific limitation in section 12.

Mr. PECK: Point it out.

Mr. KNIGHT: Section 12: "The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes."

Mr. PECK: I am not thinking so much as to the amount, but as to the manner of doing it. Do you propose to let the city determine what shall be assessed, how it shall be assessed and who shall make the assessment and collect the assessment?

Mr. KNIGHT: Subject to general laws.

Mr. PECK: That certainly is a wide power of local self-government.

Mr. KNIGHT: The next line covers that, "subject to general laws."

Mr. PECK: You say "subject to general laws." There you come to a proposition I don't understand. What do you mean by that?

Mr. KNIGHT: General laws covering the matter of taxation.

Mr. PECK: Then you do not confer the power of local government in the matter of taxation?

Mr. KNIGHT: It does not confer any powers of local self-government beyond the limitation of the following lines, which is a limitation—I mean line 49.

Mr. PECK: There are many sorts of things that affect the general government and affect the city?

Mr. KNIGHT: Yes.

Mr. PECK: For instance, laws relating to elections—

Mr. KNIGHT: It is specifically provided that all elections shall be held under the general laws of the state.

Mr. PECK: A good provision, when you do not make any such provision as to taxes. You leave to them the power to limit, which might apply to the amount and not to the mode of collecting.

Mr. KNIGHT: It was not so intended and I doubt if the language would bear that interpretation.

Mr. PECK: I think it would be bad to confer local self-government of that sort.

Mr. KNIGHT: In the machinery for collecting taxes?

Mr. PECK: Yes, and you might think of others. The machinery for collecting taxes in this state is very perfect and so admitted by everybody.

Mr. KNIGHT: "And the committee is of the opinion that lines 47, 48 and 49 do not interfere with it."

Mr. PECK: It is not likely to be improved on and the additional power of the municipality—

Mr. PETTIT: I rise to a point of order. These gentlemen are having a little discussion among themselves—

Mr. KNIGHT: I am answering questions.

Mr. PETTIT: But the gentleman is not asking a question, but arguing a question.

Mr. PECK: We are trying to get this in shape. My talk suggests what I want an answer to. Now, as to the matter of assessment. Suppose you lay out a road through a man's land, assess his compensation at \$3,000, pay him for that road and proceed to assess back on him \$3,000 for benefits conferred. Have you not simply appropriated his property for nothing?

Mr. KNIGHT: I think that has been covered by my answers heretofore.

Mr. PECK: It was not covered by any answer I have heard.

Mr. KNIGHT: The gentleman from Cuyahoga [Mr. Dory] asked whether the word "benefited" would not be acceptable in place of the word "abutting."

Mr. PECK: That does not fill the bill with me.

Mr. KNIGHT: That is a matter of opinion.

Mr. PECK: You may think so, but it does not. This thing of paying a man for his property in estimated benefits is a different thing from paying him in solid cash. If you take his property now you are bound to pay him and you can not pay him in estimated benefits.

Mr. KNIGHT: For forty years the supreme court held otherwise under the present constitution.

Mr. PECK: They didn't so hold except in connection with improvements. They held the improvements might be taken as an offset to any damage that might be done. The man had to be paid in cash for his property, but if he claimed there were any damages to the rest of his property those damages could be offset by benefits to the property.

Mr. KNIGHT: There is no difference between us. If the language here does not accomplish what you are trying to do we are willing to make it.

Mr. PECK: I am going to propose to strike all of that out when the proper time comes.

Mr. LAMPSON: Do you not think the practice of allowing a great city to issue bonds without being fully responsible for payment would be somewhat akin to the principle of selling bonds and stocks on blue sky against which we passed a proposal the other day?

Mr. PECK: Or gold bricks?

Mr. KNIGHT: Not at all, in the judgment of the committee; and there is no analogy between them.

Mr. LAMPSON: Do you not think it would have a tendency to encourage an adventurous city administration in speculation in building up railways and public utilities so that by the time the administration gets to its end it has failed and the bonds are worthless?

Mr. KNIGHT: That is an argument instead of a

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question, but, answering the argument, the provision is this: You have to sell your bonds before anybody loses any money. You have stated a double proposition, first that it would encourage municipal speculation. This very provision, in the judgment of the committee, has the opposite tendency. If you permit unlimitedly the municipality to go into municipal ownership, without any limitation on the city, you encourage municipal speculation.

Mr. PECK: Why not let them stop when they get to the end of their credit?

Mr. KNIGHT: We think there might be a well justified desire for the municipality to go beyond that limit to the extent covered here.

Mr. PECK: Some speculative gentleman that has something in mind, is about the amount of that.

Mr. STEWART: As I understand the situation in reference to municipal indebtedness, there are two types of bonded indebtedness. One class is based on paved streets, sewers, public buildings, etc., from which no revenue is received.

Mr. KNIGHT: Yes.

Mr. STEWART: The other type is such as water works, electric lights, etc., upon which revenue is received.

Mr. KNIGHT: Yes.

Mr. STEWART: Under our present system of limitation that applies directly to that portion from which there is no revenue received; do you not see that when you are combining these two types of indebtedness, you are absolutely closing the door to any improvement along the line of paved streets, sewers, public buildings, etc.?

Mr. KNIGHT: Yes; I understand the statement, but your question is not clear. Will you put that question over again?

Mr. STEWART: I mean that when you have these two types of public improvements, after having them created, might not this kind of a situation prevail: When the people have embarked in municipal ownership will it not take away from the people their right to incur any indebtedness for the things from which they receive no revenue and do you not thereby tie them up?

Mr. KNIGHT: No; not any more than they are tied at the present time. Any municipalities that have reached the limits of indebtedness are tied up now. It is discretionary with the municipality in which direction it will go.

Mr. DWYER: In the city I represent we are selling our bonds at three and one-half per cent because of the high character of the security. They have all the property of the city back of them. We have a private electric light plant there. Now suppose the city goes to work and buys that under this arrangement and issues bonds, what rate of interest would the city have to pay?

Mr. KNIGHT: It depends on whether the city attempted to issue bonds for its full value or not. They would have to pay a higher per cent if the value were only \$1,000,000 and they attempted to issue \$1,000,000 of bonds.

Mr. DWYER: You would have the city paying two different rates for money.

Mr. KNIGHT: Quite possible, depending on the nature of the security. That is the rule of the financial world.

Mr. DOTY: If the municipality decided to buy the

electric plant because it is of benefit to the whole community how can you justify the preventing of that municipality from using its own resources that it legitimately has for the purpose of bringing into existence that lighting plant? What is the justification in cutting down, as the member from Ashtabula brought out, one-half the resources to produce a thing for the benefit of the whole city? Why should not the whole city be allowed to use that which is for its own benefit?

Mr. KNIGHT: In the first place I undertook to answer that a moment ago by referring briefly to the history of municipal indebtedness in this country. The committee was unanimously unwilling to let the municipality incur indebtedness to an unlimited extent. If you answer, why put a limit? I reply, if we put no limit each municipality is allowed to go to ruin if it wants to.

Mr. DOTY: That is not the question. Leave the limit entirely separate, although I myself do not believe in a debt limit. That does not enter into the discussion. Assume the city has no debt, but has a debt limit which allows it to issue \$20,000,000 of bonds. Under this you do not allow the city to use any part of that \$20,000,000—

Mr. KNIGHT: We allow them to use \$20,000,000 of credit.

Mr. DOTY: You use the term mortgage bonds right in here.

Mr. KNIGHT: If the gentleman will read the proposal carefully he will find there is no such provision here.

Mr. DOTY: Section 11?

Mr. KNIGHT: Yes.

Mr. DOTY: If it has \$20,000,000 margin it may issue those \$20,000,000 as general bonds for which the entire municipality is liable?

Mr. KNIGHT: But if it takes twenty-one millions, the last one million is a lien only upon the entire public utility.

Mr. DOTY: Then it is on account of my inability to understand language.

Mr. KNIGHT: Or the committee has not used proper language.

Mr. DOTY: "Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor."

Mr. KNIGHT: Read the next six or eight lines.

Mr. DOTY: "beyond the general limit of bonded indebtedness prescribed by law". But a mortgage bond is not as good as a general bond, is it?

Mr. KNIGHT: That is not the intent. It is not undertaking to be so secure—

Mr. DOTY: But is a mortgage bond—

Mr. KNIGHT: Just a moment. You and I are of the same opinion, only you read the thing one way and the committee means it another way. What the intent of the proposal is—and if it does not so provide it is the fault of the language and not done wittingly—the intent is if there is a margin of \$20,000,000 the city of Cleveland may use the entire \$20,000,000 for the purpose of constructing or acquiring the electric light plant. Further than that, if it costs \$25,000,000 to construct that plant, the last \$5,000,000 can only be raised upon mortgage bonds, which mortgage bonds shall constitute a lien upon the entire public utility.

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Mr. DOTY: I can see out on the latter part, but not on the first part, where you say to raise money for such purposes you can issue mortgage bonds.

Mr. KNIGHT: Read a few lines further, read through the section.

Mr. DOTY: "provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality".

Mr. KNIGHT: Go on, you are doing first rate.

Mr. DOTY: "But shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

Mr. KNIGHT: Now the security for the last five millions—

Mr. DOTY: I can understand that. That is plain. I am talking about the security for the first twenty millions.

Mr. KNIGHT: The general liability of the city.

Mr. DOTY: It does not say so. It says mortgage bonds.

Mr. KNIGHT: Let us go back to line 101. It may issue bonds beyond the general limit. Then up to the general limit it issues bonds for general public improvement, general bonds, and this simply confers additional power to go beyond that, but in going beyond it the additional bonds shall be secured by mortgage upon the utility alone and upon nothing else.

Mr. ROCKEL: This entire section is a section of limitation.

Mr. BROWN, of Lucas: Suppose a city is up to its bonded limit, as Cleveland is. What is your opinion as to whether the mortgage bonds would be readily saleable?

Mr. KNIGHT: My opinion is where a municipality undertakes to acquire a public utility and it has no power to issue general bonds because up to the limit, it would not be able to float the bonds.

Mr. BROWN, of Lucas: So that this provision in that sort of a case automatically defeats municipal ownership?

Mr. KNIGHT: The limitation is a limitation to that extent.

Mr. BROWN, of Lucas: It makes it impossible for the city to acquire title because it has not money to pay.

Mr. KNIGHT: Yes.

Mr. HARRIS, of Ashtabula: Reversing the figures used in the colloquy with Mr. Doty, with respect to issuing twenty millions of bonds and having an indebtedness of five millions over, suppose they could issue within the limit of five millions and the other twenty millions must be secured by the mortgage bonds and the lien on the utility itself, then in the event the property representing the loan depreciates is it fair to the man whose property has been appropriated to require him to have his redress only as a lien?

Mr. KNIGHT: What do you mean by his property appropriated?

Mr. HARRIS, of Ashtabula: The man from whom you got the property.

Mr. KNIGHT: You pay him in cash, not in bonds.

Mr. HARRIS, of Ashtabula: Then the people who buy the bonds—

Mr. KNIGHT: Where there is on the face of the bond a clear statement of what the mortgage covers, and in the mortgage a clear statement of what the bond covers, both sides are amply protected. I do not believe that we can in a constitution or by law accomplish the rather difficult feat of making men who have not ordinary business sense have extraordinary business sense.

Mr. LAMPSON: Will the gentleman yield for a question? Do you think that any reputable bond house or any honest man would recommend that kind of a bond to a woman or person unacquainted with such matters?

Mr. KNIGHT: It would depend on the proportion of the value of the utility that was covered by the mortgage bond. Neither you nor I would under any circumstances recommend a person with a small amount of money to invest to take a real estate mortgage equal to one hundred per cent of the supposed value of the farm. We would recommend the taking of a mortgage where there is say fifty per cent of the value of the farm or any such matter. I see no reason whatever, nor did the committee see any reason whatever, why, when the municipality undertakes to issue mortgage bonds of even fifty per cent of the value of the utility, including a franchise, the terms and conditions of which are described in advance and are part of the mortgage contract, and the total face value of the mortgage is a reasonable percentage of the value of the utility—I know of no reason under the canopy why a reputable bond house or a reputable individual might not and would not recommend such mortgage or such a bond under the circumstances named. In fact, we are advised in our committee by bond houses that they would do that thing.

Mr. LAMPSON: If you would allow me, I would say as a person who has been associated in the same office with a firm that is dealing in municipal and state bonds all the time, that I would not permit such a thing to be done. I do not believe that any reputable bond house would do it.

Mr. KING: Is it not true that the purchaser of a government bond issued by or under governmental authority takes it always subject to the conditions prescribed by the law under which it was issued regardless of what may be printed upon its face, and this law expressly exempts the municipality from liability?

Mr. KNIGHT: That is true as to the latter part, and as to the first part I have no knowledge.

Mr. DWYER: Suppose a city buys an electric light plant which has a franchise from the city. The moment the city buys it that franchise merges. The city gave the franchise and when it gets the property back the franchise comes to it and the whole thing is merged in the city. Is not that so?

Mr. KNIGHT: I concede that.

Mr. DWYER: Then there is no franchise: it becomes merged and is all in the city.

Mr. KNIGHT: The latter part of the section takes care of that.

Mr. DWYER: It becomes the city's property.

Mr. KNIGHT: The latter part of the section says that whenever a municipality acquires such a public utility and desires to issue its mortgage bonds, it must

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state in advance the terms upon which, in a case of foreclosure, the bondholders shall acquire not only the physical property but also a franchise under the terms of which they may operate the property when it comes into their possession by virtue of foreclosure. It is a new franchise dating from the time of foreclosure and has no reference to any terms or conditions of any franchise existing before the thing came into possession of the city.

Mr. DWYER: Now let us reason that out in a circle —

Mr. KNIGHT: There is not any circle.

Mr. DWYER: Wait until I get through. Say a private electric plant is in the city and the city buys that plant by condemnation or in some other way and it is city property.

Mr. KNIGHT: Yes.

Mr. DWYER: There is a bond issue put on that.

Mr. KNIGHT: Yes.

Mr. DWYER: Now suppose the indebtedness is not paid, what then? There will be a foreclosure?

Mr. KNIGHT: Yes, sir.

Mr. DWYER: And it sells for what it brings?

Mr. KNIGHT: Yes, sir.

Mr. DWYER: There is no franchise. It was merged, and therefore, when you sell it, you sell it without a franchise. I am talking about the legal proposition.

Mr. KNIGHT: Are you through?

Mr. DWYER: Is not that the fact?

Mr. KNIGHT: No, sir; it is not. If you will allow me to make a statement I can dispose of it. I do not want to take the time of the Convention repeating so much. I presume if you had been listening to my last explanation on that line you wouldn't have asked that question.

Mr. DWYER: I am illustrating where it leads to.

Mr. KNIGHT: I would like to answer the question if you would let me.

Mr. DWYER: Let me reason it out. Let me state the facts submitted to the Convention. Suppose the city buys an electric plant that has a franchise for twenty or thirty years. The moment the city buys that by condemnation or purchase the franchise is merged —

Mr. KNIGHT: Good.

Mr. DWYER: — into the superior title.

Mr. KNIGHT: We are agreed.

Mr. DWYER: Now, in course of time the interest is not paid on the bonds issued for that purpose. The men holding the bonds have to foreclose, and what do they get? No franchise at all, and they have to make terms with a city to get a franchise. Is not that so?

Mr. WINN: I rise to a point of order.

Mr. DWYER: What is the point of order.

Mr. WINN: I make the point of order that the member from Montgomery [Mr. DWYER] insists upon asking questions and will not permit answers, resulting in great confusion. Those questions have been asked over and over again and the speaker has not had any opportunity to make an answer.

Mr. DWYER: I will take two minutes and I will be through. I was reasoning this out on the lines of the proposal.

The PRESIDENT: The member from Montgomery has the floor.

Mr. DWYER: Just give me two minutes. I appreciate the position of the Professor. But I think it is clear that if the property is foreclosed the purchasers get the property and there is no franchise, the franchise is merged. Now he has to get a new franchise from the city; and suppose he gets a new franchise from the city. In the course of four or five years the city takes a notion to condemn that plant again, and the city may do it the second time and may go through the same process right straight along. That is the whole thing.

Mr. KNIGHT: I would like to answer the question if the gentleman will kindly listen. In line 105 it is specifically stated that a part of the property covered by the mortgage in the first instance is a franchise which shall date from the time of the foreclosure, the full terms and conditions of which are made and announced and determined before a single bond is issued, and that franchise, which will become operative whenever there is a foreclosure, is as much a part of the property covered by the mortgage as is the physical property itself. Therefore, when the mortgage is foreclosed those who foreclose it and who acquire title under the foreclosure have not only acquired the physical property of the plant, but they have acquired a franchise the full and definite terms of which are described in the mortgage before the mortgage was put to record and before a single bond was issued, and which can not be modified in any jot or tittle by the municipality after the foreclosure. Therefore, the holders of the bonds know in advance, before they purchase or acquire a single bond, just exactly the terms upon which they may operate that public utility in case it ever becomes necessary to foreclose the mortgage. There is no juggling about it. They know beyond any peradventure of doubt just how long they can operate and they know exactly on what terms and conditions.

Mr. LAMPSON: Do you think that such a franchise in the hands of miscellaneous bondholders would be very valuable as against a hostile municipal administration?

Mr. KNIGHT: I do not see what the question of the hostility or friendliness of the municipal corporation would have to do with it.

Mr. LAMPSON: Suppose the bonds were scattered around the country in the hands of small holders, widows and others, in sums of \$500 and \$1,000. Of what practical value would that franchise be to that class of bondholders as against an administration that might be seeking to get control of the franchise at a low price for the benefit of some of their number or for their city?

Mr. KNIGHT: That franchise is no more subject to subsequent control of the municipality than any franchise under which any municipality is operating any utility. It can not be interfered with.

Mr. LAMPSON: Suppose the bondholders do not know how to use it?

Mr. KNIGHT: Then they have the physical property, the entire public utility, plus the franchise —

Mr. LAMPSON: Which is worthless to them.

Mr. KNIGHT: Are you through?

Mr. LAMPSON: Yes.

Mr. KNIGHT: They have not only the physical property, but they have the franchise, which may run

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for twenty years, and the physical property, which they can operate under this franchise. I do not suppose it is necessary to assume that the bondholders themselves must operate the plant. They have the property, which has value and a decided added value because of the franchise, to-wit, a certain thing with which the municipality can not interfere during the life of the franchise.

Mr. TALLMAN: Under the foreclosure of the mortgage and when the physical property and franchise are sold, is not the prior bondholder relegated to his share in the proceeds of the sale and the widow or anybody else has no longer any interest in the plant or the bonds which he has theretofore bought?

Mr. KNIGHT: Any bondholder has the option to take his or her share of the property covered by the bonds in such form as may be determined, that is, upon partition of the property or upon partition of the proceeds, but as a business proposition we know that under those circumstances a committee of the bondholders takes charge of the whole matter in the interest of the bondholders. It is not necessary to assume that the franchise of the property is worth anything at all.

Mr. TALLMAN: She might take a bond in the new corporation that buys the plant or she might take her interest in money, as she chooses.

Mr. KNIGHT: No question about that part of it.

Mr. BROWN, of Lucas: Did the committee in making these bonds a general liability of the city consider an automatic sinking fund with a fixed or varying tax rate?

Mr. KNIGHT: I am not sure of the last proposition, but they did consider making it a general liability of the municipality and were unanimously against it as to the specific feature you have named. I know that was discussed, but I am not certain of the attitude of the committee on that, but this whole question of general liability was discussed.

Mr. BROWN, of Lucas: If a sinking fund were created and a tax rate made mandatory, would not that be a check against loss?

Mr. KNIGHT: It might be.

Mr. BROWN, of Lucas: Does not that automatically defeat municipal ownership in a large city?

Mr. KNIGHT: It depends on the present bonded indebtedness.

Mr. BROWN, of Lucas: Was that what the committee wanted to do?

Mr. KNIGHT: No, sir; not at all. Now, section 12 has in part already been discussed by the Convention in connection with section 10 and section 11:

The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

This last clause is especially desirable in order that there might be full and adequate public knowledge of the condition of the municipality operated public utility, and

it is practically a continuation or embodiment of what is now provided by the statutes.

Section 13 provides "All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general laws", and provides a basis and per cent for petitions required.

Section 14 is subject to modification to this extent: That it may be entirely removed or there may be added to it such a statement as will avoid any possible conflict between the new proposed article XVIII and the existing sections of article XIII touching private corporations and which have been incorporated in one or two other features as applicable also to municipal corporations.

Mr. KRAMER: I want to ask a question or two to find out how far the municipalities will be allowed to go into business. Take Cincinnati. It has three hundred and fifty miles of street railway. Suppose Cincinnati should take over that three hundred and fifty miles of street railway and suppose they take in \$2,000,000 a year. Does this section mean that the city of Cincinnati could go outside of Cincinnati with a railway to the extent of one hundred and seventy-five miles of inter-urban roads, or does it mean Cincinnati could go outside a sufficient extent to take in \$1,000,000?

Mr. KNIGHT: It was intended that the mileage outside of the city in the case of transportation service could not be in excess of one-half of that within the city itself. In the case of water supply it may supply outside of the city its surplus, but in no event to exceed one-half of that actually supplied to the people of the municipality, and the same way with lighting service.

Mr. KRAMER: Take the telephone service. To what extent could the city go out? It is easy to see as to the water supply and as to the electric light service, etc., but take the telephone company or electric railway company and how are you going to decide to what extent the city may go outside of its limit to do business?

Mr. KNIGHT: I just answered about the railroad. Beyond all question it would be on the basis of mileage.

Mr. KRAMER: Well, take the telephone.

Mr. KNIGHT: As there are no municipally owned telephone companies in the state of Ohio at the present time there are three or four possible bases on which that could be done, either fifty per cent of the number of calls or fifty per cent of the telephones, or possibly a length of line.

Mr. KRAMER: Would not that give any municipality in Ohio the right to maintain lines all through the state because of the vast amount of service done in the city compared with the service outside of the city?

Mr. KNIGHT: Possibly, though I doubt it. I might ask a question in turn — what of it?

Mr. KRAMER: Would it not be a whole lot better to limit the municipality in its ownership to such things as water supply and electric light supply and not allow it to go out into business — the interurban electric railway and the telephone service?

Mr. KNIGHT: If we want to stand still, yes — if we want to cut off the field of municipal activity; but a majority of us are not of that opinion. We already have that power on one or two things and the distinct idea attempted to be stated at the very beginning — the distinct idea underlying the whole proposal, the idea, as we believe, of the present time and the future and the

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thing desired by the municipalities of the state of Ohio, is the opportunity when they please to go into the ownership and control and operation of public utilities, with the limitation upon the power to burden their people with taxes and debt as indicated by the latter provisions of the proposal.

Mr. KRAMER : Will the legislature have to do something in order to make section 6 available, or does section 6 work itself, and if section 6 works itself, without any legislation whatever, what do you mean by the fifty per cent? You say it might be on the service rendered or it might be what calls are made or it might be on the income. Does the legislature have to do something in order to determine to what extent the city can go?

Mr. KNIGHT: As to the basis of determining the fifty per cent there are only two services which you mention on which there might be any doubt. One is telephone transportation service, and there is nothing in this to debar the legislature from enacting a statute as to that.

Mr. WEYBRECHT: Referring back to section 6, is it intended in that section to prevent municipalities from owning and selling those products at less than cost?

Mr. KNIGHT: Not that I know of.

Mr. WEYBRECHT: It could do that under this provision?

Mr. KNIGHT: I suppose so, just as a private corporation can if there is any reason for doing it. It places the municipality upon the same basis as a private corporation with reference to privileges.

Now I am compelled to apologize for taking up so much time. I was not attempting to make an argument, but simply to tell you just what, in the judgment of the speaker, the proposal means.

Mr. HARRIS, of Hamilton: Mr. President and Fellow Delegates: The chairman of the committee on Municipal Government finds himself in an embarrassing situation. When he left here Thursday it was with the distinct understanding that the proposal on municipal government would be taken up Tuesday morning. He does not know of any member of the committee who had a different understanding. You can appreciate his surprise and amazement on coming here this evening to find that the discussion of the proposal had been taken up this afternoon in his absence.

Mr. DOTY: I would like to ask a question.

Mr. HARRIS, of Hamilton: The speaker does not yield at present. He asks the indulgence of the Convention until he makes the few statements that he is now able to make.

I do not know — not having been here during the discussion — whether proper recognition has been given to the part that Judge Worthington played in our deliberations. If it has not, I now wish to acknowledge in behalf of the committee the deep sense of obligation which the committee is under to Judge Worthington. He was not a regularly appointed member of the committee. He came into the committee at my request, and on the vote of the committee he was made an honorary member. I knew his legal knowledge and his great interest in municipal government. I knew that he would be a valuable member of the committee if we could get his services. I feel that his illness is due in a great part

to the amount of work which he gave to our proposal, and it is no more than proper that public acknowledgment of his labors should be made on the floor of the Convention.

In listening to the discussion that we have had since seven o'clock this evening, it occurred to me that possibly proper recognition has not been had of the great difficulties under which your committee labored. There were two conflicting forces in the committee, those whom we shall call "radicals" — without any desire, of course, to be offensive — who demanded that the fundamental basis of this proposal should be complete sovereignty in the municipality, independent of the state. There were others who thought they were progressive, but who would not accept that doctrine. They could not see how there could be a sovereignty within a sovereignty. So the first clash was between those who demanded all powers for the municipality, practically without reference to the state, and those who demanded that the state should be supreme.

It is but fair to say that the most radical in the committee, with a fine sense of their obligations to the Convention, made very important concessions, and there was at no time anything but unanimity in the final consideration of every section. If you will read this proposal carefully you will see that the state is dominant. The great powers of taxation, the great police power, and the great powers of education and of health, all are held with a firm hand by the state. You may liken the power of the state to a bank note, through which the silken threads run strong and firm giving pliability but not permitting disintegration. That is the fundamental underlying principle of the proposal which you have to consider. The state is dominant in those principles in which, in the judgment of the committee, it should be dominant. Municipalities are given the greatest possible freedom, all of course protected and hedged in by these general fundamental principles.

Section 6 of article XIII of the present constitution provides: "The general assembly shall provide for the organization of cities, and incorporated villages, by general laws". As has been ably set forth by one of the best lawyers in the state of Ohio, the general assembly has construed this as a mandate to provide in detail for the organization of municipalities. Now, that rule is completely overthrown in the present form of this proposal. It seems to me that this is of such vital interest and importance that perhaps going over it a second time will not do any very great injury. It may test your patience a little, but just consider that you are legislating on the most vital subject for all the people of the state of Ohio living in cities and villages, and those not living in cities and villages at present, but in places which may later become cities and villages. My reason a week ago, when I first presented the proposal to the Convention, in not asking that it be put ahead of its place on the calendar, was for the purpose of giving every member a chance to study the proposal, and I did not think it ought to be hurried. The more you study it, the more discussion we have about it, the better in the long run it will be, and if defects can be found in it, as the result of careful consideration, the remedies will also be found. With the exception of two clauses, I will say that every word in every section was carefully weighed, not only

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with reference to its meaning, but in its relation to everything else. That was done by the lawyers in the committee, and in them I include the veteran, Professor Knight, who lent his scholarship to our efforts, without any thought of the time we asked him to devote to it. All of the phrases, and all of the words, and all of the legal interpretations, were considered by this most competent to do it. On a little clause of four words, Judge Worthington went through I don't know how many decisions of the state of California. I know in his desk there is a memorandum of something like forty or fifty decisions of the court, many of which he considered carefully, and gave our committee the benefit of his labors, and it was because of his judgment on that proposition that we discarded those words, although urged very strongly by the Municipal Government League, represented by Professor Hatton and Mayor Baker and others in Cleveland, to retain them. I mention this fact simply to give you an idea of the care that was taken in the consideration of every word, and the committee at one time thought that they would give you as nearly a perfect instrument as the intelligence of the committee could furnish. Now I take the liberty, with this explanation, of again calling your attention to certain sections, and asking you always to bear in mind these two propositions; firstly, that the state must be dominant, and secondly, that it is made so in those things in which the majority of the committee thought the state ought to be dominant.

Section 1 seems to be legislative. It is a division of municipalities into cities and villages. It was thought wise to make this now a constitutional provision. For sixty years this present division of municipalities into cities and villages has been found satisfactory by the people, and in order to take away the temptation from the legislature at any future time, during the life of the constitution, to change those lines of demarkation this was incorporated in the constitution.

Section 2. Now, I call your attention to the fact that our proposal allows for three methods of organizing municipalities:

1. As at present under general laws.
2. Under general laws, plus special laws.
3. By a charter commission.

It is believed by your committee, if the legislature is wise, there will be very few charter commissions named to frame special charters. There will be no occasion for it. Let me illustrate how your committee figured this out. We will suppose that the city of Cincinnati says to the legislature, "The general laws now applying are very good in the main, but there are certain conditions applying to large cities not now covered and which cannot be covered by general laws, we submit half a dozen special laws, and if you will enact them, we shall be glad to work under the general laws and the special laws." The legislature after careful scrutiny sees the wisdom of it and enacts those special laws. But those special laws cannot immediately be placed in effect in the municipality of Cincinnati. They can only become law there if that municipality adopts them by a referendum vote.

Now the city of Cincinnati, we will say, adopts these special laws by referendum vote. The city of Cleveland, the city of Columbus, the city of Toledo, the city of

Youngstown, and a dozen other large and prosperous cities in the state find out that those special laws, or some of them, will suit their case exactly, so they by referendum vote adopt such special laws as suit their peculiar conditions and needs, and work under the general laws, plus such special laws as they have adopted. The great advantage of that is that all temptation is taken away from the legislature to enact special laws in the interest of any political party, or for any particular reason, or for any special interest, because the enactment of the special law by the legislature will do no good until the municipality has accepted and adopted it by a referendum vote. We consider that of great importance, and there was some discussion in the committee and some objection in the beginning because we insisted on making it mandatory for each municipality to adopt the special laws before it could act on them. We were told that we were increasing the number of elections and increasing the expense of elections. Our conclusion was that the hardship caused by the number of elections and the expense of the elections was far outweighed by the general good done to the community for it to become educated on the special law, for a referendum vote means discussion; hence this was made mandatory.

The mere fact, as I tried to explain to you, that it is a limitation on the general assembly, shows that the incentive for an abuse of those powers is taken away from the general assembly.

Of course, you will readily see, as a municipality expands, it would naturally take advantage of certain special laws which would have been sought for by the larger municipalities, but which the smaller municipalities would not need; the elasticity enables the smaller municipality to act at any time under the special law and the referendum election had thereunder.

Section 3 gives municipalities such police, sanitary and other similar regulations as are not in conflict with general laws affecting the welfare of the state as a whole. I assume there is no disagreement in reference to the enactment of the "local police, sanitary and similar regulations." I understood some days ago that there was considerable dissatisfaction with the words "affecting the welfare of the state as a whole." In justice to myself, as chairman of the committee, because I had distinctly stated when I assumed that position—and the report was given to the newspapers, so as to give it the widest publicity—that so far as I could control, the wet and dry fight should not be put into the municipal government proposal, I wish to state that we were absolutely neutral, and I believed we had succeeded until my attention was called to that phrase, "affecting the welfare of the state as a whole." That phrase was put in at the very urgent request of one of the most radical homerulers I ever met, namely, my colleague from Cincinnati, Mr. Starbuck Smith. He intends to leave a sick wife tomorrow morning to come to this Convention and explain his reasons for the use of those words, because I had called his attention to the necessity for so doing. Mr. Smith had repeatedly urged upon us that the limitation of the words "general laws," was most dangerous. Now, bear in mind that he is a radical homeruler. He believes in independent sovereignty. He was as radical as the Cleveland delegates, and that is saying a great deal, and he took this line of argument—how much

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merit there is in it, I do not know, but I do believe he is absolutely sincere: He stated that the general assembly might enact any number of laws that really fitted individual communities, and yet call them general laws, when as a matter of fact they would not be general laws in their application and effect, and he insisted upon those qualifying words going into this section 3. We made that concession the last evening, at the very last meeting held by our committee before instructions were given, or rather at the time instructions were given, to report out the proposal. I regret that he is not here to defend his position, but if he gets here tomorrow I am satisfied he will be able to do so.

In view of the dissatisfaction on the part of a certain element of the Convention to those words, and the insistence on the part of another element in the Convention that they should be there, it seems to me that the Convention may properly, and ought to, consider fully and carefully the merit of those words, and if there be anything "concealed in the woodpile," the Convention will know what to do. As chairman of the committee I do not feel justified in accepting their elimination as a voluntary act on my part, notwithstanding the fact, as I said, and as every member of the committee knows, they were inserted at the last meeting the committee held, when they instructed the chairman to report out the proposal, and use the words "local police, sanitary and other similar regulations, as are not in conflict with the general laws, affecting the welfare of the state as a whole." It was urged, and I believe properly, that it would in principle reverse the general law in the state on the subject, namely, that the law now presumes that no function not distinctly enumerated by the general assembly can be exercised by the municipality. This section, if I am correctly informed, would reverse that principle entirely. It would assume that all functions not specifically denied—local functions I refer to—could be exercised by the municipality, and, of course, that is the essence of home rule.

Section 4 confers power to acquire through purchase, lease or construction any and all public utilities, and the power is given to condemn for public use any existing private utility.

Section 5 covers the method of procedure under section 4. Of course it is inconceivable to imagine home rule without carrying with it the right of municipal ownership, and that without any regard whatsoever as to the individual opinions as to the advisability of municipal ownership, but home rule without the right of municipal ownership is the empty husk; the kernel has been removed.

Section 6 gives to the municipality the right to sell an amount of its surplus product or service in any public utility equal to fifty per cent of that supplied to the inhabitants of the municipality.

Now, we took a great deal of time in getting the correct phraseology for this section. The members will recall how every word was weighed, what its effect was in relation to what we had in mind, and it was found an absolute necessity in order to make municipal ownership feasible, because if you were going to stop a traction line at the city limits frequently you might as well have no traction line, but, to prevent that, the limit of fifty per cent excess product or service was determined

on, which seemed very reasonable. Of course, the question asked by Mr. Kramer as to how that fifty per cent would apply in a public utility like a telephone, would be a question for the courts to determine. The question of supplying water would be a very similar one. The question as to supplying fifty per cent of transportation might be and probably would be a question of interpretation. Would the unit be the number of miles occupied by the transportation service in the city, or would the unit be the horsepower generated? We recognize that these are things that must be left to the interpretation of the courts.

Section 7 gives the right to any municipality to adopt a charter, and I would ask you to bear in mind that no charter could grant or give one iota of power additional to that which the municipality would have under general and special laws without any charter. A charter might give the municipality a commission form, or any one of a dozen different forms of government, but it could not and does not give increased powers over those granted to any municipality not adopting a charter. The object was not to encourage charter government, but to give the city the right to exercise it if conditions justified.

Section 8 is the method of procedure under the charter. You will notice that throughout the proposal there is a great deal of what is called legislative enactment. This is absolutely necessary. We start out with the proposition that the municipality shall be given home rule. We did not want to curtail or dwarf or deform that cardinal principle in any manner by leaving to the legislature the right to make the form of procedure, for the legislature might be very slow about it and do any number of foolish things and therefore in the proposal itself are embodied those legislative features absolutely proper and essential for the rational carrying out of the scheme of government.

Section 9 provides the method of amendment to the charter, which, of course, is exactly the same as the method of adopting the charter.

Section 10 is something that is entirely new in American municipalities. There was not brought to my attention, nor do I believe to the attention of any member of the committee, a single instance of any American city having what we call "excess condemnation." It has been for fifty years one of the agencies of municipal government or power in London, Paris and Berlin. I have received from Mr. Herbert Swan, of New York City, who I believe is the leading authority in America on excess condemnation, the advance two or three hundred pages of his book on that subject, and I gave the committee the benefit of a resume of it. He showed by statistics from those great cities the large sums of money which the cities had made by reason of the use of excess condemnation. It ran up into the millions. I think London and Paris showed something like \$30,000,000 to 40,000,000 of profit in a period of fifty years by the use of excess condemnation. Broadly it is this: When a municipality finds it necessary to extend a street or acquire land for park purposes, it may also find it advisable to condemn and secure by purchase other property adjacent to or in the neighborhood of the proposed thoroughfare or park lands, which in the opinion of the municipal authorities will be likely

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to enhance very materially in value within a few years on account of the improvement contemplated. Of course there is danger of speculation in land on the part of the municipality to guard against which your committee attempted to make as reasonably difficult as it was reasonable to do, at the same time leaving it a practical working proposition by making the limitation of bonds for the payment of this "excess condemnation" conditioned upon certain things stated in the proposal, the limitation of bonds and the method of paying for the property.

Section 11. I call your attention to lines '95 to '98, which should have been a separate section. It has no bearing whatsoever upon the remainder of section 10, and it was an oversight on our part that we did not make it a separate section. Those lines revolutionize the existing laws in the state of Ohio on this subject. It was a matter of great concern to me, because some of the legal members of our committee were strongly opposed to the acceptance of the principle embodied in this section. So in order to get a clear understanding, and thinking it would be not only of interest to me, but of greater interest to the lawyers in the Convention, I went to my own attorney and asked him to write a short brief on the subject, and to furnish some leading authorities. I shall now read it to you because I think you will find it very interesting. I am now referring to the proposition on reversing the present law in the state of Ohio on the subject of appropriating private property for public uses. I want to say before reading this letter that I referred it to Judge Peck and Mr. Halfhill, whose opinions as lawyers I know will be acceptable, and they both approved so thoroughly of it, that I think I am justified in submitting it for your consideration:

Office of
SIMEON W. JOHNSON
Attorney-at Law
Cincinnati

HON. GEORGE W. HARRIS,
*Chairman of Committee on Municipal Government,
Constitutional Convention, State House,
Columbus, Ohio.*

DEAR SIR:—At your request I have given consideration to the following provision as adopted by your committee:

"Any municipality appropriating private property for a public improvement, may provide money therefor in part or in whole, by assessments on abutting property not in excess of the special benefits conferred upon such abutting property by the improvements."

The above provision radically changes the existing law on the subject in this state. *Chamberlain v. City of Cleveland* was decided by the supreme court of Ohio in 1878, 34 O. S. 551. That case involved the opening of a street and an assessment for the land ordered to be appropriated for that purpose.

In the language of the court in a later case, *Dayton et al. v. Bauman*, 66 O. S. 379, 394:

"The case of *Chamberlain v. Cleveland* was decided in the light of *Cleveland v. Wick*, 18 O. S. 303, and the question as to whether money could

be raised by assessments to pay for private property taken for public use was not raised and was not argued or decided but was conceded by counsel and assumed by the court."

The bar of the state, however, regarded the *Chamberlain* case as holding in effect that an assessment could be properly made against abutting property for the cost of appropriating the necessary land for opening a street, and many ordinances were passed making such assessment. This continued to be the course until 1902, when the case of *Dayton et al. v. Bauman*, 66 O. S. 397, was decided. In that case it was held:

"The limitation of section 19 of article I of the constitution on section 6 of article XIII as to assessment goes to the full extent of prohibiting the raising of money directly or indirectly by assessment to pay compensation damages or costs for lands appropriated by the public for public use."

Since 1902 in all municipal corporations the public has paid for the land appropriated for a public use, such as streets, etc. Is the amendment proposed, however, in violation of the fourteenth amendment to the federal constitution providing that no state shall deprive any person of property without due process of law or deny to any person within its jurisdiction the equal protection of the laws? In other words, to adopt the reasoning of our supreme court in the *Bauman* case heretofore cited, would a taking of private property for a public use, such as streets, confer any special benefits whatever upon the owners of abutting property? If not, then no assessment could be enforced. If no benefits were conferred then the levying an assessment for such an improvement upon abutting property would be the taking or the confiscation of such property to the extent of such assessment.

It was so held in *Norwood v. Baker*, 172 U. S. 269, decided in 1898, wherein the supreme court of the United States said:

"The exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking under the guise of taxation of private property for public use without compensation."

The decision in the *Baker* suit led to the bringing in the federal tribunals of hosts of assessment suits invoking the decisions of these courts on all possible phases of assessment law.

In *French v. Barber Asphalt Paving Co.*, 181 U. S. 321, 344, the United States supreme court in the year 1900 explained the *Baker* case as follows:

"This array of authority was confronted in the courts below with the decision of this court in the case of *Norwood v. Baker*, 172 U. S. 269, which was claimed to overrule our previous cases, and to establish the principle that the cost of a local improvement cannot be assessed against abutting property according to frontage unless the law under which the improvement is made, provides

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for a preliminary hearing as to the benefit to be derived by the property to be assessed.

But we agree with the supreme court of Missouri in its view that such is not the necessary legal import of the decision in *Norwood v. Baker*. That was a case where by a village ordinance, apparently aimed at a single person, a portion of whose property was condemned for a street, the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the cost and expenses of the condemnation proceedings, was thrown upon the abutting property of the person whose land was condemned. This appeared both in the court below and to a majority of the judges of this court to be an abuse of the law, an act of confiscation and not a valid exercise of the taxing power. This court, however, did not affirm the decree of the trial court awarding a perpetual injunction against the making and collection of any special assessment upon Mrs. Baker's property, but said:

'It should be observed that the decree did not relieve the abutting property from any liability for such amount as could be properly assessed against it. Its legal effect, as we now adjudge, was only to prevent the enforcement of the particular assessment in question. It left the village in its discretion to take such steps as were within its power to take either under existing statutes or under any authority that might thereafter be conferred upon it, to make a new assessment upon the plaintiff's abutting property for so much of the expense of the opening of the street as was found upon due and proper inquiry to be equal to the special benefits accruing to the property. By the decree rendered the court avoided the performance of functions appertaining to an assessing tribunal or body, and left the subject under the control of the local authorities designated by the state'.

In the same year and in the same volume of reports the supreme court of the United States passed upon many assessment cases. Some of them are as follows: *White v. Davidson*, 181 U. S. 371; *Tonawanda v. Lyon*, 181 U. S. 389; *Webster v. Fargo*, 181 U. S. 394; *Cass Farming Co. v. Detroit*, 181 U. S. 396; *Shumate v. Heman*, 181 U. S. 402.

In *White v. Davidson*, supra, the federal supreme court held that no provision of the federal constitution was violated by the making of an assessment by the District of Columbia for the opening and extension of a street, which assessment was made under an act of Congress, providing that of the amount found due and awarded as damages for and in respect of the land condemned for the opening of said streets, not less than one-half thereof should be assessed by the jury in said proceedings against real estate situated and lying on each side of the extension of said streets, and also on the adjacent real estate which would be benefited by the opening of the same.

It is my opinion that the proposed provision is

not in any way in contravention of the constitution of the United States and would be sustained by federal courts. Should there not, however, be a limitation upon the amount of the assessment authorized to be made for the appropriation of private property to a public improvement? It may be urged that such a limitation should be left to the legislature and not made the subject of a constitutional provision; but in a practical making of assessments it has been found that legislative enactments limiting assessments to special benefits have been in effect ignored by the action of municipal legislative bodies in placing the entire cost of the appropriation upon the abutting property by the front foot, although the assessing ordinances recite that the assessments have been made by benefits.

As our supreme court now holds that the taking by appropriation of private property for a public use confers a public and not a private benefit, it would seem that the clause in question in effect declares that such taking of private property confers a private benefit. This may be true in view of the fact that the making of the improvement will enhance the value of the abutting property, but there can be no doubt that the public in the long run gets an equal benefit from such improvement.

The public, therefore, should pay fifty per cent of the cost of the appropriation, and I would therefore suggest an amendment covering this point of view. I would also suggest that the assessment for the appropriation of private property should not be confined to the abutting property alone, but may be made upon the property adjacent thereto, or in the immediate neighborhood of the public improvement, giving authority to the municipal authorities to levy such assessments upon the abutting, adjacent and other property in the district affected by the improvement, in such proportion as the municipal authorities may, in their discretion, determine.

Very respectfully,

SIMEON M. JOHNSON.

Mr. WATSON: Will the gentleman yield for a motion to recess?

Mr. HARRIS, of Hamilton: It will not take me more than ten minutes to finish.

Section 11, on the method of raising funds to pay for public utilities, has created a great deal of discussion. I believe that the method which your committee has suggested will be found most practicable and equitable, and at the same time the greatest possible safeguard to prevent extravagance and debauchery in the construction and leasing or purchasing of public utilities. In my judgment it gives the municipality all the power it ought to have. It gives it no more power than it should have; and at the same time the limitations which your committee have put upon it are to greatest possible safeguards to prevent the squandering of public funds in the reckless building or purchasing of public utilities. Starting with this theory, it would necessarily follow that the general powers of taxation are held firmly under

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the control of the state. The state has an interest in seeing that the municipalities should not become bankrupt, because the credit of every other municipality might be and probably would be affected by the bankruptcy of any large municipality. So the state says, "You may build, may buy public utilities, but our limitations are at present two and a half per cent of the tax duplicate without a referendum vote, and two and a half per cent additional by a referendum vote." Now, the moment that you have reached the maximum limit of five per cent of the tax duplicate for general bonds unless you can persuade the general assembly to increase the limit, then your credit must be based on the value of the utility which you propose to construct or purchase, and every buyer is cautioned that those special bonds issued against that utility have for security only that utility and by a franchise limited to twenty years only. So it seems to us that it was a most wise provision to make this limitation, and it is all that the municipalities have a right to expect or demand. If the municipality is foolish enough to use up all of its credit by general bonds for the purchase or construction of public utilities, and it has nothing left for the building of new sewers, the building of new streets, or the purchasing of parks, etc., then the municipality must suffer for its indiscretion in not making due allowance for these other necessities that every municipality demands.

The objections I heard raised while Mr. Knight was on the floor, did not appeal to me as sound, in either public morals or in sound finance.

Mr. LAMPSON: Will you yield for a question?

Mr. HARRIS, of Hamilton: Will you wait a few minutes until I get through? Then I shall be glad to answer any questions. My remaining notes are very few, and I want to get my views as chairman of the committee on Municipal Government before the Convention.

Section 12 gives authority to the general assembly to limit the power of any municipality to levy taxes and incur debts, and makes provisions for an examination of the vouchers, books and accounts of all municipal departments and of public undertakings.

You can see the wisdom and the necessity of that. As the law is today the limit of taxation allowed to a municipality is fifteen mills by a referendum vote. You can readily see that the municipality must not be given the power to levy fifteen mills, because in that fifteen mills there must be provisions for a school levy, a county levy and a state levy; as a matter of fact, the same provisions that practically exist now are really incorporated by us, and it will limit the power of the municipality to levy taxes and incur debt, which in my judgment is proper. There is also provision for an examination of vouchers, books and accounts of all municipalities and public undertakings.

Of course your committee was met by the demand of the state auditor that the state should have practically supreme authority, and the demand of the municipal authorities on the other hand for a limitation of this power. I received four or five letters from very able men, even the mayor of my own city, stating we had given the state too much control on this subject, but we did not waver, we did not change what was originally suggested by the League of Ohio Municipalities, be-

cause we thought it struck a happy balance. So I call your attention to the fact how reasonably conservative we have been. There has been no attempt to encourage debauchery and riot in public funds. There have been the greatest possible safeguards thrown around all of the matters that are of the gravest concern to the people of the state.

In section 13 elections are to be conducted under the supervision of the election officials as prescribed by law. The state controls with a firm hand the conduct of elections. The whole proposition might be summarized in the very incisive language used, I think by the reporter for the Cleveland Leader, who said that the principal of our municipal proposal could be stated thus: Under the old order of things that govern our municipalities now the general assembly has said "Thou shalt not do anything unless we give you specific authority to do it. Under the present scheme the general assembly says "Thou mayest." That is the sum total and practically the meat of this whole proposal.

Before I surrender the floor I shall offer an amendment in lines 97 and 98 carrying out the suggestion made by my attorney:

Strike out the word "property" in line 97, insert a comma and add the following: "adjacent and other property in the district benefited." In line 98 add: "Said assessments, however, upon all of the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

The reason for this is based on public morality. I will say that I asked Mayor Baker, when he urged us to incorporate this principle in our proposal, if he did not think it wise and proper and just that in revolutionizing the law in the state of Ohio on this subject of appropriating private property for public use, we ought not to limit the assessment to fifty per cent of the cost of the improvement. My theory was that the municipality has behind it all power. It has its local officials. So the great burden always falls upon the individual owner whose property is appropriated, and he must prove at great expense to himself that the benefit as stated by the municipal authorities is less than they claim. And it seems to me that, as the state of Ohio says now—remember that the present law is that the sum total of all assessments of whatsoever kind for streets and sewers in the period of five years shall not exceed thirty-three and a third per cent of the value of the property—it seems to me that when we say in the constitution that a municipality may appropriate the private individual's property for public use, and we limit the assessments that may be made for the improvement to not exceeding fifty per cent of the cost of the improvement we are very just and very fair. Before I surrender the floor I would like to answer the gentleman from Asthabula [Mr. LAMPSON].

Mr. LAMPSON: Did you not think it would be quite as wise to require the municipality to provide a sinking fund to take care of the utility bonds for which the municipality is not responsible, as it is to require the state to provide a sinking fund to take care of the road bonds for which the state is responsible?

Mr. HARRIS, of Hamilton: I do not think there is the slightest analogy between the two cases, and I

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will show you why I do not think so. Roads are a subject of expense, always a subject of expense for repairing and maintaining them.

The new roads constructed this year at a cost of \$10,000,000 require next year possibly an outlay of \$100,000, or a quarter of a million of dollars to keep them in order.

A public utility is an income-bearing asset, and so recognized today by the laws of the state of Ohio to such an extent that they specifically exempt the bonds of an income-bearing utility from the limit of indebtedness. Why should a sinking fund be established by a municipality, thereby enhancing the cost of the service or the product to the people, on the theory of the sinking fund, that it is to take care of the bonds, and therefore pay all the debts of cost of construction of that municipal utility—why should the people living in Cincinnati, say between the years 1912 and 1932, pay for the entire cost of construction, and turn over to the people who live in 1932 an asset which brings to the municipality an annual income? Where is the justice in it?

Mr. LAMPSON: May not such a public utility become a burden instead of a profit-earning asset?

Mr. HARRIS, of Hamilton: It may, but the bankers who buy the bonds will determine whether the proposition in their judgment is a safe one. They are doing that right along.

Mr. LAMPSON: Right there, one more question: Do you think that the federal government or any state government would accept that class of bonds as security for its funds deposited in bank?

Mr. HARRIS, of Hamilton: The federal government, under the Vreeland act, is willing to accept bonds of any railroad company with anything like a history. Why, under the Vreeland act, the federal government will accept in an emergency the oddest kind of bonds as security for public funds.

Mr. LAMPSON: You would not think that was a good acceptance?

Mr. HARRIS, of Hamilton: I would not, and that is the reason I am very much opposed to the Vreeland act.

Mr. DOTY: I desire to offer an amendment upon the same point. The reason I would like to have it offered tonight is to have it go along with the one that is pending.

The amendment was read as follows:

Strike out the amendment and insert:

In line 96, strike out "the abutting", and insert "benefited".

In line 97 strike out "abutting".

Mr. HARRIS, of Hamilton: I call attention to the fact that I have not surrendered the floor. I am holding it only in the event any person wishes to ask a question. If anybody desires to ask a question I am willing to answer.

Mr. WATSON: Does the gentleman yield the floor for a motion to recess?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. WATSON: I move that we recess until tomorrow morning at ten o'clock.

Mr. DOTY: Let us get these amendments in shape so that they can be printed during adjournment.

The PRESIDENT PRO TEM [Mr. STOKES]: Does the gentleman from Guernsey yield?

Mr. WATSON: Yes; I withdraw the motion.

Mr. HARRIS, of Hamilton: I offer the following amendment [the amendment heretofore offered by Mr. Harris, of Hamilton, which had been reduced to writing]:

The amendment was read as follows:

Strike out the word "property" in line 97, and insert a comma and insert the following:

"adjacent and other property in the district benefited."

In line 98 add: "Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

Mr. DOTY: I offer the amendment which I just sent up.

The amendment of the delegate from Cuyahoga [Mr. Doty] was again read, as heretofore.

Mr. ANDERSON: So that we can get it in, I offer an amendment now.

The amendment was read as follows:

In lines 18, 21 and in lines 49 and 50 strike out the words "affecting the welfare of the state as a whole."

At the end of line 22 change the period to a semi-colon and insert the following: "provided, however, that this article shall not be construed to confer any power upon municipalities to regulate, or prohibit, the traffic in intoxicating liquors."

Mr. WATSON: Now I insist on the motion to recess.

The PRESIDENT PRO TEM [Mr. STOKES]: The delegate from Clermont is recognized.

Mr. DUNN: I would like to bid you a very kind farewell in the matter of proposals. I have one I would like to offer.

Mr. DOTY: There is a matter pending, but I will move that further consideration of Proposal No. 272 be postponed, and that it be placed at the head of the calendar, so that the gentleman from Clermont [Mr. Dunn] can introduce his proposal.

By unanimous consent the following proposals were introduced and read the first time.

Proposal No. 338—Mr. Dunn. To submit an amendment to article I, section 5, of the constitution.—Relative to trial by jury.

Proposal No. 339—Mr. Dunn. To submit an amendment to article I, of the constitution.—Relative to the silence of the defendant in murder in the first degree.

Leave of absence for Monday and Tuesday was granted to Mr. Norris.

On motion of Mr. Watson the Convention adjourned until 10 o'clock a. m. tomorrow.

SIXTY-FIFTH DAY

MORNING SESSION.

TUESDAY, April 30, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and was opened with prayer by the Rev. A. J. Wagner, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. COLTON: I introduce a resolution.

The PRESIDENT: By unanimous consent the resolution may be introduced.

Mr. COLTON: I introduce this resolution because Judge Worthington, who is a member of this committee on Arrangement and Phraseology, is ill at his home and will probably be unable to serve, and we would like some one in his place.

The resolution was read as follows:

Resolution No. 112:

Resolved, That the president is hereby authorized to appoint one additional member of the committee on Arrangement and Phraseology.

Mr. COLTON: I move a suspension of the rules, and that the resolution be placed on its passage at once.

Mr. PECK: I saw Judge Worthington's law partner yesterday, and he said that the judge was quite ill.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. PECK: I move that the debate on the pending proposal be limited to fifteen minutes to each person on the main question, and five minutes to each speaker on each amendment.

Mr. STEVENS: Last Thursday Proposal No. 25 was up for consideration and the minority report was disagreed to. The roll call disclosed the fact that I voted with the prevailing side, and in view of the fact that at that time thirty-five or forty members were absent, and that there was a spirit of inattention abroad in the Convention, I do not believe the subject had a fair consideration, and I therefore move its reconsideration. It was Mr. Bowdle's divorce proposal.

Mr. DOTY: The member making the motion at this time saves the situation so far as the proposal is concerned, and as we now have a program that we are trying to work to I therefore move that further consideration of the proposal be postponed until tomorrow and that it be placed on the calendar.

The motion was carried.

The PRESIDENT: The president will announce the appointment of the member from Allen [Mr. HALFHILL] as the new member on the committee on Phraseology. The question now is on the adoption of the amendment offered by the member from Mahoning to Proposal No. 272.

Mr. DOTY: And on that I demand a division when it comes to a vote.

Mr. LAMPSON: I would like to have the secretary read that amendment.

The amendment was again read.

Mr. ANDERSON: Gentlemen: If you will examine

Proposal No. 272 you will find that municipalities have a right to make all laws of all kinds except and save only when the legislature in express terms prohibits the municipality from making such laws.

Mr. SMITH, of Hamilton: Will the gentleman yield to a question?

Mr. ANDERSON: Yes.

Mr. SMITH, of Hamilton: Does not the member know that under this no municipality can fall short of what the statute requires, but that it only has power to go beyond the statute, that only when it is additional restriction is the ordinance legal?

Mr. ANDERSON: All I know is that the section reads as follows:

Section 3. Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as the welfare of the state as a whole; and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

In other words, if this proposal becomes a part of the constitution, the present order in things pertaining to the police power of the state which the municipality can not now exercise, except by authority of the general assembly, will be reversed, and the municipality will have the superior and supreme right to act in all things pertaining to the police power unless it is specially taken away from it, or unless the legislature in express terms has prohibited all municipalities from acting on that particular thing. There is no doubt at all that the question of the regulation of the liquor traffic comes within the so-called police power. Therefore, if this becomes the organic law of the state of Ohio and the legislature fails to prohibit the municipalities from acting in that particular, then the municipalities can make laws affecting that subject as such municipal authorities or lawmaking bodies see fit.

Mr. KING: Would they have the right to repeal the state law on the same subject having general operation throughout the state affecting all municipalities?

Mr. ANDERSON: In reference to the police power, I am very much of the opinion, and I am not alone of that opinion, for I have not been responsible for it, but it is the opinion of some of the best legal minds in the state that have passed upon this question, that in reference to the police power the municipality would have full right to act, unless inhibited by the general assembly, and that inhibition would have to be clear and certain, because these advocates of home rule for cities want that very thing. The thing they most complain of is that the city as such has no right to make any laws or exercise any power unless the legislature clearly gives them that right. They want clearly to reverse the proposal, and they want the right to make all laws and to do all things that the municipality wants to do

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under the police regulations, save only as the legislature has prohibited. Now, say that Proposal No. 151 is ratified and this policy is ratified, then what is the situation? Each municipality can regulate the liquor traffic as the officers of the lawmaking body of that municipality may see fit, and they can continue to do so until the legislature in clear and express terms prohibits the municipality from acting. Therefore, what would we have? We would have Proposal No. 151 null and void in reference to every municipality in the state of Ohio unless the legislature sees fit to put it in power and in working order with reference to that municipality by saying to each municipality that in all things with reference to intoxicating beverages the state reserves the right to act.

The PRESIDENT: The time of the gentleman has expired.

Mr. WOODS: I move that his time be extended.

Mr. DOTY: That is the beginning of the end.

Mr. ANDERSON: I do not care for any more time. I would suggest that one section of the initiative and referendum proposal should be read in connection with section 3 of Proposal No. 272. Please do that, and it will give you food for thought. Section 1f should be read with Proposal No. 272.

Mr. SMITH, of Hamilton: Mr. President and Gentlemen of the Convention: If the Anderson amendment which strikes at the essence of home rule shall prevail and no substitute is provided the municipalities in Ohio will have no measure of home rule. The committee put in those words "affecting the welfare of the state as a whole" for this reason: If any police, sanitary or other regulation passed by a city may be limited by state law, we are no further along the road to home rule than today. If any act of the city can be rendered null and void by a law of the state, where are we? Only where we are today.

Mr. ANDERSON: What in your opinion would be the effect, provided this were the law, and Proposal No. 151 also the law, and the legislature failed to inhibit the municipalities from making laws in reference to the liquor traffic? Would it nullify Proposal No. 151?

Mr. SMITH, of Hamilton: It would have no effect whatever. The only effect of the clause you refer to, that the state is required to specifically deny the municipalities the right to act, only applies, in lines 19 and 20, to those provisions which the city council may pass in addition to those passed by the general law. Take the automobile city ordinance. The state may have a general law which provides that automobiles cannot go faster than six miles an hour. Suppose the city comes along and provides by ordinance that they cannot go faster than four miles an hour. Under this proposal the city has the right to so legislate. They increase the limitation on automobile speed which the state has provided, and so, unless the legislature says by general law specifically that no city in the state has a right to do this, the city ordinance controls.

Now take the Anderson liquor proposal. The state may pass a law that there shall be but two saloons on one block. Suppose the city says that there can be but one saloon on one block. The state cannot interfere with that limitation unless the state says specifically or

denies specifically all municipalities the right to act on the question. We want in Ohio to be as far along the road of home rule as California, and unless we have these or other qualifying words we are nowhere. For example, the city cannot by city ordinance establish a police force or a fire department, cannot regulate the width or grade of a street and cannot say where the trees shall be planted, if you take those words out, because the state by general law can say cities shall have their streets just so wide, and cities shall have the tree-boxes so far from the sidewalk, and nothing whatever that the city can do is safe from interference by the state unless you put in the words that the municipality shall not be interfered with by general laws unless those general laws are on a matter affecting the welfare of the state as a whole.

Take the great health regulations—the flow and pollution of streams, for instance, and the height of the buildings and the number of cubic feet of air space in tenement houses. I say the state should not have any right to interfere with those matters peculiar to certain localities. The cities ought to have a chance to work out their own problems in their own way if it does not interfere with the general welfare of the state.

Why are we behind the great European cities in the matter of municipal government? Is it because democracy has fallen down in our cities? No, it is because the city is not a democracy; because we have never had democracy in American cities. We have never had representative government in our cities in Ohio. We have not been free from outside domination. Take Cleveland or Springfield or Cincinnati. They want something that they think will be a reform in their local government, and the municipal bosses of Cincinnati and Cleveland, and the smaller bosses in the state, come here to the legislature and so change the reform measure that it is really no reform. We in Ohio cities are not allowed to make progress; we are not allowed to solve our own problems; we are hampered by the state legislature. I tell you the state of Ohio and all the other states have treated their cities much as Great Britain treated the colonies before the revolution. We want and need some measure of home rule. I am afraid this won't do much. I am afraid the courts may say to cities you can't legislate on this or that matter because this is a matter that concerns the welfare of the state as a whole. It is hard to think of something that does not concern the welfare of the state as a whole, but your committee felt that those words ought to go in to be a notice or warning to the court, so that when they come to interpret it they will say, "We think the Convention meant that the city should have some freedom." I hope, therefore, you will give us this much home rule. I want the members of this Convention to see justice done to the cities. The farmer is just as much interested in good city government in the cities as the citizens of cities themselves are. The good of the cities is the good of the whole state. I know the bugaboo of Wet vs. Dry is raised. In the committee there was a proposition made to insert after "affecting the welfare of the state as a whole" the words "in application, in effect, and in execution," but the committee thought that would be going too far, and that it would raise a great wet and dry fight on this floor. I do not know what the courts will say, but I

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want to give the courts a chance to say that the cities have some right to control themselves.

Mr. ANDERSON: These words "affecting the welfare of the state as a whole" were not in the original draft of the home rule proposal?

Mr. SMITH, of Hamilton: I am glad you asked that question. They were in the Worthington proposal.

Mr. ANDERSON: I mean in the Cleveland draft?

Mr. SMITH, of Hamilton: Yes; a similar qualification was in Mr. FitzSimons' draft. The legislature was free to interfere with cities in all matters "except in municipal affairs," and we objected to the words "municipal affairs," because the state of California has had such endless litigation relating to a definition of words similar to these.

Mr. ANDERSON: Is it not a fact that the so-called wet lobby—the gentlemen here representing the wet side—have been insistent on getting that term in?

Mr. SMITH, of Hamilton: What words?

Mr. ANDERSON: "Affecting the welfare of the state as a whole."

Mr. SMITH, of Hamilton: I believe the liquor lobby would like to have the words remain, and every patriotic citizen interested in the welfare of our cities would like to have the words or some other limitation in the proposal.

Mr. ANDERSON: Why do they want them in?

Mr. SMITH, of Hamilton: I assume you refer to the wets again. They may feel they are getting a little more than if the words are not in. I am not going to stand here and say that the courts of the state might not say that with those words in that the city might have a little more freedom, and might say that the city could pass a Sunday baseball ordinance for example. I am not going to say that I know that the courts could not say that cities would have a right to allow outdoor amusements on Sunday with these words in. But what I am afraid of is that without these or similar words in that all local laws, such as Sunday baseball, the regulation of traffic in the streets, the way the streets are built and even the question of determining the different departments that the city may have—I am afraid that the courts may hold that these are all matters that affect the welfare of the state as a whole. But nevertheless, let us try to make some headway in home rule for cities. Let us put the cities of Ohio on a plane with the cities of Europe. Let us place the cities in a position where they may work out their own problems in their own way, where they may reach the goal that they want to reach. Let us put the cities in a position where they are self-governing communities, where they may solve the great and intricate problems of local government for themselves. Let us give them a chance to so manage affairs as to give a square deal to every man, rich and poor; let us make it possible for them to regulate big business and little business, so that every man shall have all those rights and only those rights, shall have all those privileges and only those privileges which in the clear light of truth and justice he ought to have.

Mr. HARRIS, of Hamilton: If my colleague will permit me, I would like to answer the question of the gentleman from Mahoning [Mr. ANDERSON] as to whether the liquor lobby is speaking for these words "affecting the welfare of the state as a whole." If they

are, the liquor lobby has not advised any member of the committee of the fact. No member had the slightest intimation of it, and we would never believe that the liquor lobby has had anything to do with the words "affecting the welfare of the state as a whole." What we did believe was that the liquor interests were very much interested in those four words in the letter from the attorney in Cincinnati of high character to wit, "in their application, operation, effect and execution." We have thought that there was something concealed in those words, and therefore we refused to let them come before this Convention. I make this statement as the best practical evidence of the good faith of the committee.

In reference to section 3, I shall now take the liberty of reading to you from the brief prepared by Professor Hatton and John H. Clarke, both of Cleveland, the latter an attorney whose name needs but to be mentioned to the attorneys in this Convention or elsewhere in the state—to be recognized as a man of great ability and integrity, and we are further informed in the letter from the Municipal League that a half dozen others of the best attorneys in Cleveland and Toledo carefully considered these various sections.

In original section 3 the words "affecting the general welfare of the state," were omitted and they were inserted because in the judgment of Mr. Smith, of the committee, they give us real home rule. The committee feared that a great many statutes might be passed by the legislature under the guise or name of general laws which would bind the municipalities as they have been bound in the past and are bound now.

I read to you from the brief sent down to our committee, with respect to section 3:

Attention has already been called to the fact that the police power is not considered a local function and that there are many other powers, not strictly local in character, which municipalities should be permitted to exercise subject to control by the state. Many such powers are granted to municipalities, by enumeration, in the ordinary statutory municipal code. The intention of the above proposed section is to confer upon municipalities the right to exercise all such powers except where municipal action would come in conflict with state laws, or had been specifically forbidden by general laws.

Mr. ANDERSON: Was not that the point I made, that the municipality had a right to exercise to the full all of those things carrying out the police power unless prohibited by the laws of the state, or unless they came in conflict with the state, but under the wording of section 3 cannot come into conflict with the state laws unless they clearly inhibit?

Mr. HARRIS, of Hamilton: I think you are correct. Let us see if we cannot agree on the general statement that all local police power not particularly denied by the state is clearly within the province of the municipality.

Mr. ANDERSON: But notice, under Proposal No. 272 each municipality has all of the police power that any political subdivision or the state as a unit can exercise. Therefore, the police power of the state becomes local by reason of Proposal No. 272, and there-

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fore, according to your wording, unless the general assembly prohibits each municipality from using the police powers, the city has the natural right to use them.

Mr. HARRIS, of Hamilton: Certainly.

Mr. SMITH, of Hamilton: Is it not true that a brief was sent down with the original draft and the limitations were less than in the draft we adopted?

Mr. HARRIS, of Hamilton: Unquestionably. But even taking Mr. Anderson's statement, and there is practically no disagreement between us on that, and assuming that Mr. Anderson's statement is correct, and his interpretation is correct, the moment that the municipality exercises any power which the general assembly thinks beyond the province of the municipality, the general assembly would enact a general law forbidding the municipality from exercising that particular power.

Mr. ANDERSON: Assuming that Proposal No. 151 is the law, if this is passed would not Proposal No. 151 be nullified all over the state of Ohio so far as municipalities are concerned, unless the legislature would act and say to the municipalities, "You shall not exercise police power with reference to selling intoxicating liquors within your borders?"

Mr. HARRIS, of Hamilton: As a layman my legal logic is probably very bad—

Mr. ANDERSON: No, sir; it is not—it is better than that of most of the lawyers.

Mr. HARRIS, of Hamilton: My contention is this: You assume that Proposal No. 151 is adopted by the people, and it then becomes a constitutional provision. Now how in the world can a municipality do something contrary to that constitutional provision, assuming there is a conflict between the two powers, the powers granted in Proposal No. 151 and the powers granted in Proposal No. 272?

Mr. ANDERSON: There will be no conflict for the reason that unless the legislature speaks Proposal No. 151 remains inactive. After the legislature speaks and puts it into life, by designating the power that grants the license, then that part becomes a law of the state, and unless in that law they inhibit municipalities from exercising police powers under Proposal No. 272 each municipality in the state of Ohio will have a right to do as it pleases with reference to the liquor traffic, and it puts up to the next legislature a fight between the Anti Saloon League on one side and the foreign brewer on the other to determine whether the legislature will write that inhibition in or not—

Mr. HARRIS, of Hamilton: That is too hard a nut for me as a layman to crack.

Mr. ANDERSON: And we simply transfer from this Constitutional Convention to the general assembly the right to say whether Proposal No. 151 amounts to the paper that it is written on.

Mr. HARRIS, of Hamilton: According to this draft of Mr. Clarke and of Professor Hatton, I should not think so, but I make that statement with all due deference and humility, for I appreciate the fact that the fine questions of law do not penetrate the layman's mind. Here is what they further say in that brief:

The intention of the above proposed section is to confer upon municipalities the right to exercise all such powers except where municipal action

would come in conflict with state laws, or had been specifically forbidden by general laws. The language used is substantially that of the California constitution (art XI, sec. 11), with the addition of a provision giving a constitutional status of the interpretation placed upon the California grant by the courts of that state. Should this action be written into the constitution of Ohio any municipality in the state could make all necessary police and other regulations without the power to do so having been conferred by statute. As to these powers, it would reverse the presumption which now lies against the municipality in any case where a specific grant of a particular power is not found in the municipal code. It would introduce the principle which has so long been applied on the continent of Europe, that cities are granted full power of action in all cases not denied.

Mr. ANDERSON: Of course you know that the cities of Europe have absolute control over their municipal affairs?

Mr. HARRIS, of Hamilton: I think the cities of the United States ought to have the same power.

Mr. ANDERSON: Is not that true of the cities of Europe?

Mr. HARRIS, of Hamilton: Yes.

Mr. ANDERSON: According to those gentlemen, you would have the same conditions here as in Europe. I agree that this is a very good brief.

Mr. HARRIS, of Hamilton [continuing the reading]:

This grant of power to cities would not preclude state action on the same subjects. Indeed, statutes would supersede municipal regulations when in conflict therewith. Conflict could not be held to exist, however, if the municipal regulation merely went beyond that required by the state unless the state had denied to municipalities the right to act on the particular subject involved.

That covers the point made by Mr. Smith, of Hamilton, that the state might pass a law saying that no buildings should be more than one hundred feet high, and the city might come along and say, "We don't want any building one hundred feet high; we won't allow the buildings to be any higher than sixty feet," and if this particular inhibition is less than the inhibition by the state, then under this proposed section it would be legal for the municipalities to so regulate this and kindred matters.

Mr. LAMPSON: As a matter of fact if it is not intended at all by section 3 to give municipalities the power to nullify the local option laws, what possible objection can there be to that part of Mr. Anderson's proposed amendment, which limits the exercise of that power?

Mr. HARRIS, of Hamilton: I would consider it criminal to introduce into this home rule proposition any word or words relating to the liquor traffic.

Mr. LAMPSON: But that would not affect the home rule proposition at all upon any subject other than the liquor subject.

Mr. HARRIS, of Hamilton: Whether it affects the home rule proposition or not, I would still consider it

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criminal, because in my judgment there is not a word in the present home rule proposition which has any bearing whatsoever on the liquor question.

Mr. LAMPSON: But that is the bone of contention.

Mr. HARRIS, of Hamilton: I know the bone of contention is on those words "affecting the welfare of the state as a whole," and you must always bear in mind that while I am pretty positive in some of my opinions I have the knowledge that I am only giving an opinion of a layman, but lawyers on the other side, who are dry as summer's dust, do not hesitate to say to me that in their judgment the phrase would not have the effect charged by the dries. Of course, I recognize the right of the Convention to strike those words from the proposal and so end the whole controversy, but I do not think it is wise for the Convention to do so. But what I am trying to keep out of this discussion is the bitterness that the mere raising of the ghost of the liquor question seems unconsciously and unintentionally to invite.

Mr. LAMPSON: Do you not think that words should be used which would dispose of the ghost at once and remove all objection?

Mr. HARRIS, of Hamilton: The point I am making is that the words "affecting the general welfare of the state," are words which can be used and are used properly to dispose of that ghost. If we can possibly do it, I appeal to the Convention to leave out all reference to the liquor fight. Do not let the wide divergence on the liquor question appear in this proposal, so that this can go out from this Convention, signed by delegates representing fifty-three municipalities and representing two million people, as a proposal not from the Municipal Government committee especially, but from all the people who have sent us here, as well as representing the mature judgment and wisdom of the entire Convention on this proposal.

Mr. LAMPSON: Suppose you leave the words in there, and still adopt something like the Anderson proviso, which makes it perfectly clear that it is not intended and does not in fact grant the power to municipalities to nullify local option or other temperance laws of the state. Would not that greatly strengthen your home rule proposal and get you almost unanimous support?

Mr. HARRIS, of Hamilton: I do not think so. I object strenuously to the liquor fight, either in favor of the wets or the dries, being brought in here and incorporated in our proposal. For three months your committee refused to let the fight creep in. There were two proposals covering everything that we thought was proper to be covered in the municipal scheme. There were dozens of proposals which had merit, but we finally considered two, one from Cleveland and one from Cincinnati. The mayor of Cleveland asked me to introduce their proposal. Cincinnati thought that I should bear the authorship of theirs. I refused to do either, because I did not want to lend the influence of my official character as chairman to either proposal, but as chairman of the committee I did use my influence to have the committee consider only the Cleveland proposal, and swept aside the natural pride of citizenship of having Cincinnati given the credit for the proposal on municipal home rule, a proposal which I think your children's children will glory in and refer to the fact with pride that one of their parents or grandparents took part in the

Convention which gave home rule to the cities and villages of the state of Ohio. I surrendered that personal pride because I knew that one of the gentleman very active in municipal affairs happened to be closely identified with the liquor interests and an attorney for the liquor interests, and fearful that this fact might have some weight in the Convention and that the impression would be that perhaps the liquor interests were gaining some foothold deftly, I refused to consider the Cincinnati proposal and urged the committee to build on the Cleveland proposal.

Mr. LAMPSON: Does the gentleman not believe as much in state rights as he does in home rule?

Mr. HARRIS, of Hamilton: I am a democrat, and I believe a great deal in state rights. I believe in it so much that throughout this proposal we have made the state all powerful in things concerning the state, and the municipality all powerful in things concerning the city and village.

Mr. LAMPSON: Would not the gentleman be willing to make it so certain that the right of the city to home rule does not nullify the right of the state over this matter that we can all see it?

Mr. WINN: I rise to a point of order. The member from Hamilton [Mr. HARRIS] has spoken twenty minutes. I want to know this for the benefit of future guidance—

Mr. HARRIS, of Hamilton: As chairman of the committee I was under the impression that the limit did not apply to me.

Mr. WINN: I asked the president for information.

The PRESIDENT: The president was afraid if he enforced the rule it would be repealed.

Mr. KERR: I move that the gentleman's time be extended.

The motion was seconded.

Mr. DOTY: How long?

Mr. KERR: Fifteen minutes.

Mr. DOTY: I think the member's time should be extended, because he has been laboring under the disadvantage of having many questions put to him.

Mr. HARRIS, of Ashtabula: I move to amend by giving ten minutes.

Mr. KERR: I accept that.

A vote being taken the time of the delegate from Hamilton [Mr. HARRIS] was extended ten minutes.

Mr. ELSON: You acknowledge that you do not wish a liquor ghost to be raised on this question, and you also acknowledge that there is no intention on the part of the committee to nullify Proposal No. 151 by this proposal. Is that true?

Mr. HARRIS, of Hamilton: It is.

Mr. ELSON: Then why should we not prevent all possibility of raising the liquor ghost by inserting at the end of the paragraph these words that the gentleman from Mahoning [Mr. ANDERSON] has put in? Let me ask this question: In what possible way could it be criminal to put in such words?

Mr. HARRIS, of Hamilton: First, the municipal home rule proposal cannot be carried in this state except by the vote of the large cities. Second, by the insertion of any words in this proposal referring to the liquor question, even though there be no merit in their contention, the wets throughout the state, dominant in the large cities,

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will destroy this proposal, and I do not propose to be placed in any such position.

Mr. ANDERSON: Then it is your idea that by making no change the wets over the state will believe that Proposal No. 151 is nullified and will vote for this?

Mr. HARRIS, of Hamilton: That is a presumption on your part which I specifically and emphatically deny.

Mr. ANDERSON: Do you not know that Professor Knight said that he did not believe the words "affecting the welfare of the state as a whole" added anything to this proposal?

Mr. HARRIS, of Hamilton: I have a great deal of respect for Professor Knight's construction of law, but Professor Knight took care to say that he was speaking for himself alone.

Mr. ANDERSON: Did you not say that the words "affecting the welfare of the state as a whole" were put in at the last moment, and it was not in the original draft from Cleveland, and that you didn't care much about it?

Mr. HARRIS, of Ashtabula: That is partly accurate. Of course, during the discussion of that question, in section 7 the words "affecting the welfare of the state as a whole" were passed upon. It was discussed by Judge Worthington, Professor Knight and Judge Rockel. I remember the discussion back and forth, and the effect of those words was weighed in an apothecary's scale by Professor Knight, who is here to answer whether I have stated the fact correctly. In section 3 the words "affecting the welfare of the state as a whole" were, as you correctly state, put in at the last meeting, because we were afraid to take the phrasing from the original Cleveland proposal, but Mr. Smith, of Hamilton, insisted as the words were agreed on in section 7, they could and ought properly to go into the other section in question.

Mr. ANDERSON: Did not some of the members refuse to sign it unless that was put in?

Mr. HARRIS, of Hamilton: No, sir; one of the members refused to sign, but there was no objection to those words. I want the Convention to bear in mind that the words "affecting the welfare of the state as a whole" were weighed by Professor Knight and Judge Worthington as carefully as gold dust is weighed. The words that we refused to insert, because we did not grasp the full meaning of them, were "in their application, operation, execution and effect," which were to follow "affecting the welfare of the state as a whole," and one of the members refused to sign because we would not put in those four words.

Mr. DOTY: If those words had been weighed in the apothecary's scales word for word by experts like Professor Knight and Judge Rockel and Judge Worthington, why is it that their meaning cannot be explained in such simple terms that even an obtuse person, such as I am, can understand it? I understand that I am pretty dumb, but you might at least try to tell me what they mean.

Mr. HARRIS, of Hamilton: The committee are responsible only for furnishing you the words. They are not expected to furnish you with the brains to understand them. I would like to finish. My time is brief—

Mr. DOTY: I would like to have you answer one further question.

Mr. HARRIS, of Hamilton: I have not the time. I want to finish this [continuing reading from the brief]:

This is a valuable agreement, especially in matters of police regulation. In legislation of this character it is the duty of the general assembly to enact laws, general in form, which will apply to all parts and sections of the state. In doing so it can do little more than set a standard below which no locality must fall. To enact a general police code which would provide the requisite regulation and protection for communities widely different in character and population is an obvious impossibility. The true solution of this difficult problem is found in the section proposed above. Under such a provision the municipalities of the state, building upon the foundation laid by the general assembly, could provide themselves with a system of police and other regulations which would fit their peculiar needs. (See in re Hoffman, 105 Cal. 114; Cuzner v. California Club, 155 Cal. 303; Mayor v. Craig, 109 Pac. 842.)

It should be noted that this section grants these powers to all municipalities, and not merely to those framing and adopting their own charters.

Mr. REDINGTON: I am not in favor of the amendments because I do not believe they are necessary. If Proposal No. 151 should pass and be adopted it would become part of the constitution of the state of Ohio, and wherever territory is wet it is expressly stated that no license shall be issued except under certain conditions and the business is regulated absolutely by the organic law of the state, and where territory is dry we have in Proposal No. 151 expressly reserved the regulatory statutes to the state, and they are a part of the organic laws of the state and so recognized. Now, if Proposal No. 151 should be adopted I cannot see the object of this Convention in asking for the amendment, for where the territory is wet, where they have saloons, the constitutional provision will control, co-ordinate and equal to this constitutional provision, and it takes the business specifically out of the police regulation of the state and makes it a part of the constitution.

While it is now a police regulation, we put it in the constitution, and no legislature can add to it, and if Proposal No. 151 should not pass and this provision (Proposal No. 272) should pass we have been very careful to make the police power of the cities at all times subservient to the state laws. If the state makes a general law, and the state has a right to so far as police and sanitary regulations are concerned, and makes the regulation more stringent, in that particular city the stringent state law will be the law of the city. If the state passes a general law more stringent than the city ordinance, then the city ordinance is nullified and the state law takes effect. While you are in this proposal giving to the city full police and sanitary powers, at any time they may be stripped of some of these powers by the state, the supreme authority. The city has to go at all times to the state for power. In case the state neglects to pass proper police and sanitary regulations, the city may do so, and if the state then passes laws beyond and more strict than the city laws, the city laws are nullified.

I think it is unnecessary to adopt these amendments

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because if Proposal No. 151 passes and the regulation of saloons, being a police regulation, is put into the constitution, so that no city and no legislature can change it, it must follow that such regulation will be upheld to be the mandate of the constitution, as provided therein for wet and dry territory. The constitutional provision in Proposal No. 151 expressly reserves all the regulatory laws of the state and says other similar laws may be passed. In case Proposal No. 151 should fail to become a law and Proposal No. 272 should pass and become a part of the constitution, we have provided for this in Proposal No. 272, expressly in section 3 and elsewhere—we have taken great precaution, where we are going to give the city rights to pass the police and regulatory measures, that the state can control and pass laws beyond those of the city, and the object of putting that in was that, as was stated, oftentimes laws are passed pretending to be general laws, but they are not so, and therefore it was insisted that the city should not be controlled by a general law unless it was a law that affected the state as a whole.

The only idea I have in arguing the matter is that the amendment is unnecessary, and that it simply calls attention to this part of the liquor proposal by putting in the liquor clause, and if Proposal No. 151 is passed it cannot add to or take from the other, and we do not want the liquor proposal mixed up with the municipal proposal. We do not want any fight in the city on this matter with regard to wet and dry questions. We believe the city should have home rule, and if we can give it home rule without entering into the liquor fight we would like to do it. I do not believe putting the amendment in would weaken or strengthen it one iota, because I think the whole proposition is plain and fair, so that if Proposal No. 151 should fail the cities are still subject to the sovereign powers of the state. Nobody is undertaking to do what he has no right to do—to take that power from the state—and no matter what police or sanitary measure is passed for cities they would be subject to the state. The city cannot be over or bigger than the state. The city can make stronger and more stringent laws than the state, if the state neglects so to do, but when the state goes beyond anything that the city has done the state laws take effect. I think the amendment should fail.

Mr. WINN: Mr. President and Gentlemen of the Convention: If this proposal meant just what the member from Lorain has stated it means no one would have any objection to it. But it is because some can not see it that way that there is more or less confusion. There is such uncertainty about it that the member from Cuyahoga [Mr. DORV], who generally is able to see through ordinary propositions, is unable to understand this one; and I may say in this connection to the member from Hamilton [Mr. HARRIS] that it is not a sufficient answer for him to say to the member from Cuyahoga that the committee put the words in the proposal but is not responsible for the lack of brains to understand them. That is not a good answer to the citizenship of Ohio. If this proposition goes to the electors of the state what will be the attitude of the member from Hamilton [Mr. HARRIS] or of the committee if the electors ask us what is meant by this? Will the answer be, "We put the words there but we are not responsible for the lack of brains

in the electorate to understand them?" Now, Mr. Harris, of Hamilton, is not the only one who would regard it as criminal to see these words taken out. I can tell you of others who would look upon an act of that sort as being a crime. They are the men who constitute the liquor lobby, who crowded the halls of the Convention the first day we came together; who, after the passage of the liquor proposal went to their homes, and who came back here yesterday, and who were here last night and are here this morning. I have seen them with their arms around the necks of members of this Convention yesterday and last night and this morning, until the Convention was called to order. They are here to assert that they believe it would be criminal if we would take these words out. There is no use in attempting to conceal the fact that those words were put in the proposal at the behest of the liquor interests of the state.

Mr. REDINGTON: I deny that.

Mr. WINN: I weigh every word I say and I say them knowing when I say them that they are true. I say these words are in this proposal at the behest of the liquor interests of the state. I am not here to say that the liquor interests of the state came to the committee and requested any member to put those words there. That probably is not a fact, but I say that those words are here for the very purpose of nullifying so far as possible the effect of Proposal No. 151. Let me show you how it can be done. Proposal No. 151 provides, among other things, that upon the conviction for violations of any liquor law of the state the licensee shall forfeit his license and not again be eligible to secure a license. One of the laws of Ohio is that saloons can not be opened on Sunday. Pass this proposal and every city can throw its saloon doors open on Sunday. Now can you see why the liquor lobby wants this?

Mr. CROSSER: Do you contend that in spite of the fact that provisions of Proposal No. 151 say that the existing laws shall remain in full force and effect?

Mr. WINN: Proposal No. 151 does not provide that. Do you undertake to say that if this is placed in the constitution the legislature could not repeal the Rose law?

Mr. CROSSER: No; if they want to repeal the Rose law they can do it, but that is not our fault.

Mr. WINN: I can point it out in a moment so that anybody can understand it. I will read the amendment:

And no such regulation shall by reason of the requirements therein in addition to those fixed by law be deemed in conflict therewith unless the general assembly by general laws specifically deny the municipalities the right to act thereon.

So that unless the general assembly by specific law shall deny the right to municipalities to say that the saloons may be opened on Sunday they might do it, and when they have done it they have nullified that part of the liquor proposal.

Mr. HARRIS, of Hamilton: Don't you know that that requirement or statement "specifically deny" applies only to those municipal requirements put in in addition to those fixed by the general law, so it would only apply in case the city said saloons should not open Saturday as well as Sunday, and then the only way for them to become operative would be to deny the municipi-

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pality specifically the right? Don't you know that is only where the city makes an additional requirement?

Mr. WINN: There are others besides the member from Cuyahoga [Mr. DOTY] who have not brains enough to understand it in that way. Must we have this committee going around over the state with this proposition, and carrying brains with it to make the electors understand it? I say that unless the general assembly by specific enactment shall say to the municipalities of the state "You shall not carry in your charter any provision respecting Sunday closing of saloons, or any other similar question," it may be carried into their charters and become a part of the municipal law.

Mr. REDINGTON: Do you overlook line 18?

Mr. WINN: No, sir; I have not overlooked line 18.

Mr. REDINGTON: I would like to put a question for my own information: "Municipalities shall have the power to enact and enforce within their limits, such local police, sanitary and other similar regulations, as are not in conflict with general laws affecting the welfare of the state as a whole." Would you call Sunday closing laws passed by the general assembly general laws?

Mr. WINN: Yes, I would, but down in the latter part of the proposal it is especially provided that those things shall not be deemed in conflict with general laws unless the legislature specifically says so. Now this does not apply only to liquor traffic, but to everything else. We have in Ohio a department of workshops and factories. There is an officer of the state who looks over the public buildings and all sorts of buildings to ascertain whether they are in sanitary condition and whether the fire escapes are put up properly, etc. There has been enacted a state law regarding certain other safety devices, as you know, and you probably know how much trouble has been encountered by officers of that department, who have gone over the state requiring owners of buildings to put fire escapes on buildings.

Now it is proposed that by the charter of any municipality that it may control those matters, as well as sanitary matters, unless the general assembly by some specific law shall say that the municipality may not enact an ordinance regulating such matters. Then the municipality may go ahead and have full control of it.

I am not ready to agree with the member from Hamilton [Mr. SMITH] that the whole world is pointing a finger of scorn at the state of Ohio. Indeed, while it has never been my privilege to visit the cities of the old world, I have heard of them, and read the histories of some of those cities, and I am here to say that I never want to live to see the day when the affairs of the cities of this state shall sink to the level of the cities of the old world if the things exist there that have been recorded in history. The strongest argument I can offer against this proposition is that those who favor it so earnestly were against Proposal No. 151.

Mr. DOTY: Oh, no.

Mr. WINN: I mean those who have spoken. In other words, Mr. Harris, of Cincinnati, says he would regard it as criminal to take these words out and put the amendment in, because it would inject into the proposal the disagreeable liquor question and we should not do it. But it is here, it is in the proposal, and now you ask every man opposed to it to stultify his conscience by keeping his mouth shut for fear there may be some debate in-

jected into it. I can not support this measure unless it is amended so it may be made reasonably certain that all of the efforts of the friends of Proposal No. 151 have not been defeated by its enactment. I can not support it here or at the polls. I would feel like thousands and hundreds of thousands of others, obliged to go out, on the stump and elsewhere, and combat it. If the friends of this measure—and I am a friend of home rule for cities—would have something submitted to the people which would meet the approval of the people at the ballot box, let the proposal be amended so every one will know it does not contain these dangerous sleepers it is now suspected of having.

Mr. HURSH: Gentlemen: I have the greatest respect in the world for the learning of our professional brethren—and that includes the legal fraternity—but I want to say as one who comes from the rural districts that we have our problems to solve as well as the cities have theirs, and when I find the gentlemen learned in the legal profession can agree on any proposition, when I find that they write a proposal and pass it and say it is good, when they say it will carry and can not be defeated and is good constitutional and organic law and very popular, I conclude that probably they have as lawyers gotten somewhere, but here is Proposal No. 151 with specific provisions stating what shall and shall not be and what can and can not be done.

Why, until yesterday, nobody doubted that that was good organic law. It deals specifically with the saloon problem. I thought all liquor questions would be solved by that because in explicit words it tells how to regulate the saloon, and here this home rule proposition for cities comes up and it tries to say what powers the cities can have. It says absolutely nothing about the liquor traffic, and then certain gentlemen here have injected this liquor proposition into this discussion. I for one resent it, and I believe there are many others who resent it. We are not all lawyers, so I am going to talk to you a little while and appeal to my brother farmers and other laboring men. Let us consider this question. We of the country have our problems and you of the city can not understand them as we do, yet we need your help to solve them. You of the city have some great, grave, serious problems in your great congested centers of population that we do not understand, yet through the daily press, I think we do know a little, in a general way, as to your problems. I came here with some ideas of what the cities wanted. If they knew what they wanted, and we were able to give it to them, if we succeed in giving you something that will give you a better condition, it will help our condition. We realize there are certain conditions and certain interests that have grown up in your cities that must be corrected, and by giving you larger opportunities we are helping ourselves by giving us also larger liberty. Now we were hoping, and I hope it is yet the sense of this Convention, that you will confine yourselves to those problems and confine yourselves to a consideration of home rule for cities.

Mr. HARRIS, of Ashtabula: Mr. President—

Mr. HURSH: I refuse to be interrupted.

Mr. HARRIS, of Ashtabula: Are you speaking for farmers?

Mr. HURSH: Yes, and I refuse to be interrupted. I have been noticing the proceedings of the Convention

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and I have noticed that the interruptions have not been alone for information, but for the purpose of confusing the speakers, and for that reason at present I refuse to yield.

Now I wish to say that I believe this is a good proposal. I have at different times, when not too busy, attended the meetings of this committee. They have labored seriously, honestly and earnestly to give a proposal to this Convention that would give relief to the cities. Assuming that these gentlemen understand what they want, I think it is a pretty good proposition on general principles to adhere pretty close to this proposal, and I am sorry this liquor question has been injected here. As I said in the beginning, Proposal No. 151 covers that liquor proposition entirely and well, and I can not see, in the light of organic law, how Proposal No. 272 can in any way infringe upon the right of Proposal No. 151, and I hope you will brush aside this matter injected into the discussion and consider this question upon its merits alone.

The cities of the state have a right to home rule. We can not solve their problems and they can not solve ours, and we owe it to the toilers of the cities who are trying to work out their salvation to ignore the matter that has been injected here and exclude it from our consideration and give these people the right to home rule. I, as one of the middle-of-the-roads upon the liquor proposal, insist that we refuse to consider that matter in connection with the home rule proposal, for when you inject this bitter contest of the wet and dry question into this measure you are going to lose sight of its merits and you are going to decide and determine the angle by which you reach your conclusions from an entirely biased standpoint. I say it is unfair. I say we have surely advanced enough in our civilization to give the cities a chance to work out their salvation. As one gentleman said, it is remarkable that the cities have done as well as they have. I want the time to come when the people of Cleveland and of Columbus and of Cincinnati, who know their own problems, can work them out themselves. I do not want their big businesses to be able to send lobbyists down here and work something through the legislature and tie their hands, and for that reason I hope the conservative men of the Convention will not inject this liquor project into this proposal.

Mr. HOSKINS: I want to ask a question. I want somebody who is in favor of letting section 3 stand as it is—I will say frankly I have not made up my mind how to vote on it—but I want somebody standing sponsor for this, Mr. Harris or someone else, to tell the Convention why you cannot end section 3 with the words "general laws" in line 18, and mean everything you want to cover? Tell us why.

Mr. HARRIS, of Ashtabula: I am astonished that the member from Auglaize should be at all in doubt or be unsettled after the very lucid explanation of the member from Hardin. It seems to be clear to the agricultural fraternity in so far as Hardin county is concerned. Now I want to call attention to this, that there need be no doubt about the fact as to the purpose of this amendment. That is settled. We farmers have agreed to it and it ought to go. The suggestion has been made here that there was some difference between the legal brethren on the floor as to what it meant. Certainly the members of the com-

mittee do not seem to be altogether clear. I have a great deal of respect for the clear-headedness of the member from Franklin [Mr. KNIGHT]. If Professor Knight will get up and say that he knows exactly what this will do I shall be a great deal relieved. In other words, I think I shall know a good deal more definitely what it means than I do now. Of course, as a farmer I ought to know off hand, but I do not, and when a question so pertinent as the one put here, that refers to the uncertainty that obtains in the minds of some men without brains in regard to this proposition, when you can relieve that uncertainty so easily by putting in a few words supplementing this third section, it is criminal, they tell us, to do it. That is the reason it can not be done. We do not want to do anything criminal here, even if the cities want it done, and in this case they do not want it done. I think the whole thing is settled and we ought to be able to vote for it right away.

Mr. JONES: This provision applies to municipalities. That does not mean only the big cities of the state. It means the smaller cities and the villages as well. Now the rule, as already stated here with reference to municipalities, big or little, in the state of Ohio, is that they can exercise such powers and such powers only as are conferred upon them by legislation. The proposition here is to reverse that rule, under which we have been living for sixty years, and establish the rule that municipalities, big and little from the merest village of one hundred or two hundred population in the state up to the larger cities, can do anything they want to do that is not prohibited by the legislature or the fundamental law. Now I make that statement advisedly and I think upon reflection. The statement as a general proposition is that if this proposal passes the ruling of the state of Ohio will be that every municipality, big or little, can do anything and everything that is not denied to it by law. That is clear, because under this proposal you first provide that they are to be subject in their legislation and in their action to general laws, but in addition to that you say to them they may exceed the general law upon any particular subject and go as far as they want to, and the only way then of checking or interfering with their action is for the legislature to pass a new special act denying them the extra authority which they have sought to exercise. So, after all, it comes right down to the bald proposition that the rule must be established in Ohio that municipalities shall be permitted to do anything they want to do that they are not specifically denied by the legislature from doing.

Do we want to adopt that rule and apply it to municipalities in the state of Ohio with reference to all the matters contemplated by this proposal? For one I say if this proposal is submitted to the voters as it now stands I shall be compelled to vote against it for that reason, and I heartily agree with the suggestion in the question of the gentleman from Auglaize [Mr. Hoskins] that the whole of this matter in section 3 after the word "laws" in line 18 ought to be stricken out, and then you would have this matter resting in the position that the municipalities in the state of Ohio may do whatever they are not prohibited by general law from doing. The term "general law" is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the construction of that term and we need have no doubt

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about what the future rule will be. Therefore you are not launching on any untried sea. You simply open the doors and lay down the bars for the municipality, big or little, to do everything it is not prohibited from doing by general laws.

It only takes a little illustration to show the evils that would follow from what is contemplated by the latter clause of this section 3 and I do not care to take the time to cite authority. It is clear to every member of the Convention. Why should a municipality of three hundred population be granted any different rights from those a township of a thousand population has? The county has its problem and the township has its problem to solve just as the cities and villages have theirs, and why any different rule applying to the county and township than apply to the municipality? Let them all be subject to the same general law without any special legislation applicable to either one of them.

Mr. FACKLER: The townships have no housing problem, have they? They do not have any problem of crowded districts.

Mr. JONES: There are many problems in the county and township that do not arise in the municipality and you can not make a law of a general nature that will apply to all of those details, but the proposition as a general one that there is no reason for a different rule applicable to cities and villages than is applicable to townships and counties is sound. In other words, we are all people of Ohio, we who live in the small villages and in the counties. We, who are near to cities are just as much interested in the laws that shall regulate the life of a community as the city is. We are just as much interested in the police regulations as the people in the city are. A man who is rearing a family on a farm in the neighborhood of a city is just as much interested in the question of saloons in a city as a man in the city. There can be no difference in that situation. You will assume the people in the city are entitled to have some different laws with reference to police regulations—I mean in its broadest sense, including health and the general welfare of a community—from those the people living in the country have, but I submit there can be no excuse for the latter clause of this section 3, laying down the bars for the municipalities to do everything they desire to do except as prohibited by law and then requiring those who want a different rule to obtain to go and get an act of the legislature. Why not let the application be made to the legislature in the first instance for authority to adopt certain regulations in the municipality? There are those who desire those things; let them be put to the bother of securing things from the legislature, while if this rule is adopted those who are opposed to them will be driven to the legislature to get legislation to prevent or nullify the action of the municipality.

Mr. DOTY: It seems to me there is a habit in this Convention on all big questions to have extremes on one side and extremes on the other. Heretofore I have always been one of the extremes and I have never had the pleasure of being in the middle of the road. It appears in this I am the only one who is in the middle of the road. There may be some who will get with me, but at present I am alone.

It appears from the member from Defiance [Mr. WINN] that the liquor lobby was very active last night

and this morning on this particular thing. I want to say to this Convention that I had the pleasure of conferring with the liquor lobby last night and this morning at some length and this was never mentioned, so I think we can take with a grain of salt the rest of the gentleman's remarks. I have been trying to find out from both of the members from Hamilton [Mr. HARRIS and Mr. SMITH] very able men, but I have not been able yet to find out what these words are there for. The member from Fayette has called attention to the fact that the words "general laws" have been adjudicated, as they call it, that they have been talked about by the courts—

Mr. MAUCK: Construed.

Mr. DOTY: Construed "de novo," I suppose it should be. If that is true what is the use of putting in the rest of this language "affecting the state as a whole?"

A DELEGATE: To "safeguard" it.

Mr. DOTY: Yes; to safeguard it. A safeguard you know is a little jigger put in to make trouble. I expect that is what this was intended to do and it will do it. Now at the first opportunity I want to offer an amendment and I will read it now as part of my remarks so that you may know what I would like to do if I have a chance. I would like to strike out all of section 3 after the word "laws" in line 18, and insert a period. Strike out in lines 49 and 50 the words "affecting the welfare of the state as a whole."

Mr. ANDERSON: I understand you wish at the proper time to submit that amendment in place of mine?

Mr. DOTY: Yes.

Mr. ANDERSON: And I further understand the objection of those men who are in favor of home rule to the words of my amendment is because it mentions intoxicating liquor?

Mr. DOTY: Yes.

Mr. ANDERSON: Which it does not.

Mr. DOTY: No.

Mr. ANDERSON: I ask unanimous consent to let the Doty amendment be substituted for my own.

Mr. DOTY: Do you withdraw yours?

Mr. ANDERSON: Yes.

Mr. DOTY: Then I offer this:

The amendment was read as follows:

Strike out all of section 3 after the word "laws" in line 18 and insert a period. Strike out in lines 49 and 50 the words "affecting the welfare of the state as a whole."

Mr. DOTY: Now, I do not know that I am competent to discuss this whole question, but I am competent to discuss the removal of these words, the meaning of which we can not find even after they have been weighed in apothecary scales to the fraction of an ounce. The amendment I have offered, if it carries, will make section 3 read as follows: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Now why ought they have that power and why ought they not have any other power?

Mr. REDINGTON: If the section is amended as you suggest that leaves the cities as they are now and gives them only the same power that they now have.

Mr. DOTY: If all there was to this proposal was

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section 3 you would be right, but we are attempting to put some other things in this proposal which would make quite a change in municipal government, so I would answer that your assumption is not right.

Mr. REDINGTON: Do you not understand that section 3 is a section that gives home rule and gives power to cities to pass ordinances for their own benefit for police, sanitary and other similar regulations?

Mr. DOTY: No, sir; relying entirely upon my general ignorance, I would have to say I do not understand that.

Mr. SMITH, of Hamilton: Do you know that the cities can not have home rule under your amendment?

Mr. DOTY: No, sir; I have been utterly unable to find anybody who can show me that they won't. It appears that my brain has become an issue. I am glad something has become an issue, even as small as that, but I do not understand why the whole of the home rule principle must stand or fall on section 3 as in the proposal book. As I understand the home rule proposal it is a proposition that allows cities to frame their own charters and make for themselves such laws as they deem wise, provided those laws do not conflict with the general laws of the state. In a general way that is my understanding of home rule. Is there anything else than that in this home rule proposal?

Mr. SMITH, of Hamilton: You admit under your amendment the legislature could by general law take away a license next door—

Mr. DOTY: No, sir; in section 2 it is provided that they can not pass any law applicable to the municipality unless a municipality accepts it by a vote of the people.

Mr. SMITH, of Hamilton: But section 7 says it is subject to general law.

Mr. DOTY: What is the theory of passing a general law excepting that it is a law that affects the general welfare of the state? Can there be any other reason for the passage of a general law?

Mr. CROSSER: Have you not in mind a special law which the city can accept?

Mr. DOTY: That is true; I did have that. But come over to section 7, and what is there in the words "affecting the welfare of the state as a whole" that makes general laws any more effective than if those words were not there?

Mr. HARRIS, of Hamilton: I call your attention to original Proposal No. 272 in your proposal book, which came to the committee on Municipalities. In line 32 of the original proposal we have the words "except in municipal affairs." Those four words were almost demanded by your local people and those words are taken from the California constitution and they were cut out of that draft for the reason stated on the floor and the qualifying words that you now want to eliminate were substituted in their place. I suggest to you that if you are going to cut out everything after the words "general laws" you should add the words "except in municipal affairs," or you will be stoned to death when you reach Cleveland. I tell you you are destroying municipal home rule.

Mr. DOTY: I have no objection to putting in the exception if we can understand what it means or if we have any fair chance of understanding it. I want to say that the words the member called attention to will be

found on page 2 of the regular proposal, the next one after the one you are looking at in line 32. The words are "except in municipal affairs." They have been stricken out, and the words "affecting the welfare of the state as a whole" simply amount to the committee inserting one set of words instead of another. You strike out something and put in something that is not germane, and for the life of me I can not get anybody to answer what they mean. We tried to get Judge Rockel last night to answer the question, and after pinning him down he didn't answer, but afterwards I went to him and got him to answer the question. I would be glad to have Judge Rockel answer the question now publicly.

Mr. ROCKEL: I will answer. I said to the committee that it didn't make any difference whether you put the words in or not.

Mr. DOTY: I tried to get you to say that last night and I couldn't do it, but better late than never.

Mr. KNIGHT: I had not intended to speak any further on this lest I be considered as discourteous to the chairman of the committee. I want simply to make the inquiry whether I did not say last night that in my judgment those words added nothing to the proposal.

Mr. DOTY: I guess you did agree with me all right last night. I understood the chairman of the committee to say these words did not add much, but he reserved the right to hear from his colleague from Hamilton [Mr. SMITH]. Now if I understand this home rule proposal—I made a mistake four or five weeks ago and this may be another one—but as near as I can find out this home rule proposal is to allow cities and villages to run their own government under any scheme they choose, provided their plan and their laws do not interfere with general laws. Is not that definite and certain and specific? How are we missing anything by simply stopping there? You can shake your head all you want to. Of course that disconcerts me for the moment, for I am not against home rule, but when men as able as the gentleman from Hamilton, who have given much more study than I have, charge me with being against home rule because I am in favor of this amendment, I will say it takes more than a shake of the head to answer my question, and I put the question over and over again. I put it last night and the member from Franklin very frankly answered it. The member from Clark answered it today, and if anybody else has answered it it escaped my attention.

Mr. CROSSER: Suppose a legislature should pass a law saying that all municipalities should do certain things. Under your proposed change would not that be binding on the municipality?

Mr. DOTY: Yes.

Mr. CROSSER: Where is your home rule? It is gone, provided it affects municipal affairs only.

Mr. DOTY: Can they not do that with this language in?

Mr. CROSSER: No, sir.

Mr. DOTY: How can you have a law that is not for the general welfare of the state as a whole?

Mr. CROSSER: The legislature might pass a law applying to municipalities which would be a special law and not affect the state as a whole.

Mr. DOTY: But it has to be on the theory of affecting the welfare of the state as a whole or it is not a general law?

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Mr. CROSSER: In all the history of the state laws have been passed applying to all municipalities and they have been construed as general laws.

Mr. DOTY: I am laboring under the disadvantage that my legal training stopped at page 40 of Blackstone.

Mr. ANDERSON: Will the gentleman yield while I read an authority?

Mr. DOTY: Yes; I need all of the authorities I can get.

Mr. ANDERSON: The constitution of California was passed in 1879. They say this Proposal No. 272 is largely copied after the constitution of California, so much so that the gentleman from Hamilton [Mr. HARRIS] had an extensive brief made by his legal representative on this question. I can clear up just why these words were put in that proposal and it grows out of a decision of the California supreme court in 155 California, page 304, right on the liquor question, and I want to read it:

A municipal corporation, in the exercise of the power to regulate traffic in intoxicating liquors that is a part of the police power conferred upon it by the constitution, may enact prohibitory laws applicable not only to those engaged in the business of selling intoxicating liquors to the public, but also to such transactions of a bona fide social club, and may regulate, by license tax or otherwise, any and all kinds of dealings with relation to such liquors, including such dealings of a social club with its members.

In other words, California under the liquor provision provides that each municipality in California may do just as it pleases with the liquor traffic notwithstanding what the state laws may be, because that right was given in the constitution.

Mr. LAMPSON: I move the previous question on the pending amendment.

The PRESIDENT: The gentleman from Cuyahoga has the floor.

Mr. LAMPSON: I thought you had yielded?

Mr. DOTY: No; I yielded to get some legal help. Now I agree with Mr. Harris, of Hamilton, in some things that he contended for, and I agree that the insertion of words relating to the liquor traffic would be a mistake. I deprecate the bringing of this question in here at all, and I do not believe the question would have been brought in if the proposal had been used as sent from Cleveland.

These three words have precipitated this unfortunate debate so far as the proposal is concerned, and I regret very much that the question has come in at all. As to the liquor lobby the member from Defiance [Mr. WINN] is much mistaken, or else I am not in the confidence of the liquor lobby.

Mr. LAMPSON: I now move the previous question on this amendment.

Mr. SMITH, of Hamilton: I would like an opportunity to answer the gentleman from Cuyahoga [Mr. Doty].

The PRESIDENT: The question is shall debate close on the pending amendment?

Mr. DOTY: I move that we recess until half-past one.

The motion was lost.

The PRESIDENT: The question is shall debate close upon the pending amendment?

The main question was ordered.

Mr. WINN: I demand the yeas and nays on the amendment.

The PRESIDENT: The question is on agreeing to the amendment offered by the member from Cuyahoga [Mr. Doty].

The yeas and nays were taken, and resulted—yeas 66, nays, 41, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Miller, Ottawa,
Antrim,	Harris, Ashtabula,	Nye,
Baum,	Henderson,	Okey,
Beatty, Morrow,	Holtz,	Partington,
Beatty, Wood,	Hoskins,	Peck,
Beyer,	Johnson, Madison,	Peters,
Brattain,	Johnson, Williams,	Pettit,
Cassidy,	Jones,	Read,
Cody,	Kehoe,	Rockel,
Colton,	Kerr,	Rorick,
Crites,	Kilpatrick,	Shaw,
Cunningham,	King,	Smith, Geauga,
Doty,	Kramer,	Solether,
Dunlap,	Lambert,	Stevens,
Dwyer,	Lampson,	Stewart,
Eby,	Leete,	Stilwell,
Elson,	Longstreth,	Stokes,
Evans,	Ludey,	Tannehill,
Farnsworth,	Mauck,	Wagner,
Fess,	McClelland,	Walker,
Fluke,	Miller, Crawford,	Winn,
Halfhill,	Miller, Fairfield,	Woods.

Those who voted in the negative are:

Bowdle,	Hahn,	Riley,
Brown, Lucas,	Halenkamp,	Roehm,
Brown, Pike,	Harris, Hamilton,	Shaffer,
Collett,	Harter, Stark,	Smith, Hamilton,
Cordes,	Hoffman,	Stalter,
Crosser,	Hursh,	Stamm,
Davio,	Keller,	Tallman,
DeFrees,	Knight,	Tetlow,
Donahay,	Kunkel,	Thomas,
Earnhart,	Leslie,	Ulmer,
Fackler,	Malin,	Weybrecht,
Farrell,	Moore,	Wise,
FitzSimons,	Pierce,	Mr. President.
Fox,	Redington,	

So the amendment was agreed to.

Mr. MILLER, of Crawford: I move that the Convention recess until 1:30 o'clock, p. m.

The motion was carried.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. Watson rose to a question of privilege and asked that his vote be recorded on the amendment of Mr. Doty to Proposal No. 272. Permission was given and his name being called Mr. Watson voted in the affirmative.

Consideration of Proposal No. 272 was resumed.

Mr. DOTY: The motion pending is an amendment introduced by myself, the amendment I introduced last night. I desire to call your attention to lines 96 and 97. The chairman of the committee explained last night or this morning that part of section 10, beginning with line 95, ought to be a separate section. In other words, the

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subject matter of those four lines has not anything to do with the subject matter of the remainder of section 7. Bear that in mind, because it is important. It is important that you keep your mind clear on the two things attempted to be done in the one section. I think before the matter is concluded Mr. Harris, of Hamilton, will offer an amendment to make that a separate section, as the last four lines have nothing to do with the section.

The object of the last four lines is to reinstate and bring into existence again what was the constitution of Ohio from 1851 until about eight years ago—that is to say, the supreme court of Ohio interpreted or construed the present constitution of Ohio to do that which these four lines attempt to do provided the amendment is adopted. That constitution, construed as it was for forty years, provided that in the appropriation of property for public improvements, especially like the opening of a street—the opening of parks can be handled under bond provisions, and is often handled that way, so it is not as important as the matter of opening streets—the supreme court interpreted the constitution for forty-one years to the effect that the appropriation of property for the opening of streets should bring about the distribution of the cost of that improvement upon the property benefited by the improvement, a perfectly fair, square proposition, because when you open a street and thereby enhance the value of somebody's property you are giving them what they do not possess, and, therefore, if you take a part of that which you give them to pay for the improvement you are providing you are really taking nothing from them they ever had; you are simply keeping from them a part of that you are giving them. In the city of Cleveland we are in a particularly unfortunate position on account of that decision of eight years ago. The city of Cleveland is what we may term a fan-shaped town—that is, the big thoroughfares run from the center in every direction. We have certain arteries that run from the east, like Euclid avenue and Superior avenue—those are the only two that come down to the center of the city. When you get out a little way there are some avenues like Chestnut, Carnegie, Cedar and Central that come down part way and stop a little short. When those streets were laid out it did not make much difference, because with a town of from only fifty thousand to one hundred thousand people those arteries were enough to care for the people. Now there are living east of this center not less than three hundred and fifty thousand people, two-thirds of whom have to come into the center of the city through these two arteries, and the congestion is becoming intolerable. It is impossible for us today to put enough street cars on our streets between five and six o'clock to carry the people home. We are up to the limit and we must have more outlets. Now the people who are interested in those four avenues—there are other minor avenues—but the people directly interested are going to get a direct benefit, for their property is going to be enhanced, and they are quite willing for the streets to be opened, but under any law we have it is impossible to provide that they shall pay for thus opening the streets. If it is not done that way we have to issue bonds and levy taxes upon the whole city, so that the two-hundred and twenty-five thousand people living in the western part of the city have to contribute to the opening of these streets that are only useful to the eastern

end of the city. Maybe they are willing to do it and maybe they are not. If they are willing we could get past that problem, but when you get to the minor problems it would be different. The problem is not of sufficient importance for the rest of the city to help out and the result is they don't make the opening. I presume there are one hundred street openings in the city of Cleveland that should be made for the good of the city. As my colleague reminds me, these four openings—Carnegie, Cedar, Central and Chestnut avenues; we call them the four C's—will cost \$2,000,000. The people who get the benefit are willing to pay that amount as it is estimated by conservative men in the city of Cleveland that the opening of those four streets will add \$15,000,000 to the value of the land benefited by the opening of those streets. Now all we ask is a legal way for compelling those people who get the \$15,000,000 to pay the \$2,000,000 to have it done, and that is all my amendment provides.

The gentleman from Hamilton says the word should be "adjacent" instead of "benefited." I would be satisfied with either, but mine is simpler and more direct, and is in fewer words. He has submitted his full amendment to me and I do in one word what he attempts to do in eight words.

Now the other part of the Harris amendment, line 98, at the end of what is now section 10, he proposes to add "said assessment, however, upon all abutting, adjacent and other property in the district benefited shall in no case be levied for more than fifty per cent of the cost of said appropriation." Just see what that would be in the very case I am telling you about. Here we have four street openings that will add \$15,000,000 to certain property and as I understand the Harris amendment we can only assess \$1,000,000 of that \$2,000,000 against the persons who get the \$15,000,000 benefit. I think we should be allowed to assess all of it, for the benefit is greater than that which we attempt to assess. In other words, when they get the benefit of \$15,000,000 those people ought to be willing to pay the \$2,000,000.

Mr. ULMER: If your statement is true, does not that \$15,000,000 that is added in value go on the tax duplicate?

Mr. DOTY: Technically it will. What has that got to do with the question?

Mr. ULMER: Now another question—

Mr. DOTY: Yes; that will be all right, but I want to ask another question right there. What difference does it make if that \$15,000,000 does go on the tax duplicate?

Mr. ULMER: The point is that the community will receive some benefit from that.

Mr. DOTY: They ought to do it. Mind you that \$15,000,000 of value does not exhaust tomorrow with the opening. It continues to exist. Who produced that \$15,000,000? The people of Cleveland by opening the streets. Who gets the benefit? A few of the people. Now all we contend for is that the people who get the \$15,000,000 of benefit shall pay the bill, amounting to \$2,000,000.

Mr. ULMER: That is all right, but if the streets are open do not the people receive the benefit?

Mr. DOTY: Yes.

Mr. ULMER: Ought they not pay some too?

Mr. DOTY: Absolutely not. If the gentleman had heard a while ago or understood—which probably was

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my fault—all I said was that we should take a part of what the city creates, a thing which does not exist before and which the private owner does not have, but I claim a man who sits still and lets the community give him \$15,000,000 is getting off lucky when he is asked to only pay \$2,000,000 for the \$15,000,000. I think he is getting off easy.

Mr. ULMER: After this value is created does not the city have a constant income from it in the form of taxes?

Mr. DOTY: Yes.

Mr. ULMER: Does the city lose anything by the transaction?

Mr. DOTY: Absolutely not, unless they have to pay a part. If the city of Cleveland pays fifty per cent of that it will cost the city of Cleveland \$1,000,000 and it is gone forever, and who gets the benefit of it? Comparatively few get the benefit of it. Mind you, these people are not asking to be exempted from paying the fifty per cent. They are willing to pay the whole of it, but if you fix it so they can not pay but half the city will have to pay the rest.

Mr. ULMER: Is it not true that under the present law the city has to pay all?

Mr. DOTY: Yes, and that is what is wrong and that is what has congested the city of Cleveland and the city of Toledo. Toledo can't make a street opening any more than we can, and the city of Toledo up to eight years ago was in the habit, under the old interpretation, of opening streets from time to time. The last one they opened was the straw that broke the camel's back. They opened Bank street one block and I think the property cost \$100,000 or \$200,000 and they attempted to assess that on the property benefited. The owners of some of that property carried it to the supreme court and the supreme court overruled its decision of forty-one years' standing and decided it could not be done. From that time to this the city of Cleveland has not opened a street. We have one hundred or one hundred and fifty streets that require opening, and the worst condition we are in now is about the four street openings that lead toward the heart of the city from the east. On the west of the city there are some that I have not touched upon, but those four are the worst that we have. This amendment of mine seeks to restore conditions as they existed prior to the decision of the supreme court and make it possible for the assessment of all or any part of such improvement upon the benefited property.

Mr. ULMER: Whom do you blame for the situation now existing?

Mr. DOTY: The supreme court.

Mr. ULMER: I blame the city council that adopted the plats.

Mr. DOTY: The trouble is that those men have been dead for fifty years and we can't get at them. We can't even recall them.

Mr. REDINGTON: You assume in every case that a benefit would be derived for the property owner, but can you not imagine a place where it would operate in such away as to hurt the property?

Mr. DOTY: It is conceivably possible that that might happen. I don't think it ever did, but if it ever did the part that is benefited is the only part that should be required to pay. If you have a house and lot worth

\$1,000, and we put an improvement next door that does not add a cent of value to your land, and it is just worth \$1,000 after the improvement is put there, I think that that kind of improvement should be made at the expense of the city, because it would never be made except by the city. There is no local benefit there.

Mr. HARRIS, of Hamilton: The member from Cuyahoga [Mr. DOTY] ought not to ask this Convention, acting for the whole state of Ohio, to enact a constitutional provision for the sole benefit of Cleveland. The situation he names may exist in the city of Cleveland. It may be that he is mistaken as to the amount of benefit to be received by the abutting property holders in Cleveland, but if he is right it would not make a particle of difference. What the member from Cuyahoga [Mr. DOTY] fails to take into consideration is the sacredness of private property. Now let us see what the present constitution has to say as to the inviolability of private property. Section 19 of article I reads as follows:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

As stated last evening, and as read from the brief prepared by my own private attorney on this proposition, these four lines, 95 to 98 (which by the way ought to be a separate section) revolutionize the law in the state of Ohio. It says, "Private property may be taken for public use," but I go one step further in my proposed amendment and that step is taken in the interest and for the protection of the individual as against the public. I say that while the municipality may take private property for public uses, it may not put upon the private owners of that public property more than fifty per cent of the cost of making improvements. The present laws of the state of Ohio also carry out the same idea of equity and public morality in the very proposition I have advanced. Under the present laws of the state of Ohio the aggregate assessment of all kinds within a period of five years for improving streets and laying sewers, etc., can not be assessed against the abutting property in excess of thirty-three and one-third per cent of the value of the property. Now in my amendment I have increased that limit to fifty per cent, and I go on the theory that wherever private property is taken for public purposes it must necessarily be also for the benefit of the public. The benefit to the individual is secondary for it is a sacred proposition of law that no private property ought to be taken for public purposes unless the needs of the public are greater than the rights of the private individual. As an illustration, no improvement in the extension of roads through a farm is made save and except on the theory that the public demands, the public requirements, the public uses, imperatively demand the improve-

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ment, for otherwise there would not be any occasion for condemning this private property. It sounds well to cite this isolated case of Cleveland, but we are not adopting fundamental laws for the benefit or protection of one particular municipality, where the working of the law in all other instances might bring great hardship.

Mr. ANDERSON: Have you not in your amendment made a mistake in that you have not distinguished between the words "abutting property" and "benefited property"? I have just read your amendment and there is a good deal of difference between distributing the cost upon property that is benefited and property that is abutting.

Mr. HARRIS, of Hamilton: The intent of the amendment is to say that the total cost shall not be in excess of fifty per cent of the improvement. Now it may be provided that total cost may be assessed, twenty per cent on the abutting property and thirty per cent on the non-abutting property benefited in a certain district; the council would determine how this was to be distributed.

Mr. ANDERSON: But you do not distinguish between the words "abutting" and "benefited". There is quite a difference between "abutting" and "benefited"?

Mr. HARRIS, of Hamilton: The idea is to take in all the property benefited.

Mr. ANDERSON: You should not say abutting.

Mr. HARRIS, of Hamilton: I am willing to accept the amendment of the gentleman from Cuyahoga that the cost upon all the property benefited shall not exceed fifty per cent.

Mr. HARRIS, of Ashtabula: Is not that question of "benefited property" very indeterminate?

Mr. HARRIS, of Hamilton: Very hazy and very indeterminate, and that is the reason why there should be a safeguard to the poor man with his house or farm. Of course I can see what might happen. Here is the state or the municipality with its legal department and all of its experts to conduct such affairs as against the individual, who in event of a controversy, would have to employ his attorneys and try to keep the town from confiscating his property. There is all the difference in the world between what real estate experts say is the value of the property and what the property will actually sell for.

Mr. DOTY: The only difference between you and me on this awful thing of confiscating property is not a matter of principle. I want to take all of it and you only want half.

Mr. HARRIS, of Hamilton: That is not a fair statement.

Mr. DOTY: It is as fair as for you to say that I am attempting to confiscate property. I never said any such thing.

Mr. HARRIS, of Hamilton: Then I withdraw the statement, but the proposition I am urging upon you and which you ought to consider is whether the cost of the improvement may all be put upon the property benefited; in my judgment it should not, because I could readily see if the city of Cincinnati extends a road and it goes through Brown's farm and Brown's farm becomes more accessible and it is very much easier to reach the main road, then Brown's farm is benefited and the city may say to Brown that he must pay a large share

of the cost of the improvement, but Brown answers "My farm is not worth that much." Your idea of the pecuniary benefit is too great. You always fail to take into consideration the benefit to the public. If the public is benefited the question of the increase in value to the individual may also be considered to some extent. From my point of view I say the public is benefited to the extent of not less than fifty per cent, otherwise, why does the public appropriate that individual's private property?

Mr. DOTY: Why fifty per cent?

Mr. HARRIS, of Hamilton: It is absolutely arbitrary, just as a great many other things are. It is some point between nothing and one hundred per cent.

Mr. DOTY: Now I want to ask you about Brown's farm. Suppose Brown's farm before that road or street is made is worth \$10,000, and after the road or street is put in it is worth \$50,000 and the street cost \$10,000. We ask Brown to contribute the \$10,000. Wherein are we asking Brown for any of his private property?

Mr. HARRIS, of Hamilton: I will show you.

Mr. DOTY: You will have a good time doing it, but go ahead.

Mr. HARRIS, of Hamilton: Brown has not asked the community to open the road on his farm. Brown himself may not want a road through his farm, but the community by reason of this law takes Brown by the throat and says, "The road will be put through your farm whether you wish it or not, and we further think you ought to be grateful because we have increased your property \$40,000," but Brown is not grateful and does not want the road open and he answers, "You are not opening the road for my benefit; I don't ask or want you to do it; you are opening it solely for the public's benefit."

Mr. DOTY: But the point is the measure of damages.

Mr. HARRIS, of Hamilton: There is no question of the measure of damages.

Mr. DOTY: But what is the measure of damages?

Mr. HARRIS, of Hamilton: You can not measure it.

Mr. DOTY: You can measure his damages by the amount of the property you have taken away.

Mr. HARRIS, of Hamilton: If you put a road through his farm, from his point of view the beauty of the farm may lie in the fact that it is not divided and if there is a public highway driven through it he may figure it that it is greatly damaged; that his privacy has been invaded and the æsthetic enjoyment and mental pleasure have been lost.

Mr. DOTY: You are enough of a lawyer to answer my question — what is the measure of his damages?

Mr. HARRIS, of Hamilton: Neither you nor any other man can answer that. The legal measure may be one thing, but there may be an entirely different measure.

Mr. HALFHILL: The measure of damages is how much less valuable it is after the improvement than before.

Mr. DOTY: We have assumed we have taken the man's property?

Mr. HALFHILL: The value of the property taken —

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Mr. DOTY: But the measure of the damages is less than nothing.

Mr. HARRIS, of Hamilton: The measure of damages would be how much less?

Mr. DOTY: Assuming he was benefited to the extent of \$40,000? Is it fair when you give a man \$40,000 to ask him to give you back \$10,000 of it?

Mr. HARRIS, of Hamilton: No; he is not asking you to do that. I am simply asking you to pay him the damages you are putting him to.

Mr. ANDERSON: A point of order.

Mr. DOTY: I am down.

Mr. HALFHILL: Don't your amendment proceed upon the theory that the opening of the street is of value to the entire public?

Mr. HARRIS, of Hamilton: Absolutely, and therefore the entire public should share the cost of opening it.

Mr. HALFHILL: And that has been the law of the state of Ohio and of every other civilized state in the world that anybody knows anything about, and further there is one class of cases in torts where a city is always held responsible for obstructions to streets because streets are for the general public. That is fundamental and can not be gainsaid.

Mr. HARRIS, of Hamilton: It goes one step further. My amendment will help hold back extravagance. There will not be reckless opening of streets and reckless extension of roads through farms.

Mr. DOTY: Or reckless benefits to the public.

Mr. HARRIS, of Hamilton: Or reckless injuries to the public, perhaps. There will not be any of these. It will not be done carelessly or recklessly when the public knows that at least fifty per cent of the cost of the improvement must be paid by it. So there is a question of morality and a question of sound business sense in the management of your municipal affairs, and it rests with you to determine which you will adopt.

Mr. ROCKEL: I think the amendment of Mr. Harris, of Hamilton, ought to prevail. I have no doubt some of the lawyers at least are perfectly familiar with the provisions of the present constitution and the debate that occurred upon the insertion of those provisions in the constitution of 1851. Previous to that time property was appropriated and the entire cost of the property was assessed back upon the abutting owners. That became such a great abuse that property was practically confiscated prior to 1851, and that convention was so much impressed with that that they safeguarded against it in two separate provisions of the constitution of 1851. One of these provisions has been read by Mr. Harris. The other is in another section and is substantially the same. Now if that was the subject of great abuse prior to 1851 I do not believe that this Convention, in order to protect Cleveland perhaps, or any other city, ought to violate the rules that those people in 1851 saw were absolutely essential to protect people's property in the state of Ohio. I think we are going far enough when we give them the privilege of assessing back one-half of it, so I am very much in favor of the provision of Mr. Harris's amendment. I think it will be an abuse if you give the city the privilege of assessing back the full value. They will do as he suggests. They will put out streets in a number of directions. They will say "it doesn't cost the city

anything; we will assess the cost back on the adjoining property." It seems to me it is a very dangerous provision to put into this constitution, to allow any man's property to be taken for the public use and assess the cost back on him. Remember you can not take it for private use, and when you do take it for public use the public ought to pay something for it. I think we are doing very liberally with the cities of Ohio if we permit them to make excess condemnation or any condemnation and permit them to assess back even fifty per cent.

Mr. KNIGHT: At the request of the chairman of the committee I am glad to speak for a moment on this amendment. It seems to me that the amendment of the gentleman from Cuyahoga [Mr. Dory] and the amendment of the gentleman from Hamilton [Mr. HARRIS] may readily be combined into a single amendment covering substantially what is wanted by both, with the exception that one proposes that the city shall stand fifty per cent of the cost of improvement contemplated and the other contemplates that the city shall pay nothing, but the entire cost shall be put upon benefited property, and it seems to me that the amendment of the gentleman from Hamilton [Mr. HARRIS] is the one that ought to be incorporated into this proposal in that regard. I agree with the gentleman from Allen [Mr. HALFHILL] and this is seemingly acquiesced in by others, that it is impossible to open any streets where and when they ought to be opened without a benefit to the entire community resulting from that opening. Every street in the city, unless it has been opened purely for speculative purposes, is and can not help being a benefit in a greater or less degree to the people in all parts of the city, and is not a special benefit solely, although it may be in a larger degree, to the mere local district through which the street runs. For example, in Cleveland there is congestion in certain parts. It is for the benefit of the entire city to have the streets opened there so that congestion in that part of the city can be relieved. It is not a benefit solely to that part of the city to have the streets open, to have the congestion relieved. It seems to me, as stated by the gentleman last on the floor, that it is the taking of property for public use, and it is absurd to talk about taking property for public use and not having the public pay for it in part at least. It seems to me that this proposed amendment is wise and liberal and goes as far as it ought to go in providing that fifty per cent of the entire cost of the improvement should be levied on the specially benefited property and the remaining fifty per cent upon the municipality as a whole. If the municipality as a whole must stand fifty per cent it serves as a check upon the municipality itself in the indiscriminate opening of such streets, whereas if it can mulct the property owner for the entire cost of the improvement it is a matter of no concern to the municipality as a whole, for, as stated a moment ago, it costs the municipality nothing. I hope the change will be made from "abutting" to "benefited" and that we make this further change "not to exceed fifty per cent of the cost."

Mr. DOTY: Take the illustration which I used as an illustration and not applicable to the necessities of Cleveland more than any other city, that the improvement will produce \$15,000,000 of value for the mere making of the improvement. What is it that makes that \$15,000,000?

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Mr. KNIGHT: I will answer that question by asking another.

Mr. DOTY: Any way you choose.

Mr. KNIGHT: If in case it would really make that much value, if it would increase the value of the proverty \$15,000,000, would not you regard the property owner foolish not to make it himself?

Mr. DOTY: They will not do it because they can not do it. There are five thousand of them. Can you get five thousand citizens to spend two million dollars on a thing like this? You might get them to build a Y. M. C. A. or something like that, but you can't get them to make a street. Now I wish you would answer my question.

Mr. KNIGHT: I will if you will keep still a moment.

Mr. DOTY: I have given you a lot of chances, but you don't seem to do it.

Mr. KNIGHT: Have you run down yet?

Mr. DOTY: No, I have just started.

Mr. KNIGHT: I am not going around with the dog-in-the-manger principle that lest somebody may get something for a little less than it costs the rest of us, therefore he must be "soaked" by the rest of us.

Mr. DOTY: Is that an answer to my question?

Mr. KNIGHT: Yes.

Mr. DOTY: I thought that was just about as good an answer as you could give. You are about four miles away.

Mr. FESS: There are two amendments, one by the gentleman from Hamilton [Mr. HARRIS] which is opposed by some, and the other by the gentleman from Cuyahoga [Mr. DOTY] which strikes out "abutting" and puts in "benefited," and there is no serious objection to that.

Mr. HARRIS, of Hamilton: I will accept the word "benefited" instead of "abutting".

Mr. DOTY: For the purpose of facilitating the vote, I will withdraw my amendment.

Mr. HARRIS, of Hamilton: I will withdraw my amendment, and then I will offer another amendment.

The second amendment offered by the delegate from Hamilton [Mr. HARRIS] was read as follows:

1st Division. In line 96, strike out "the abutting" and insert "benefited."

In line 97, strike out "abutting".

2d Division. In line 98 add: "Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

Mr. FESS: I now demand the previous question.

The PRESIDENT: The question is "Shall debate be closed on this amendment?"

The motion was carried.

The PRESIDENT: The question is upon the adoption of the amendment, and a division having been heretofore called, the vote will be on the first part.

Mr. KING: There is something the matter there. You say that you will assess the whole in one place, and now you say you will assess fifty per cent.

Mr. HARRIS, of Hamilton: Would not that mean that they could provide part of the money in bonds, but not more than fifty per cent by assessment?

Mr. KING: They could provide the whole of it.

The PRESIDENT: The amendment can be amended later if desired.

The first division was agreed to.

The question being "Shall the second division be agreed to?"

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 65, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	Fess,	Norris,
Antrim,	Fluke,	Nye,
Beatty, Morrow,	Fox,	Partington,
Beatty, Wood,	Halfhill,	Peters,
Beyer,	Harbarger,	Pettit,
Bowdle,	Harris, Ashtabula,	Pierce,
Brown, Pike,	Harris, Hamilton,	Redington,
Cody,	Hoffman,	Riley,
Collett,	Holtz,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Shaw,
Crites,	Keller,	Smith, Geauga,
Cunningham,	Kerr,	Solether,
Donahey,	Knight,	Stalter,
Dunlap,	Kramer,	Stamm,
Dwyer,	Kunkel,	Tallman,
Earnhart,	Lambert,	Tannehill,
Eby,	Leete,	Ulmer,
Elson,	Longstreth,	Wagner,
Evans,	Ludey,	Walker,
Fackler,	McClelland,	Watson.
Farnsworth,	Miller, Crawford,	

Those who voted in the negative are:

Baum,	Kilpatrick,	Smith, Hamilton,
Brattain,	King,	Stevens,
Crosser,	Lampson,	Stewart,
Davio,	Leslie,	Stilwell,
DeFrees,	Malin,	Stokes,
Doty,	Mauck,	Tetlow,
Farrell,	Miller, Fairfield,	Thomas,
FitzSimons,	Miller, Ottawa,	Weybrecht,
Hahn,	Moore,	Winn,
Halenkamp,	Okey,	Wise,
Harter, Stark,	Peck,	Woods,
Hursh,	Rorick,	Mr. President.
Kehoe,		

The second division was agreed to.

Mr. KING: Now I offer the following amendment: The amendment was read as follows:

Strike out all of lines 95, 96, 97 and 98, as now amended.

Mr. DOTY: A point of order. The motion to amend is out of order, in that the Convention has already amended these four lines in two particulars, and therefore the amendment to strike out is out of order.

Mr. KING: That would be a queer rule. It is now a part of the proposal adopted so far, and it is now pending, and I offer an amendment to strike out all that the amendment added, and I make that motion because I do not believe it has any place in this proposal. I do not believe it serves any useful purpose in there, as appears from the argument of those gentlemen who have explained its benefits, because I do not believe it adds anything whatever. All that it pretends to do could be done now by the legislature, and therefore I am opposed to having it in this proposal.

Mr. PECK: That is to strike out all relating to the assessment for benefits?

Mr. KING: Yes.

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Mr. PECK: I am opposed to anything of that sort. It has been in the constitution since 1851. Someone has some property, and they think it will be a great benefit to open a street. The thing is rushed and it goes through with a whoop, the man's property is taken—a hundred feet of it—and they say that his property has been greatly benefited, more than to the extent of the property taken, and they simply confiscate his property. It may be a very grave question whether he has gotten any benefit or not. It is estimated that he has gotten or will get some future benefit, but his visible, tangible property is taken, and all that he gets for it is some estimated future benefits. I say that is a right of property that is protected by the constitution of the United States that no man's property shall be taken except by due process of law. I have here a statement about that which was made by some of the lawyers in the constitutional convention of 1851, and I shall read some of the debate. There was an amendment put in there just like this. I have myself probably participated in the trial of as many condemnation cases as any lawyer within the sound of my voice. Over and over again I have tried cases, and the jury has always been instructed:

Gentlemen of the jury, you will appraise this property, and give the man its fair value in money—what it is worth—and you will not deduct anything for any supposed benefit to that property. You give him the amount of it in money. This is the law, and that ought to be the law if you are going to take the property. But this is also the law, and should be, that as to any damages to the remainder of the property, by reason of the appropriation, you may offset those damages with the benefits, if any, to the property. The damages are hypothetical, and so are the benefits, and you can set the one hypothetical side against the other hypothetical side, but as to the ground which is really taken, you must pay him for it at its full, fair, marketable value, and that is the constitutional rule.

Mr. Groesbeck, in the convention of 1851, said on this subject:

If the public necessities demand it, my property may be taken, and I must submit. But there is still a right resulting to me out of the transaction. What is it? I am entitled to payment for the property taken. But, sir, is it right in that case for the state to say, I will take your property, and I will assess—not the damages—but I will take into consideration the damage that is done, and the benefits that are to accrue to you from the use to which I put your property, and I will pay you the balance? No, sir; that is not right. It is not consistent with the rule that private property shall be inviolate.

The first part of this section begins with the proposition that private property shall be inviolate, and the end of it is that the benefits shall not be considered. Mr. Groesbeck says further:

Now, what is the rule? Go through my land—take whatever you want, whether I desire to part with it or not, and pay me exactly what it is

worth. Under that rule I shall get all that I am entitled to; under the other, I may get nothing. My property must be taken, and I have no right to complain. All that I can ask, and all that I have a right to ask, is that at the hands of a jury of my countrymen, I may receive for compensation the full value of that which has been taken from me. If in going through my land, with a public work, damage is done to other land beside that which is taken, doubtless the benefit which I receive may be set off against this injury, but where the land itself is taken, there is no basis for such a commutation.

There is a longer and more powerful argument by Rufus P. Ranney right alongside of it. And it is the judgment of every lawyer familiar with the subject that it is not proper to try to pay a man for his ground in the supposed benefits assessed by a jury that may or may not accrue. They speculate on what he gets, but the public gets his concrete property. I submit that it is not a just rule, and that it is the last thing that should be put in the constitution.

Mr. DWYER: I can corroborate very fully what Judge Peck has said. I remember further back probably than any gentleman in this hall. I remember prior to the constitution of 1851, in the early days of railroad building in this state, when they would go to a man's farm, and they had a commission to fix the valuation. They didn't have a jury trial then, but they had a commission. They would go to your farm, and they would say, "We will take so much of your land for this railroad," and then they would say the benefit to the rest of the land is equal to the value of the land taken, and they would not pay anything. That was the rule prior to the constitution of 1851. I know one person in the city of Dayton from whom they took seven acres, and they never gave him a penny. They said the benefits to the rest of his land were equal to the value of the seven acres and that was why in the constitution of 1851 the Convention was so careful to guard against anything of that kind. They put in the provision that in all cases of condemnation the party should get the full value of the land taken irrespective of any benefits. They cut out the clause that before that time allowed them to take benefits into consideration and pay the man for his land with those benefits, and in the constitution of 1851 said that the party must be given the value of the land, irrespective of any benefit from the improvement. I have been in a number of those cases, and the law provides that when you take the land you must give full cash value, irrespective of any benefits, but if you come to incidental benefits that are not shared by the community, if there is any damage, offset the damage by the incidental benefits. But first they must give the cash value of the land, irrespective of any benefits to the remainder of the land, and then they may consider the damages to the rest of the land, and if there are damages, they can offset incidental benefits against those damages. I think that is a fair way to have it. Every man whose land is taken should get the full value of the land taken.

Mr. FACKLER: It seems to me that the community should have a right to levy upon benefited property a part of the cost of making an improvement. As a mem-

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ber of the council several years ago in an outlying section of what is now the city of Cleveland I recall that the council was confronted with this proposition: Two streets had been opened some years before by real estate dealers. The people from one part, in order to get to the business section of the city, had to go several blocks around a truck farm. We desired to put a street through the truck farm. It was getting to a time when it would have to be lotted, but the owner of the property, knowing there was a demand for the opening of the street, would not do anything to assist the village in the matter. It had to open the street, and it paid full cost to the owner of the truck farm. He immediately laid out his lots on either side of the street. He was benefited by that, and the community had to pay the whole cost.

I think putting the whole cost on the abutting property is going too far, but I think we should go as far as attempted here—we should permit the municipality to levy not exceeding one-half of the improvement on the benefited property.

Mr. PECK: If you own a lot next to a neighbor in the city of Cleveland, and assume that the street is not much improved, and you erect a valuable building on your lot, does it not improve the value of your neighbor's property?

Mr. FACKLER: That is a mere incidental benefit.

Mr. PECK: Exactly. Do you have any right to assess him for any of the cost that you have expended?

Mr. DOTY: If you—

Mr. PECK: I am asking Mr. Fackler—you don't know.

Mr. DOTY: Yes, I do. You don't know what I am going to say.

Mr. PECK: Yes, I do. I am asking Mr. Fackler.

Mr. FACKLER: On the other hand, he has no right to stand in the way of my improving my property, but sometimes men own property that will be greatly benefited, and refuse to open streets and compel municipalities to buy their property when at the same time it is a benefit very largely to them in the enhancement of the property they have remaining.

Mr. PECK: They simply refuse to give away their property.

Mr. DWYER: I want to ask the gentleman from Cuyahoga [Mr. FACKLER] if he is in favor of the rule in the Cameron case?

Mr. FACKLER: No; I am not. Now I move to table the amendment.

The motion was carried.

Mr. DOTY: I would like to offer an amendment to cure an error.

The amendment was read as follows:

At the beginning of line 95 insert "Section 10a."

Mr. DOTY: That divides the section that we have been talking about, and it would be better to have it done.

The amendment was agreed to.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

In line 96, strike out the words "or in whole".

Mr. KNIGHT: The object of that is to reconcile that with what we have done. It would then read "Any

municipality appropriating private property for a public improvement may provide money therefor in part by assessment," etc.

The amendment was agreed to.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out the word "special" in line 11, and insert the word "additional". In line 12 strike out the word "special" and insert the word "other".

Mr. KING: There has been considerable miscellaneous discussion of these words "special laws," and all I have heard upon that subject has treated them as general laws. A special law would apply to but one place in Ohio. That has been determined over and over again. Now, if you pass a law that can be adopted or accepted by more than one municipality, or by all if they want to, it is a general law, and has uniform operation throughout the state, and I do not think the word "special" ought to be put into a constitutional provision when you mean something else than special. It was explained by the chairman of the committee that upon application, as he illustrated it, by the city of Cleveland for a certain law or laws that law or those laws would be submitted to the people and would be adopted. Then he afterwards said that other municipalities, if they saw that they worked, could pass under the provisions of these laws by simply submitting them to a vote of their people. If a law is so broad that that can be done, it is not a special law at all, but it is a general law, because if you can use it more than once it is not a special law. It is merely optional.

Mr. KNIGHT: Do you think that the insertion of the word "other" adds anything?

Mr. KING: It seems to emphasize that you mean an additional law to that described in the first clause of the section.

Mr. KNIGHT: Would it not be clearer by striking out the word "special"?

Mr. KING: Probably it would.

Mr. KNIGHT: Would it not be better if you would insert the word "additional"?

Mr. KING [reading]: "No such law shall become operative in any municipality until it shall have been submitted." Are you distinguishing that from "The general assembly shall by general law provide for the incorporation and government of cities and villages; and it may also enact"—

Mr. DOTY: Additional laws—

Mr. KING: Well, "additional laws" would do. But I don't like the word "special". You make it necessary to pass a special law for each city, whether they want something or not.

Mr. DWYER: A special law applies to one.

Mr. KING: Yes.

Mr. DWYER: And the general law applies to the class.

Mr. KING: Yes.

Mr. DWYER: But as to a special law, you will have to go to the legislature every time you want to get one passed?

Mr. KING: Yes.

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Mr. DWYER: I believe you are right, and that we don't want any meaning of that kind to apply to it.

Mr. HARRIS, of Hamilton: Is there any objection to changing that amendment by inserting the word "additional" instead of that word "other"?

Unanimous consent was given and the amendment thus changed was agreed to.

Mr. KING: Another amendment.

Mr. DOTY: Do you make them over there?

The amendment was read as follows:

Strike out the period at the end of line 30 in section 4, and insert a comma and these words: "but any such public utility shall be subject to any regulations provided by law for a public utility of the same class owned or operated by any person, firm or corporation."

Mr. KING: I submit that amendment because in my judgment if the municipal corporation enters into the operation of public utilities, either in competition or as the owner of the whole of the utilities in that particular corporation engaged in furnishing for toll, or for a price agreed upon by itself, the particular thing manufactured and furnished or given by the utilities, it should be amenable to such laws as the state has passed or may pass regulating the administration or operation of that particular utility, and that, being so amenable, it should be required to make such reports of administration as by our laws the state demands of all others operating similar utilities.

Mr. FACKLER: That would place the issuance of bonds with which to purchase utilities under the public utilities commission.

Mr. KING: I think it would, and I make it for that reason, that every utility in the state would be brought under its domination and control, and that it is a protection not only to the public who use the utilities, but to those who own them.

Mr. MAUCK: With or without your amendment, if a public utility sells its service to a private property owner will that utility be the subject of taxation?

Mr. KING: Not in the state; that is my understanding.

Mr. MAUCK: I would call attention to the fact that it has been held that where a municipal corporation owns a city hall and rents out part of it for a cash rent, that so far as it is rented, it becomes subject to taxation. Why not a municipal plant of any other kind?

Mr. KING: If that is so, I am wrong in my abrupt answer. That is only an additional reason why a public utility that can sell one-half of its output shall be under the control of the most important board we have in the state.

Mr. DOTY: Is not the object of your amendment to prevent the public utility from cutting under the price of other service?

Mr. KING: No; I didn't have that provision that you refer to in my book, but—

Mr. DOTY: Is not that the primary purpose of your amendment?

Mr. KING: No; this makes them report like any other corporation.

Mr. DOTY: I call your attention to section 12: "The general assembly shall have authority to limit the power

of municipalities to levy taxes and incur debts for local purposes, and may require reports from the municipalities as to their financial condition and transactions,"—that takes in public utilities—"in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

For all you are after you don't need your amendment, because it is in there, but if you want to head off any rate matter, all right.

Mr. KING: I want the provisions as they exist now, or as the law may be hereafter.

Mr. DOTY: As to rates?

Mr. KING: Anything that the law covers.

Mr. DOTY: We have taken care of everything but rates in this section 12.

Mr. KING: I don't think so. We have passed upon the amount of the mortgage, and we have talked recently about privately owned public utilities—

Mr. DOTY: Your amendment doesn't touch that.

Mr. KING: The public utility law does.

Mr. DOTY: But your amendment doesn't cover it.

Mr. KING: Certainly it does.

Mr. DOTY: I will read it—

Mr. KING [reading]: "All regulatory laws that apply to privately owned public utilities shall apply to municipally owned public utilities."

Mr. HARRIS, of Hamilton: This amendment should not be considered for one moment if the Convention favors home rule for municipalities, because with the amendment of Judge King there is no such thing as home rule or public ownership of public utilities. It says to the municipality, you may build, you may operate, you may purchase, all subject to the public utilities commission of the state of Ohio, and the public utilities commission may determine that you cannot issue the bonds, you cannot put such a mortgage, or that you cannot do one of forty different things. This is as diametrically opposed to home rule as it is possible to be. There is only one thing to do, and I move now to lay this amendment on the table. It is not worthy of discussion.

Mr. KING: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 85, nays 18, as follows:

Those who voted in the affirmative are:

Anderson,	Farnsworth,	Lampson,
Antrim,	Farrell,	Leslie,
Baum,	Fess,	Longstreth,
Beatty, Morrow,	FitzSimons,	Ludey,
Beatty, Wood,	Fluke,	Malin,
Beyer,	Fox,	Mauck,
Brown, Lucas,	Hahn,	McClelland,
Brown, Pike,	Harbarger,	Miller, Crawford,
Cassidy,	Harris, Ashtabula,	Miller, Fairfield,
Cody,	Harris, Hamilton,	Miller, Ottawa,
Collett,	Henderson,	Moore,
Colton,	Hoffman,	Okey,
Cordes,	Holtz,	Partington,
Crites,	Hursh,	Pettit,
Crosser,	Johnson, Madison,	Pierce,
Davio,	Johnson, Williams,	Read,
DeFrees,	Kehoe,	Redington,
Donahey,	Keller,	Riley,
Doty,	Kerr,	Rockel,
Dunlap,	Kilpatrick,	Roehm,
Earnhart,	Knight,	Rorick,
Fackler,	Lambert,	Shaffer,

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Stilwell,	Smith, Geauga,	Watson,
Tallman,	Smith, Hamilton,	Winn,
Tannehill,	Solether,	Wise,
Tetlow,	Stamm,	Woods,
Thomas,	Stevens,	Mr. President.
Ulmer,	Wagner,	
Shaw,	Walker,	

Those who voted in the negative are:

Bowdle,	Evans,	Leete,
Brattain,	Halfhill,	Norris,
Campbell,	Hoskins,	Nye,
Cunningham,	King,	Peck,
Dwyer,	Kramer,	Stewart,
Eby,	Kunkel,	Weybrecht.

So the amendment was disagreed to.

Mr. CROSSER: As I have not thus far inflicted myself upon the Convention with any long statement, I feel that now is a pretty good time, when we are all in good humor. By way of commiseration of the member from Hamilton [Mr. HARRIS], who feels that a discourtesy was done him in entering upon the discussion of this matter in his absence yesterday afternoon, he should remember that it is not those who drive along difficult highways who are heard, but rather those who are on the tallyho as passengers and blow the silver bugle. So, if it will do him any good to have sympathy, I can give him some, having been there myself.

Every amendment that has been offered here to this proposal is clearly intended to destroy the principle of home rule as involved in this measure. The struggle for municipal home rule which has gone on in this country for so many years is actuated by the same motive as that which has advanced the cause of direct legislation, direct primary, and every other democratic measure which has agitated this country for some time, namely, the desire to control the machinery of government by those who are subject to that government.

Direct legislation is an attempt to restore to the people control of their political destinies and welfare further than that of merely changing their rulers every year or two, as is the case at present, for after all that is the only democracy which they have had so far in this country.

The advocates of home rule merely insist that municipalities be allowed to solve their own problems and control their own affairs, independent of outside authority, whether that authority be a monarchy, an oligarchy or the people of a whole state. In short, the cities merely ask that the principle of self-government be extended to them. At the present time they find themselves in the predicament of the women, the only other beings in the state denied the right to self-government.

In order to have real self-government all those, and only those, who are appreciably affected by governmental activities should have a voice as to what that government should be. In other words, if there be a problem which affects the city of Cincinnati or Columbus or Toledo particularly, it is not home rule in any sense of the word if the people of the whole state of Ohio undertake to decide that question, merely because those outside of the cities have more people to vote upon it than the particular municipality.

It is difficult to understand by what reasoning the framers of our constitution and some other constitutions justified the taking away from municipalities the right

of self-government, since this has been the principle of which the United States was supposed to be the best example. Such constitutions have reversed the natural order of things.

I contend that the natural and correct method proceeds upon the theory that municipalities exist first and provide for a government suited to themselves, and that for their own mutual welfare, and also for the welfare of the intervening territory, general governments should be established, but which should exercise authority only in regard to matters of a general nature. As the federal government in its relation to the states has only such powers as are specifically granted to it by the people of the states, so it should be with the state in relation to municipalities. The state should have only such powers as the people specifically grant to it.

This is the view taken by Judge Cooley, and it has been held in many cases outside of Ohio that this is the only authority which the state has: *People vs. Hurbut*, 24 Mich. 44; *People vs. Albertson*, 55 N. Y. 50; *People vs. Detroit*, 28 Mich. 228; *Commrs. vs. The Mayor*, 29 Mich. 343; *People vs. Lynch*, 51 Cal. 15; *Allor vs. Wayne*, 43 Mich. 76; *State vs. Denny*, 118 Ind. 382; *Evansville vs. State*, 118 Ind. 426.

Judge Cooley used this language: "A written constitution is, in every instance, a limitation upon the power of government in the hands of agents".

Of course, I have not quoted enough here to show what he really meant, but his theory is that a state legislature should only have such authority as the people of the state grant to it, not the converse, the situation as we have it in this state, that they have absolute authority, and that the subdivisions have only such authority as the legislature doles out to them. If you stop to consider a moment, you will realize that the municipalities, the village communities, as they are sometimes called, were the first forms of government in the history of any civilization. There was no need for a general or central government until there were a great many municipalities and cities. The villages and cities are simply aggregations of people who have congregated in some particular part of the earth. They found it necessary to have governmental machinery of some kind to regulate their affairs, and it was only natural that all powers of government should remain in them when they established a general government, except such as was necessary to discharge the government functions arising from the interrelations of the municipalities.

But some gentlemen have said that that is neither the natural order nor historically true. I have investigated the question, and I find that even in this country, in the state of Rhode Island, that is exactly what happened.

In an article in *Harvard Law Review*, vol. 13, I find this language by A. M. Eaton:

The original towns of Rhode Island existed before there was any colony or state, with well defined self-instituted powers, legislative, judicial and executive, that were not surrendered when they agreed to unite. * * * They derived no powers from any charter, and no title nor any authority to any land from the crown, except from the Indians by purchase.

In 1640 a union was brought about between Portsmouth and Newport, but the two towns were

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not fused together, and each continued its separate existence, "forming a union only for their common object, but leaving to each one the management of its own local affairs."

So not only in theory but in fact that has been the natural growth of all governments. They grow from the smallest unit up to the community or village, and from that on to what is known as the state, and from the state to the nation, and at the present time it might be well to call attention to the fact that in our analogy we must remember that the United States government, the federal government, has not all the power of government over the states of the Union, which it may dole out to the states as it may see fit, but the converse is true, the theory which I am advocating here for municipalities in relation to the states is true, namely, that the United States only has such power as the people have specifically granted to it, and wherever problems can be handled by the people of any locality, where they affect the people of that locality more than some other locality, that locality should be allowed to do as it sees fit, not because of any sentimental feeling, but for the most practical reason imaginable, namely, that the people being on the ground and having the problem facing them every day, the people knowing their resources, wants, and the exigencies of the situation, are better able to control by governmental process the difficulty involved in that particular case. It is a practical proposition. It is real self-government, that those actually affected by any law shall have the right to enact and enforce that law. The state should have control over certain functions of government. For example, not even I would insist that cities and municipalities should regulate intrastate railroads or canals, for the very simple reason that the railroads enter a number of different municipalities and the canals pass through a great part of the state. Therefore, if one municipality were allowed to regulate or manage a canal or railroad some other municipality would suffer an injustice. So there is a clear dividing line between the case where the matter affects more than one municipality, and therefore requires control by a general government, and the case where it is properly a local problem and can be regulated by the municipality. In the latter instance in order to have real self-government the people of the municipality should control. Now, what are some of the difficulties that have resulted from an infraction of that principle?

I read the other day of a case where, down in Boston, it was necessary to go to the state legislature of Massachusetts to get authority from the legislature to enable the city of Boston to run an electric wire from the city hall to the old court house so that they could use their dynamo in the city hall to supply the old court house with electric light and power. What was the amusing result of the effort to get that through? The electric light company got busy with the state legislature and prevented the passage of that bill, so the city of Boston was compelled to install another plant for the court house, do without light or buy electricity from a private company.

Why, in the state of Ohio I find that a few years ago the city of Cincinnati made application to the legislature, through a member of the legislature, for the passage of a bill giving cities of the first grade of the first class a

grant of power to open a street called Gilbert avenue, and the bill provided that the street should be of a certain width. Think of it, going to the legislature to get authority to open a street in Cincinnati or Cleveland!

I was talking the other day to a gentleman who was once a senator from Cuyahoga county. He told me that when he was in the legislature a few years ago all he did when he wanted any legislation for Cleveland was to go to the Cincinnati crowd and say, "We have a bill that doesn't affect Cincinnati; I want you to help it through." And it would go through. They would each have bills providing for bonds for park purposes and all sorts of things, and they each helped the other through. This gentleman said that one day an old gentleman came to him and said, "Senator, don't you think you had better stop for a little while? I hear a good deal of growling that these bills are vicious and rotten in every particular." And he said, "Old man, do I bother you when you want something for Cincinnati? Don't I come to you with my delegation? Don't you think we had better handle this matter just as we have handled the rest of them?" And the old man went on and voted the rest of the session in the same way, and had all of his friends in Cincinnati do the same thing. What naturally results, therefore, is not only a great detriment to the cities, but also to the country, because it results in the system of trading votes. You vote for this bill which affects my city, and I will vote for something that you want. The result is you get a lot of confused laws on the statute books, obnoxious to the whole state, and probably most of them wrong in principle.

Mr. PRICE: I rise to a point of order. The time of the gentleman has expired.

Mr. KING: I move that the time of the gentleman be extended.

Mr. CROSSER: I don't care to have it extended if any gentleman is tired of hearing what I have to say. The motion to extend was carried.

Mr. CROSSER: But I think the worst result of this centralized form of government which regulates cities from Columbus is that the people of the cities are left in a position where they have absolutely no control over their own destinies, and they are blamed for not taking an interest in the city government and for lacking in civic patriotism and righteousness. I tell you that the members of the legislature and of past constitutional conventions have been entirely responsible for that condition. Does it lie in our mouths to say that the people of Cincinnati or Cleveland or Columbus have been derelict in their duties when really they have had no control over their affairs at all? In order to stir up civic pride and political activity must there not be placed some feeling of responsibility upon the people of the municipalities? At present all they do practically is to vote for a mayor and councilmen occasionally, and then the mayor and councilmen are herded in by a lot of legal restrictions which say what they shall do or shall not do. Put the power in the hands of the municipalities so that they can govern themselves, and they will have no such excuse. They will know then that whatever ills they suffer are due to their own neglect, but at the present time they can conscientiously say that it is not their fault, that they have no control over their own destinies, and that is the reason I was so much opposed to the amendment

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offered by my friend, Mr. Anderson, this morning, which struck out really what seems to me to be the very thing we have been striving for. If this proposal is passed in its present condition, all we can get is a right to own a few more public utilities than we now own. I think I can prove that this is true. What is there to stop the state of Ohio, as the proposal now stands, from passing a general law saying that every policeman employed by any municipality in the state shall get \$50 a month, no more and no less? Would not that be a general law? Certainly it would be so construed. Suppose the state should go farther and say, there is a civil service regulation which shall affect every public officer in the state of Ohio and the employment of every public officer in the state of Ohio, would not that be a general law? Couldn't they pass such a law? I cannot see it otherwise.

So I feel about cutting out the words "affecting the welfare of the state as a whole." If you have that language in the proposal you are certain that a regulation passed by the city of Cleveland in regard to a local condition would not be one that affected the general welfare of the state of Ohio, but as it now stands you can pass such a regulation and the legislature can nullify it so that home rule is destroyed. I propose therefore to offer an amendment a little different in language, but which is the original language of Professor Hatton, contained in the proposal of Mr. FitzSimons, and I hope the amendment will be adopted.

The amendment was read as follows:

After the word "laws" in line 18 strike out the period and insert a comma and add the following: "but such regulations shall be subject to the general laws of the state, except in municipal affairs". In line 49 after the word "laws" strike out the period, insert a comma and "except in municipal affairs."

Mr. CROSSER: It seems to me that if we are to have any home rule whatever we should have some language of that kind in the proposal. Personally I have no objection to striking out the matter relating to liquor. I have no patience with either side of that controversy. I have a contempt for those who can see nothing else in all the deliberations of this body but the wet and dry question. It seems to me the principle of self-government is ten times more important than this wet and dry question, which is eternally being flaunted here every time any kind of question is brought up. Let us be broader. Let us give citizens by the initiative and referendum real self-government, and let us also give the municipalities real self-government. We have already given the women the right of self-government. Now, let us go a little further. Let us strike the shackles of political serfdom from municipalities.

Mr. KNIGHT: I offer a substitute for the amendment just offered.

The substitute was read as follows:

"Amend the amendment to Proposal No. 272 by substituting the following: In line 16 strike out the word "power" and in lieu thereof insert the word "authority to exercise all powers of local self-government, and".

Mr. KNIGHT: That substitute just read undertakes, and I think succeeds, to cover the same thing intended by

the amendment of the gentleman from Cuyahoga and avoids the phrase "in municipal affairs". These words were given a very careful research by Judge Worthington, and they constitute a phrase which has been given varied interpretation by the courts of California, where the very same words are used in a provision with reference to municipal home rule. I regret that the report which Judge Worthington made of his examination, and which he brought before the committee, is not available at the moment, but it became entirely obvious to the committee at that time that the words "in municipal affairs" were not susceptible of a single definite and unvarying interpretation, and that at least in one case the court in California, composed of seven judges, differed very widely on it. Three of them held that the term "municipal affairs" meant one thing, three others held that it meant something else and the seventh judge differed from the other six, which seems to be fairly good evidence that the phrase was not a definite and certain one.

The substitute I offer places in section 3 the same phrase that occurs in section 7. It is already in section 7. Section 7 deals with those cities which choose to frame charters for themselves, while section 3 deals with the municipalities which choose to remain under general laws, and this puts both kinds of municipalities upon the same footing, so that those who shall operate under general laws shall have authority to exercise all powers of local self-government, and enact and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws. The same provision is in section 7, with reference to charters of cities framing their own charters, that any city or village may frame, adopt or amend a charter for its government, and exercise thereunder all powers of local self-government, but all such charters and power shall be subject to general laws. We have here identically the same provision. The language may vary a word or two, but it does not vary at all in sense or substance. It is my belief that the insertion of these words restores to section 3 a vital feature which was by the last action of this Convention before recess today stricken out; that is, in our effort to get away from the question which I am certain we all want to get away from, a good deal more was stricken out than was helpful to municipal home rule, and more than was intended, and it is with a view of restoring to the proposal that which ought to be there in our judgment, without breaking into anything which anybody can by any possibility term a sleeper.

Personally I feel that this goes far enough to give us in the cities of this state an adequate measure of municipal home rule, and that it does not in any way raise any controverted question such as we had the flurry over this morning. I am not attempting to insert anything except what is attempted to be accomplished by the amendment of the gentleman from Cuyahoga [Mr. Crosser], but his amendment does contain language which the courts of California have held to be language of uncertain meaning.

Mr. DOTY: The gentleman's amendment has the first part of the Crosser amendment, but I want to ask the gentleman if that part of the Crosser amendment ought not to prevail in which he says that all such regula-

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tions shall be subject to the general laws of the state, except in municipal affairs?

Mr. KNIGHT: You have the wrong proposal. You must have the original proposal.

Mr. DOTY: No; I have not. I will read his amendment to get it straightened out. It would then read "But all such charters and powers shall be subject to general laws except in municipal affairs." Do you not think, while your amendment ought to prevail in place of Mr. Crosser's first amendment, that his second amendment ought to prevail, and if not, what is your view on that?

Mr. KNIGHT: I see no reason why it should go into section 7, unless there is a reason why it should go into section 3. The object of my amendment is to place all classes of municipalities, whether those which shall operate under general laws, or those which shall operate under additional laws, under section 2, or those which operate under charters, that they shall all be under the same provisions. Personally I feel that the provision now does accomplish all that it is necessary, or, in my judgment, that it is desirable to insert in the constitution on the subject of municipal home rule. I think it goes far enough to satisfy the most ardent homeruler, whose zeal for home rule does not run away with his judgment and discretion. I do not think, therefore, it is wise to insert language which the courts have held to be indefinite and uncertain and which is not capable of interpretation.

Mr. SMITH, of Hamilton: I understand that sometime yesterday I was called a radical homeruler. I am justified in saying, unless one of these amendments or some similar one is adopted, that this Convention is radically opposed to home rule. I hope the Convention will adopt the Crosser or the Knight amendment. I prefer Mr. Crosser's, although Mr. Knight's will give local power of self-government.

In section 7 it is provided that "Any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government," etc. The action of the Convention therefore makes even the adoption of a city charter subject to general state laws. This is all wrong. Suppose, for example, that the legislature by undue and evil influence might say that there shall be no commission form of government in Ohio for cities. Even if some of the cities might want a commission form of government, the state could forbid them under this proposal as it now stands. The real fact, I think, is, and if you will study it you will agree with me, that you have gone too far in changing this proposal. There is nothing under the proposal now to give a city any home rule. There is no matter upon which the legislature might not pass a law, and prevent the city from legislating along the same line. The city would be blocked by the general act of the legislature. So I hope you will do something to relieve the situation, because some relief should be given.

Mr. ANDERSON: Personally I am in favor of the fullest home rule for the cities of Ohio, but I do not want so much home rule for the cities of Ohio that they may nullify a work that we have already done in reference to the licensing of intoxicating beverages. The court of California may have differed as to the interpretation of the words that were offered here in the proposal as sent down from the committee at Cleveland,

but be that as it may, the supreme court of California has agreed in reference to the fact that if the proposed amendment of Mr. Crosser, or that for which Mr. Smith is contending, is put into Proposal No. 272, it will give to each municipality absolute authority to do absolutely as it pleases with reference to all the things concerning the regulation of the traffic in intoxicating liquors. They can abolish it, they can give it a degree of prohibition or they can regulate it in any way that they please, and I have the authority here in my hand. I found it by an examination of Mr. Harris' brief. It is 155 California, page 304.

Mr. FACKLER: What is the provision of the constitution of California with reference to the liquor traffic?

Mr. ANDERSON: I waited and allowed the discussion to proceed. I really tried to inform myself on the situation, so that I might be understood. The home rule proposition is in the constitution of California, and it is in there in practically the same language as suggested by Mr. Smith and by Mr. Crosser, and by the language employed before we struck out part of Proposal No. 272.

Mr. FACKLER: Was there any general law in the state of California that conflicted with the authority attempted to be exercised under the home rule provision?

Mr. ANDERSON: I do not know; nor do you.

Mr. FACKLER: Is it not a fact that your case would not be in point unless there were such a law?

Mr. ANDERSON: Absolutely in point, because the court in this volume holds that by reason of the constitution of California giving municipalities home rule such as you want to give, no matter what law they have passed, each municipality may do as it pleases in reference to the liquor traffic.

Mr. FACKLER: That could only be done in case there was not a general law, and that would not be a case in point unless you can say that there was an absence of a liquor provision in the state of California.

Mr. ANDERSON: I am stating it awkwardly. I mean this, largely following the logic and the words of the supreme court report: The constitution of California gave to each city certain rights. Therefore, that municipality could do as it pleased, in introducing an ordinance to throw out or to allow the uncontrolled sale of liquor within the bounds of the municipality. It could license any saloon at any place. An attempt there was made to license a business club to sell intoxicating liquors. I believe the Knight amendment preserves home rule in its purity, and therefore—and in this I believe Professor Knight will agree with me—there is no need of going any further, except to obey the demands of the "wet" lobby. I want to say that the liquor proposal, Proposal No. 151, has met with praise all over the state of Ohio, with the exception of two classes—first, the third party, the prohibitionists, and second, the foreign brewery representatives. The report from the home counties to the delegates is that there has been nothing but praise for that proposal, and what is the use of allowing it to be nullified? What is the use of trying to permit, as I am beginning to believe Mr. Smith, of Hamilton, is attempting, the wet lobby of the foreign brewery representatives to have what they want? I am afraid that the

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gentleman from Hamilton [Mr. SMITH] is more in favor of the brewery than he is in favor of home rule. I am only influenced by the evidence. I may be mistaken, but it does seem strange that when the brewers have anything they want done here, any kind of amendment to Proposal No. 151, it comes in from the same delegate and the same city, and we have it from the mouth of the chairman of the committee that all amendments that were made in the committee to amend this home rule proposition to let the brewery have its sway came from Cincinnati. Because I am in favor of home rule in its purity, I am in favor of the Knight amendment, and because I am opposed to having a collateral attack made upon Proposal No. 151, I am opposed to the Crosser amendment.

Mr. PETTIT: It seems there are certain gentlemen, who in the discussion of this question are very fearful that the whisky question will be lugged in. Who has lugged it in, I would like to know? The same slimy serpent that has been here all the time, wriggling around among the members of the Convention. A gentleman from Cuyahoga came to me this morning, because he knew I was a dry, and asked me to see that this provision, limiting section 3 was stricken out. He was willing that that matter should be stricken out.

Mr. DOTY: What part was that?

Mr. PETTIT: About the welfare of the state as a whole.

Mr. DOTY: What gentleman was that?

Mr. PETTIT: Mr. Fackler. I will name him. He didn't want the whisky question brought in here. He said he was satisfied if those words were stricken out.

Mr. FACKLER: Yes.

Mr. PETTIT: Well, why have you changed?

Mr. FACKLER: Mr. Knight has pointed out the reason. If section 3 is changed as we have changed it, and section 7 is left alone, under section 3 municipal corporations which do not adopt charters are left in the same position as now.

Mr. PETTIT: That is not the reason. I tell you you were not in good faith when you voted for the amendment. I came to you and cautioned you—

Mr. KNIGHT: A point of order. I think this unseemly discussion is out of order.

Mr. PETTIT: Now you are satisfied with the amendment offered by Mr. Knight.

Mr. FACKLER: I am.

Mr. PETTIT: Mr. Crosser is not.

Mr. CROSSER: Mine was in first.

Mr. PETTIT: You are trying to lug in what we struck out this morning. I see through it all. This is very much favored by the gentleman from Hamilton [Mr. SMITH]. He is one who gave notice of an amendment to Proposal No. 151. He tried to cram that down the throats of the Convention, and he saw he couldn't do it and withdrew it, and now he is trying to lug this thing in here, and as long as you let this thing bob up we will be ready to hit it. Why do you not enforce your law against the saloons? You can shut them up, but you won't do it. If you would shut them up you wouldn't have to have so many police regulations, and wouldn't have to have half as many evils as you have now, and you wouldn't have to have half as many workhouses.

Mr. SMITH, of Hamilton: I rise to a point of personal privilege.

Mr. DOTY: I rise to a point of order. I think this matter should be confined to the question before us.

Mr. SMITH, of Hamilton: I was out of my seat and I heard my name mentioned on the floor of the Convention, and I want the privilege of making a statement. When a man finds that he has no argument—

Mr. DOTY: I rise to a point of order. The gentleman has not stated any question of privilege yet. He has to state that first.

Mr. SMITH, of Hamilton: Don't you know it?

Mr. DOTY: No; I do not.

Mr. SMITH, of Hamilton: I was going to say when I was interrupted by the gentleman from Cuyahoga [Mr. Dory] that when a man fails to find any sound arguments for his cause he descends to insinuation and innuendo. Now, the gentleman from Mahoning [Mr. ANDERSON] virtually accuses me of representing specifically the liquor lobby in this Convention. That insinuation is absolutely false. It is only due to the Convention and to myself to say this. I am strongly in favor of a proper license provision, but am not fighting for home rule because of any profit the liquor interests may get out of it, but for the reasons that I have tried to state to the Convention. I believe the Convention understands my strong convictions. I want the cities of our state to be free to work out their destinies. I am president of an organization composed of thirty-five local welfare and civic organizations, organized to discuss and handle for the people of the city the big problems of government that come up in Cincinnati. This organization, called The Federated Improvement Association of Hamilton county, has gone on record in favor of home rule. So I am here striving to secure for them and for all the people of Ohio a reasonable provision for the self-government of cities.

Mr. WINN: I would like to ask the member from Hamilton [Mr. SMITH] a question: If you could have your way about it, you would prefer to have this proposition so written that each municipality could have absolute power to determine for itself all questions respecting the sale of intoxicating liquors, would you not?

Mr. SMITH, of Hamilton: No; I am not prepared to say that. What I do believe and have already said is that the cities themselves are best able to solve the great problems arising in the city. Only one of these problems is the abuse of the liquor traffic and its remedy. You must admit that our present methods have not been so successful that it might not be a wise plan to give to cities some measure of control over the situation themselves.

Mr. PETTIT: You think they cannot have home rule unless they are entitled to control the whisky question?

Mr. SMITH, of Hamilton: No, sir; that is a mere incident in my mind. I believe the city should have some measure of control over that business in the city, but I have many bigger questions than that in my mind. When I speak of home rule the liquor question is never a part of it. For one thing, I think of public ownership of public utilities. For another, I think of the advantage of letting a city decide its own form of charter.

Mr. PETTIT: But you only pander to that element whenever they get scared and demand something of you?

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Mr. SMITH, of Hamilton: You may think so; I do not. As I said before cities have many problems. The liquor question is only one of many. I trust the Convention will not be fooled and allow this kind of talk to cloud the important issue under discussion.

Mr. FESS: On the fourth day of our session I introduced a proposal designed to give home rule to cities. It is one of the questions that is of interest to me, and has been for a great many months, if not years. I do not want to speak to the amendment that is pending, but I would like to speak briefly in regard to the principle of home rule. Here is a proposal that has come in after a long and elaborate study, both by men who are experts along the line of local self-government and men in the committee. I have understood that committee held many, many meetings and the matter was threshed out very thoroughly, and I have wondered whether when the proposal has come, consisting of twelve articles, if we are not likely in our enthusiasm upon the police power in the proposal to lose sight of the thing we are trying to get here. I am wondering whether the most important thing we have is this section 3 and part of section 7. I believe that we should keep in mind the eighty-two cities which will fall under this proposal, and which may utilize it to get what this Convention wants to give them.

I think every man here would like to have the city have the power to organize itself with the power of determining its functions. We would like to have the administrative functions not disturbed in this state house or interfered with by exterior power from the cities. It seems to me that what we are concerned about is that each city may determine its own powers of government and powers of administration. In trying to reach that we have a long proposal that is somewhat legislative, and on that score there will be some objection, but at the same time it will appear that this is the best thing that can be done. This has been a work of collaboration that represents no political party, that represents no city, that represents no industry or interest, that represents no locality, but represents our state; and being a representative proposal, with no particular or local interest in it, it merely gives to every city in this state what other cities in other states have profited by. That being the case, I appeal to you not to lose the main thing we are trying to get here. I do not want to minimize the importance of this amendment. I do not want to say that any amendment is offered to defeat the proposal. I believe the amendments are being offered to clarify the proposal, and thus far we have profited by the discussion of the amendments, but I would hate, in our efforts to get what the cities of the state ought to have, to do something that would be a detriment to the proposal. This is the police power you are discussing. It is an important part of it, but the most important part is the right of the city to govern itself. The police power exercised by the city is of less importance. It is true that the greatest problem our state has ever had has been its federal relations, its relations with the power of the government at Washington. Now the same thing is true in Ohio, there is a conflict between the cities and the state and between the cities and the counties.

Therefore, in this proposal, while we recognize the authority of the state in matters pertaining to the general

welfare, in school legislation, in sanitation, in the police power that you are now discussing, while we recognize that, we do not want to give the state the power to nullify the power of the cities, nor to allow the city to nullify the power of the state. That is our problem. It is the biggest one we shall have, and I appeal to the men here, let us not jeopardize the larger interests of the government of the city by our fears that something we are constructing will ultimately defeat the regulations that we insert, and it seems to me that the amendment of Professor Knight will cover it all, and without any conflict. As I recall that amendment it provides authority in the city to exercise local self-government, subject, however, to general laws. It seems to me that that covers the whole thing.

Mr. DOTY: How about section 7?

Mr. FESS: That is one of the important sections which gives a right to the city to frame its own charter.

Mr. DOTY: How about the Crosser amendment?

Mr. FESS: The only thing I fear about that is the phrase "except in municipal affairs." Does not that open the door too wide? I would vote for that as a last thing, but I prefer Professor Knight's amendment. We have suffered so very much from being controlled by power in the state house here that it seems to me we ought not to allow those other matters to jeopardize this larger purpose. Therefore, I am going to vote for the amendment of Professor Knight in the hope that it will carry, and it seems to me there will be no suffering either on the part of the city or the state. Let us not jeopardize this very important proposal for self-government by some fear of something that nobody understands.

Mr. HARRIS, of Hamilton: I sincerely hope the Convention will adopt Professor Knight's amendment rather than the amendment by Mr. Crosser. I believe the amendment of Mr. Knight will cover, so far as can be covered, that which was unintentionally cut out of section 3 this morning.

I hold in my hand some papers taken from the desk of Judge Worthington. There are forty-five decisions by the supreme court of California in their efforts to interpret the four words "except in municipal affairs" which the committee absolutely refused to insert in its proposal. Every member of the committee knows how thoroughly that was discussed. It is inviting lawsuits and litigation for construction of every function of municipal government, and it is most unwise to incorporate it in our proposal. Section 3, as amended by Professor Knight, has this further advantage, that it will agree with the phraseology in section 7, because he has used the exact words, to-wit, "may exercise thereunder the powers of local self-government."

Now, I maintain that there is nothing in this proposal which means to give, or ever was intended to give, a charter-governed city any greater power or authority than a municipality organized and working under the general or special laws. Consequently, when you limit the phraseology in section 3 and in section 7, and make it exactly the same, you are conferring a distinct public benefit. You are removing a great many possible cases for interpretation by the supreme court. I thoroughly coincide with my distinguished predecessor from Greene, who always speaks well and intelligently. We must not lose sight of the general scope of the proposal for the

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mere egotism of words, and I trust that the amendment offered by Professor Knight will be accepted, and that then the proposal as a whole will be adopted by the Convention.

Mr. WINN: I shall not ask very much time. If any amendment is adopted, I favor the amendment of the delegate from Franklin [Mr. KNIGHT], and it seems to me that if section 7 can be amended so as to make it harmonize with section 3, we shall have accomplished all that any of us who are deeply interested in local self-government for municipalities could ask. Of course, this proposal, after having eliminated from its provisions those parts that were taken out this forenoon, is still a long way in advance of the existing constitution and statutes. It does not, of course, go as far as those gentlemen who believe, as some do, in local self-government to its fullest extent, would ask. I would amend section 7, and I take the floor for the purpose of making this suggestion. We can study about it a minute. If we adopt the substitute amendment of the member from Franklin, and then make this amendment to section 7, it seems to me it will make the two harmonize:

Strike out all of section 7 and insert the following:

SECTION 7. Any city or village may frame and adopt a charter for its government and may subject to the provisions of section 3 of this article exercise thereunder all powers of local self-government.

Now cut out everything that is left in that section respecting conflict of laws, "but all such charters and powers shall be subject to general laws affecting the welfare of the state as a whole." That can all be stricken out if we say that section 7 is subject to the provisions of section 3.

Mr. KNIGHT: Are you aware that the last nine words of section 7 are eliminated?

Mr. WINN: Take it all out after the word "government." Leave the municipality under a charter to exercise absolute self-government, subject only to the restrictions under section 3. What objection could there be to that? It looks to me as though that gives all that is asked for.

Mr. CROSSER: You don't mean to cut out the word "amend". Sometimes they want to amend.

Mr. WINN: I did cut that out accidentally, but I can add it. I hope the amendment of Professor Knight may be adopted after which I will offer that.

The amendment offered by the delegate from Franklin [Mr. KNIGHT] was agreed to.

Mr. WINN: Now I offer this amendment:

The amendment was read as follows:

Strike out all of section 7 and insert the following:

SECTION 7. Any city or village may frame and adopt or amend a charter for its government and may subject to the provisions of section 3 of this article exercise thereunder all powers of local self-government.

The amendment was agreed to.

Mr. DOTY: We have not adopted the substitute offered by the delegate from Franklin [Mr. KNIGHT].

Mr. ANDERSON: No, sir.

Mr. DOTY: The question is on that.

The PRESIDENT: The question is on the adoption of the amendment by way of substitute to an amendment of the delegate from Franklin [Mr. KNIGHT].

The substitute was agreed to.

Mr. WINN: Now I offer an amendment to correct the phraseology in another part of the proposal.

The amendment was read as follows:

Strike out all of section 4 to and including the word "service" in line 26 and insert the following:

SECTION 4. Any municipality may, for the purpose of supplying the product or service thereof to the municipality or its inhabitants, acquire, construct, own, lease and operate, within or without its corporate limits, any public utility; and may contract with others for any such product or service.

Mr. WINN: Under the provisions of section 4, as now written, a municipality may contract for the purchase of a public utility provided the product of such public utility is at the time of purchase supplied to the inhabitants of the city or village. If it is a city or village that has no such service, it is not permitted, under section 4, to acquire the public utility of that sort. This is designed to broaden the terms of that to extend it to any municipality, whether the municipality has the public utility or not, and it may proceed to acquire one. It makes it possible to have just what was intended.

A vote being taken, the president announced that it seemed to be carried.

Mr. HARRIS, of Hamilton: I think that is a very important amendment, and I do not think an amendment of that kind ought to be rushed through without the Convention understanding the scope of it.

Mr. DOTY: In order to bring it before the Convention, I move to reconsider the vote by which that amendment was agreed to.

The motion to reconsider was carried.

Mr. WINN: Let me explain a little bit further. If the members will turn to their books and read section 4, you will see the importance of it: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants." That seems that unless the utility is supplying at that time its product to the municipality the municipality cannot acquire it. I suggested that amendment to Professor Knight last night, and he said, that "is or is to be supplied" would remedy it.

Mr. HARRIS, of Hamilton: Would not the purpose you seek to cover be entirely secured by inserting the words in line 25 "which is or may be supplied"?

Mr. WINN: I thought about that seriously, and if I were not particular about the use of the English language I would have put it in that way, but the more I have studied it the more I have thought it was bad English, and I attempted to say it with the better English.

Mr. FACKLER: Do you think it is possible under the construction of your amendment that a municipality would not have authority to acquire a public utility if it were already a public utility supplying service, inasmuch as you say it "may acquire, construct, own, lease and

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operate within or without its corporate limits, any public utility"?

Mr. WINN: Certainly not. I offered that to cure what I say is a defect in this.

Mr. KNIGHT: May I say that the gentleman from Defiance [Mr. WINN] misunderstood me if he understood me to say that the language of his amendment would cover the matter. I distinctly said that the words "is or is to be" should be inserted, but he misunderstood me very clearly if he understands me to approve the language of the amendment which he now proposes.

Mr. WINN: With the consent of the Convention I will withdraw the amendment. I do not care a snap about it myself.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: I suppose there is nothing that is good in this world that comes into it without having a price and I take it that Proposal No. 272, which was brought into you here, has paid the price of wanting to come into actual use. For the last thirty years I have been looking forward to the day when the people in our municipalities might have the right to govern themselves in their own way, at their own pleasure, in their own time, at their own cost, with due respect for the rights of everything that belongs to the great commonwealth of Ohio. I am pleased to see the disposition shown here to grant to the municipalities of Ohio the privileges that have been accorded to municipalities of Great Britain for thirty years. It shows that we are marching, probably not up in the front rank, but in motion, and when the American people get into motion on any subject they are not long in the rear.

The municipalities of Ireland, that are only subjects of Great Britain, not sovereigns as we are, not kings twice a year, not exercising sovereign prerogatives individually as we are, have the right to serve themselves municipally in everything that may tend to their own benefit. I speak of the Irish municipalities for this reason: We are apt to look upon them as only subjects of Great Britain, but they have their own electric railroads and they have a multiplicity of services they render themselves.

When John Burns was in this country some days ago he was then representing Battersee in the London council. He told me that the county council had taken up the work of reclaiming the slums of Battersee, and in the place of slums they were erecting modern tenement houses with every convenience and utility attached to them. They were renting these to the people of the locality at a price way below what those unfortunates had been called upon to pay for the slums that they occupied. He said to me the rent they pay for these tenements is capable in every way of meeting all the running expenses of the plant and creating enough in the sinking fund to eventually liquidate the indebtedness. That all sounded well to me. I was glad to hear it, but when John Burns went to the limit of the proposition and when I asked him if he thought it would pay—I was only asking him from the American standpoint at the time—I said, "Burns, will it pay?" He said, "Yes, it will pay, but if it does not pay in pounds, shillings and pence, it will pay in this way: It will not cost as much to police those people under the conditions in which they are

living now as formerly, for, remember, you can not rear men and women in the slums and have them of any account."

That, my friends, was the foundation principle that permeated them. That is the principle that should permeate us. I can take you to municipalities in the state of Ohio and show you divisions between families in their rooms that have no more resistance than a chalk line on the floor, and how do you expect to rear people that we should be proud of on that basis?

In Glasgow they have gone further. There they own their own slaughter houses. They can afford a premium for choice cattle and butcher them at their slaughter houses and put them in cold storage and sell them to the people at the cost of the service. How could the Beef Trust get their hooks into those people under those circumstances? Even in our cities the trusts have got control of the fish product that we tax ourselves to plant in Lake Erie. They got so arbitrary that they told our fishermen what they should pay and what the consumers should pay. The city took things into their own hands and put up a city dock where the fishermen could bring their fish, and the fishermen got more for their fish than they formerly did from the trust, while the people who were buying the fish are paying only about thirty per cent of what they paid formerly. It shows that with our congested population we have to get away from certain policies that we have been pursuing for years up to the present time. Anything that will tend for the betterment or elevation of the human family should have our best efforts. Gentlemen, from this time forth in this country it is to be men, not dollars. It has come to that. We have tried the other god. We have tried the dollar for a god, and while he is a handy first lieutenant, he is an awful unreliable god.

Now there is no use continuing on this proposition. The work is done, but in conclusion let me say, let at every point our efforts be to secure to the mass of the people, those who through stress of circumstances have not the ability, haven't the disposition and haven't the time to be eternally looking out for self—let us take their task in hand, and let us to the extent of our limited ability do everything in our power to uplift and bring up the column, not to get in advance of it and leave them behind, but to bring the column up so that when all are there, there will be no man or woman or child in this country who will have any plausible, reasonable or logical excuse for being helpless. Our natural resources are ample to meet everything. All that is needed is a change of front on our part and the job is done.

Fundamentally the American is right at heart, but in the past he has been looking out for himself. When the army shouts "Save yourselves," they are ready for the enemy's cavalry and when the cavalry gets in among the infantry there is mischief to pay. I have seen it when the officials of private interests have got up and told me in public that it was cheaper to buy officials than to deal fairly with the people. My friends, when we have gotten to that low level it stands us to take an account with ourselves, and the way to do that is to remove temptation, quit eternally fighting among ourselves and keep the other man from preying on our necessity. I do not care how the interests may come in conflict, the people are the ultimate sufferers. It is up to us; let us enlarge our

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ability to help ourselves, and the generations that will follow us will call us blessed.

Mr. FESS: I move the previous question.

Mr. HOSKINS: I would like the gentleman to withdraw the motion.

Mr. DOTY: You can vote it down.

Mr. HALFHILL: Some of us would like to be heard on the matter.

The motion for the previous question was lost.

Mr. HOSKINS: I offer an amendment.

The amendment was read as follows:

After the word "municipality" in line 46 insert: "A municipality owning or operating a public utility shall not sell its service or product at less than the cost thereof."

Mr. HOSKINS: I am offering that amendment solely upon my own authority and without any suggestion or solicitation. It presents a phase of this question that I am satisfied has not been considered by this Convention. If I read this proposal right, there is absolutely no limit on the cost at which the municipality may furnish its service, and there should be such a limitation. I am heartily in favor of municipal ownership of public utilities in a general way and I desire to vote for this proposal, but there ought to be limitations upon the sale of the product so that the product can not be sold at less than cost. There is a reason for that. For instance, a municipality undertakes to acquire and operate an electric light plant. They will have a right to do it under this proposal. Electricity is a commodity that will be produced by the public utility and it will be used by a certain percentage of the citizens, while a large percentage of the citizens will probably continue to use a cheaper method of illumination than electricity. Now if the municipality is permitted to furnish the current at less than the cost of it, the common taxpayer bears part of the burden of the man who is getting the electricity at less than it costs. That cost can always be determined. In my judgment, you will find that we are not going to have the millennium right away. You will still have politics in the management of your public utilities, and you will still have boards of administration who will want to make a showing to other boards of administration, and they will undertake to reduce the cost of their product or reduce the price of their product to secure a favorable comparison. The municipality ought not by reducing to a price below the cost put a new burden on the common taxpayer. That is my idea of it. There ought to be a limitation upon the sale of the product so that it could not be sold at less than cost.

Mr. FACKLER: That would enable the private lighting company doing business in a city which had a municipal lighting plant to put the municipal plant out of business, would it not, by lowering the price below the cost temporarily for the purpose of driving the municipal plant out of business?

Mr. HOSKINS: Well, reverse the rule—

Mr. FACKLER: Is not that the fact?

Mr. HOSKINS: Not necessarily so, and I do not think it would do that. Now let us reverse the rule and put the other proposition. If the municipality undertook to operate and came in competition with a private company that may be operated they would at the expense

of the taxpayer drive out or destroy the public utility that was thus being operated.

Mr. DOTY: In all your knowledge and experience have you ever heard of a public ever treating a privately owned utility in the fashion you are now describing? Did it ever happen?

Mr. HOSKINS: I do not know. I am not making a plea from that standpoint.

Mr. DOTY: You are making a plea from the standpoint that the public might do it?

Mr. HOSKINS: That has been done ten thousand times.

Mr. DOTY: Name one. It never happened once.

Mr. HOSKINS: That is an all-fired, broad assertion.

Mr. DOTY: If you know ten thousand just name us one.

Mr. HOSKINS: I have in view one instance that you don't know anything about, but I do. A company went into a city and put in a utility after they had been invited by the city council to come there and put it in, because the opposition public utility was not furnishing the service which should be furnished.

Mr. DOTY: A public utility?

Mr. HOSKINS: Yes.

Mr. DOTY: Publicly operated?

Mr. HOSKINS: Sit down—keep your seat. Mr. President, I object; somebody from Cuyahoga county is disturbing the proceedings with his mouth.

Mr. DOTY: I am not disturbing you.

The PRESIDENT: The member from Auglaize [Mr. Hoskins] has the floor.

Mr. HOSKINS: I want to give you this instance, if you will just shut your trap. This private company, operating what would be a public utility under this proposal, was invited to come there and invest its money for its own private benefit. The investment was made under the ordinance of the city council. Two or three years passed and one night a reform wave came in all at once, and without warning and without notice and without any indication that they were going to make that bid for public approval, they reduced the right of the operating company.

Mr. DOTY: That doesn't answer my question at all. I knew you couldn't.

Mr. HOSKINS: All right; if it doesn't, keep still.

Mr. FACKLER: I would like to know where that was.

Mr. HOSKINS: Come to me privately and I will tell you.

Mr. DOTY: Sure, sure.

Mr. HOSKINS: I want to be understood on this. I am not making this plea, but I believe this proposition is one that the committee has never considered, and without putting this limitation upon the price you are opening up a road by which the ordinary people may be charged greatly by furnishing the commodity at less than the cost of manufacture. You know what may happen in one of these reforms and where one administration wants to make a showing for itself, and you know that in circumstances like that the loss through operating and selling the commodity at less than the cost price would fall on the common people. Now I say this is entirely my own idea of the matter, but I believe a limitation of that matter ought to be incorporated here at the end of line 46.

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Mr. HARRIS, of Hamilton: It is sometimes difficult to understand the psychology of things and persons and I know the member from Auglaize [Mr. HOSKINS] is a staunch home rule man. I know his sincerity and his truth, and knowing all those things I can not understand how his mind can frame the features which are embodied in his amendment. This is absolutely denying the right to the municipality to own or operate its utility. Just stop and consider for a moment. How many injunctions would be filed against the public utility from time to time to determine the cost of that utility's service? How many factors do you suppose would be considered by the attorneys for the complainants in determining the cost of that product? It has absolutely no standing in this proposal. While it is new to him, I will say for his benefit that that very proposal was handed to me as chairman of the committee, and I told the gentleman who handed it to me—he was not a member of this Convention—that I had too much respect for the intelligence of the least intelligent of my committee to even submit it to the committee.

Mr. CROSSER: Do you object to telling who handed it to you?

Mr. HARRIS, of Hamilton: Yes; there is no occasion for bringing in personal names. There is one thing the students of history have remarked, and that is the public morality of any community is not immensely higher than the individual morality. When you say a municipality may reduce the price of a product below the cost of production for the purpose of bankrupting some corporation, you are assuming the lowest type of public morality, that public morality which is indulged in by the unscrupulous private corporation, but never by the community as a whole. You are impugning the morality and sense of fairness of the people. I think that this amendment needs no discussion and needs no consideration and the kindest fate I can offer it is to move that it be placed on the table.

The motion to table was carried.

Mr. PIERCE: I wish to offer an amendment.

The amendment was read as follows:

After section 6, insert the following, which shall be known as section 7, and all sections thereafter of Proposal No. 272 shall be renumbered:

SECTION 7. Any municipal corporation is hereby vested with authority to create by its legislative body a city planning commission with authority to prepare plans for the future development of such city and to change, alter and reestablish any part of the existing plat or plan of such city by laying out streets, avenues, alleys, parks, boulevards and other public ways and places within such city and also within limits not exceeding three miles from the existing corporation lines at the time of the adoption of such plan. Such commission may lay out a city plan in whole or in part and may add to, change or alter the city plan from time to time as desirable, but all plans, additions, alterations and changes shall be subject to adoption as herein provided. Any plan proposed by such commission, if adopted at a general election by a majority of the electors, shall constitute an established city plan, and the city shall thereafter be surveyed, laid out

and developed in strict accordance with such plan, and all owners of land must conform thereto.

In order to fulfill its powers such commission shall have authority to condemn property; to enter upon property for the purpose of making surveys and plans upon payment of any damages it may cause, and any person claiming to have suffered damages by reason of the plan adopted and followed by such city may be awarded damages by the commission to be paid by the municipality; and if damages can not be agreed upon such person shall have a right of action against the municipality and such commission to establish his damages. All expenses of such commission shall be provided for by the legislative body of the city.

Mr. PIERCE: Mr. President and Gentlemen of the Convention: I introduce this amendment at the request of the chamber of commerce of my own town. It has been gone over by attorneys there and other citizens and they asked to have it incorporated in the municipal proposal or adopted as a separate proposal, as I could get it. I find that the time is up for separate proposals, so this is the only time I can possibly get it in. I want to say that my amendment does not change the pending proposal in any way. It takes nothing from it, and, so far as I am able to see, there is no reason why any member of the Convention should oppose the addition.

It gives the legislative body of a city authority to create what is known as a planning commission, which will deal with the future growth and development of the city. At present there is no beauty, symmetry or system attempted in the development of cities. Everything is left to chance and accident. Consequently, as the city grows and develops by patches, instead of a thing of beauty it resembles a crazy-quilt.

One party lays out an addition outside the corporate limits, without any reference whatever to any other part of the municipality and as the city grows it is compelled to take in the addition with all its defects and deformities. No regard perhaps is paid to the width of the streets, the size and depths of the lots, parks, drive-ways, boulevards and other necessary details, all of which add to the beauty and permanent welfare of the city. Under such hodge-podge arrangements the city is finally put to great expense and inconvenience in curing the defects; whereas, if it had had control over the matter when the addition was platted, it could have directed the owner how it had to be done and thereby have saved the taxpayers an enormous amount of money.

I am informed there are a number of planning commissions in some of the German cities and in a few cities of this country. It is important that the legislative authority of a city have control over this, because if additions to cities are left entirely to the owners, they try to coin them into dollars for themselves without regard to the future welfare and development of the city. As cities increase in population, to conserve the health and morals of children there is almost a universal demand, at the present time, for parks and playgrounds, all of which may be provided at a minimum cost to the city when the addition is platted into lots. It enables a city to provide for its future growth along definite lines. It

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enables a city to provide for parks, avenues and boulevards by reason of natural conditions, without being compelled later to acquire them after the enhancement of the value of property. It enables the commission to lay out in an orderly and well-defined manner future additions to the city, instead of waiting until its natural beauty and symmetry have been destroyed. It requires both time and money to change the plan after it has been adopted. The time to do it is before it has been adopted by the city.

According to this plan, a city may be developed along intelligent and progressive lines and home-seekers can determine the locality in which to acquire property, as it will give them an idea of its future surroundings. It enables the city to control its own development without being left at the mercy of those trying to get all possible out of their additions without regard to the beauty and future prosperity of the city. The plan proposed is not compulsory. It must first be approved by a majority vote of the people of the city and then it is up to the legislative body whether it shall carry it into effect or not. All will admit that cities should be developed to bring forth the beauty and utility of their natural situation—parks along rivers, boulevards and driveways along natural ridges and avenues to connect important centers of development. This may all be done by fore-ordained plans with little expense, whereas if it is not done at the proper time, it entails an enormous expense upon the city. The changes must be finally made or the public must always suffer for want of a little care and foresight.

Mr. ANDERSON: If we had had this kind of a provision either in the constitution or law of Ohio it would have prevented the high cost of extending many of the streets in the cities.

Mr. PIERCE: Yes.

Mr. ANDERSON: Is it not true that at the present time where properties are platted very little attention is paid to the streets that exist at the time?

Mr. PIERCE: Yes.

Mr. ANDERSON: And this would correct all of that evil?

Mr. PIERCE: Yes.

Mr. ANDERSON: In other words, it would give a system for our streets in advance?

Mr. PIERCE: Yes; it would prevent conditions like that Mr. Doty talked about and all future conditions like that, and instead of a city becoming a crazy-quilt it would have some uniformity.

Mr. DWYER: Under this could any private owner lay out a plat without getting permission from a municipality?

Mr. PIERCE: If anybody contemplated laying a plat out outside of the city limits he would have to go to the city authorities.

Mr. DWYER: Within the three-mile limits?

Mr. PIERCE: Yes.

Mr. KNIGHT: I want to ask a question and my question does not imply that I am opposed to this idea. On the contrary, I think some of it is good. But are you of the opinion there is anything in the way at present of this very thing being provided for—assuming that this proposal is now adopted, have we anything that we

couldn't have now? Is there anything in it that is not purely statutory?

Mr. PIERCE: Really, I do not know that there is anything in it except what is purely statutory. I know those having the matter in charge went over it carefully and they were of the opinion that we ought to have constitutional authority; that the legislature could not deal wholly with the question. That was their opinion. Whether that opinion was well founded or not, I am unable to say.

Mr. CROSSER: I have always had the highest regard for anything that comes from the gentleman from Butler [Mr. PIERCE], but there is no question that the authority he grants is fully granted in other sections, and I therefore move to lay this on the table.

Mr. HALFHILL: I think it is very evident, after listening to the excellent exposition of this proposal by Professor Knight, Mr. Harris, chairman, and some others of the committee, that we all have reached the conclusion that they have thoroughly considered and canvassed the question of municipal government. Also, listening to the earnest speech of the proposer [Mr. FITZSIMONS] we realize he has to an unusual degree knowledge of certain sociological conditions in the great centers of population. I think I am as much in favor of local self-government of cities as any man can possibly be, but I want to confess to you that it was a great surprise to me when this proposal came before the Convention. I always supposed, from the consideration I had given this subject, that we could readily and easily grant a large measure of power to the cities by adding a very few words to the existing constitution; and by adding these that we would follow the well-accepted canons of constitutional law. Now, in order to make myself plain, I want to read for the information of the Convention, and if I have an opportunity I desire to offer it at the proper time as an amendment providing what has always seemed to me to be the correct remedy for these evils we now admit exist so far as governing the municipalities is concerned:

Strike out all after the word "follows" in line 3 and substitute the following:

"Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities, all others shall be villages, and the method of transition from one class to another shall be regulated by law.

The general assembly shall provide for the organization of cities, and incorporated villages by general laws and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

Provided, that subject to general laws affecting the welfare of the state as a whole, any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government, which charter or amendment shall become operative when affirmed by a majority of the electors of such municipality voting thereon. Laws shall be passed to make effective the privilege of local self-government for municipalities subject to the foregoing restrictions.

The adoption of the foregoing shall operate to

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repeal section six (6) article thirteen (13) of the the constitution."

In order to make myself plain on the limitations expressed in that proposition, I desire to call attention to the three provisions of the constitution which would be virtually amended or supplemented if this substitute were passed — in other words, the three provisions of the constitution which now govern and control us in the organization and government of the municipality, namely, article XIII, section 1:

The general assembly shall pass no special act conferring corporate powers.

Article XIII, section 6:

The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

Article II, section 26:

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

As has been referred to here in debate, it is a well-known fact that from the time of the adoption of the existing constitution in Ohio and up to the year of 1902, both the legislative branch and the judicial branch of our state government found it necessary, in order to meet and solve a situation that was presented in the government of municipalities, to give effect to special laws, and that condition was supposed to be so imperative that we have a great number of decisions of the supreme court of Ohio which held that the condition that confronted us in the government of cities could only be met by special laws. Now I call attention as a matter of interest on that point to one or two decisions of our court. You will find in a case reported in 44 O. S., page 139, the State ex rel. Attorney General v. Hudson, as a part of the opinion of the learned judge, the following words supported by authority cited:

Each of the large cities seems to need peculiar legislation, which can be provided only by such general classification. The peace and prosperity of these cities, and the best interests of the state, require that this system of classification be regarded as stare decisis and settled. See Rev. Stat., p 1546. Under the power to organize cities and villages (Const., art. XIII, sec. 6) the general assembly is authorized to classify municipal corporations, and an act relating to any such class may be one of a general nature. See State v. Covington, 20 O. S. 102; State v. Mitchell, 31, O. S. 592; State v. Brewster, 39 O. S. 653, 658.

Recently this court, without a dissent, reaffirmed this principle in the case of Alice D. Scheer v. The City of Cincinnati, on error to the superior court of Cincinnati (15 Week. L. Bull. 66), which case was not reported. In that case the court held

to be constitutional the act of April 24, 1885 (82 O. L. 156, sec. 2293a), providing for improving the streets of Cincinnati.

By the same principles and holdings, the act in question here, by the provisions of which Hudson was appointed to his office and now holds and exercises the same, is also constitutional, as not inhibited by section 26 of article II, or section 1 of article XIII, of the constitution.

That was a well-expressed opinion of the existing rule a good many times before that announced by the courts, and a number of times subsequently announced by the court up until the year 1902, when the whole of the former decisions were overturned and we came back to the hard rule of the constitution. That was all well said by the supreme court in the syllabus of the case reported in 66 O. S. 440, where the court held in the case of the City of Cincinnati v. Trustees of the Cincinnati Hospital that the conferring of such power (meaning general power) by a special act is inhibited.

So all of that went out of existence and was overturned by that decision and two others of equal import, which are also reported in the same volume, 66 O. S.

Now we have come to the time where we can get a remedy for an evil that has confronted us, by changing the organic law, and the change that I thought would meet all of the requirements is set forth in this amendment I have read to you. All the rest that is offered here is legislation. I submit if you give full power of local self-government by virtue of a special charter which can be created under act of the very community which is to be governed thereby, you have conferred everything that anybody can ask, in so far as the government of that local community is concerned.

Now I fear and believe that in this proposal as it is before you for consideration, there are vast powers which will eventually lead to a great deal of trouble in the state of Ohio and a great deal of conflict between the cities and the state. I think some of them have been cured by amendments, but I want to call attention to the fact that with the single exception cited of the experiment in the state of California, which has not yet had time to really work out so that we can know what the result will be, there is not another constitution in these United States, or, so far as I know, in any of the English possessions, that has any such theory of municipal or local self-government as is put into this proposal. You have cured it in some respects, but in many it is not cured. Here is the idea that obtains everywhere, so far as municipal corporations are concerned, which I want to state accurately as a legal proposition:

A municipal corporation is a legal institution formed by charter from a sovereign power, erecting a populous community or prescribed area into a body politic and corporate with corporate name and continuous succession, and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state.

The whole theory of the existence of sovereignty in the first instance, to-wit, the state that we are dealing with here, is that it must be greater in all essential particulars, greater in all essential parts than the municipality, and none of you will deny the fact that there are

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a number of very essential particulars that the state must insist upon and must assert at all times against the municipality.

Mr. HARRIS, of Hamilton: Are not those very propositions which you have enumerated made fundamental in this proposal?

Mr. HALFHILL: I do not consider that they are, and the reason I do not consider that they are is that I understood from the very first, even from the exposition of the chairman of the committee and of the others that have talked representing the committee, that all power except in these very few essential things is conferred in the first instance upon the municipality, and the state can never take that power back except as it goes out and asserts itself and attempts to bring it back by a general law. That is the theory of it, and that is a theory that is absolutely opposed to a logical and well-reasoned idea of a municipal charter, and right upon that point and right at that place I predict there will be conflict between the jurisdiction of the state of Ohio and a jurisdiction that is conferred upon the municipalities which will result in multitudinous litigation in Ohio, because you have changed the theory, absolutely changed the theory of the creation of this power.

Mr. HARRIS, of Hamilton: Will you state for the information of myself as well as the Convention what general power outside of the great powers of taxation and police and health are — what general great fundamental powers are exercised by the state?

Mr. HALFHILL: One of the fundamental powers exercised by the state is police power.

Mr. HARRIS, of Hamilton: I named that. Are not all the great fundamental powers reserved to the state in the proposal?

Mr. HALFHILL: What line?

Mr. HARRIS, of Hamilton: Every line.

Mr. HALFHILL: Where is the line of demarkation that is preserved in this proposal? Wherein is there not abundant opportunity for conflict between the powers conferred upon the municipality and the power that ought to be reserved for the state? I submit that the opportunity for conflict in jurisdiction is there.

Mr. HARRIS, of Hamilton: That is indefinite. Point it out.

Mr. HALFHILL: You have in the police power such a multitude of items to be considered, as applied to our complex state society, that you do not know at what place there will be a conflict. Some of the conflicts have been pointed out here, notably control of the liquor traffic. At one time they almost wrecked the proposal, but happily that was averted.

It is incumbent upon the state at all times to enforce the laws of a state and to stand back of the laws. The state is greater than any county or municipality. The state must enforce the decrees of the courts. That is why the cannons are planted on the court house lawns and state house campus, a silent admonition that all the force of the state stands ready to back the courts and enforce the laws. In this exercise of the police power of the state is interested at all times and there is a broad and plain line of demarkation between its powers and those that should be conferred upon a municipality.

In the great question of education, in the police power and in all the great questions that could be enumerated,

the city can not at any time be greater than the state and it can not be put upon a parity with the state in the exercise of these sovereign powers. Now the power to limit indebtedness is plainly provided for in any proposal, which I shall seek to substitute for the one that is offered here. I have heard it argued here, possibly not in debate, but by the most ardent homerulers, that the state had no interest in limiting the amount of the indebtedness of a city; that that was a problem of the city and for the city and that the city should be permitted to incur any indebtedness it thought necessary or beneficial. Along the same line of argument when you take away the power of the state to control in that respect, if you follow it up you would find that it was no use to have anything like organized society so far as the state is concerned, and if you would follow it to its logical conclusion you would find that men who contend for that, contend that a constitution is not necessary. They contend that the right of each community to govern itself is supreme. Now I contend that a municipality is simply one agency of a state to discharge some of the functions of government, and a municipal charter can emanate only from the sovereign power which alone can delegate faculties and functions of government, and as heretofore considered, with the single exception of the recent experiment in California, the granting of such a charter is solely an act of sovereign legislative powers to be exercised by the general assembly under grant of authority in the organic laws.

Now, for the reason that I believe that this proposal is fraught with a great deal of difficulty in the future, and that it means conflict between the powers that are granted to the cities and the powers that are retained by the state, I am opposed to it if I can get anything better. I favor the very greatest measure of self-government for cities. I feel that the city ought to have power to control the municipal public utilities of the city and that the city ought to have the settlement of the problems that confront the city if it so desires, but at the same time I believe that we ought to have over it the controlling hand of the state to a much greater degree and with the lines much better marked than in this proposal. Therefore, without further taking the time of the Convention, I now want to offer this substitute and secure a vote on it.

The amendment was read.

Mr. HARRIS, of Hamilton: I move that the amendment be laid on the table.

Mr. HALFHILL: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 77, nays 27, as follows:

Those who voted in the affirmative are:

Anderson,	DeFrees,	Harbarger,
Baum,	Donahay,	Harris, Ashtabula,
Beatty, Morrow,	Doty,	Harris, Hamilton,
Beatty, Wood,	Dwyer,	Henderson,
Beyer,	Earnhart,	Hoffman,
Bowdle,	Fackler,	Hoskins,
Brown, Lucas,	Farnsworth,	Hursh,
Brown, Pike,	Farrell,	Johnson, Madison,
Cody,	Fess,	Johnson, Williams,
Colton,	FitzSimons,	Jones,
Cordes,	Fox,	Kehoe,
Crosser,	Hahn,	Keller,
Davio,	Halenkamp,	Kilpatrick,

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Knight,	Miller, Ottawa,	Stokes,
Kunkel,	Moore,	Tallman,
Lambert,	Okey,	Tannehill,
Lampson,	Partington,	Tetlow,
Leete,	Pierce,	Thomas,
Leslie,	Redington,	Ulmer,
Longstreth,	Riley,	Wagner,
Ludey,	Rockel,	Watson,
Malin,	Roehm,	Winn,
Mauck,	Shaffer,	Wise,
McClelland,	Solether,	Woods,
Miller, Crawford,	Stamm,	Mr. President.
Miller, Fairfield,	Stilwell,	

Those who voted in the negative are:

Brattain,	Halfhill,	Peck,
Campbell,	Harter, Stark,	Peters,
Collett,	Holtz,	Pettit,
Cunningham,	Kerr,	Read,
Dunlap,	King,	Shaw,
Eby,	Kramer,	Stevens,
Elson,	Matthews,	Stewart,
Evans,	Norris,	Walker,
Fluke,	Nye,	Weybrecht.

So the amendment was tabled.

Mr. CROSSER: I offer an amendment.

The amendment was read as follows:

Strike out lines 119 and 120.

Mr. CROSSER: The fact that this is passed after the old constitution gives it precedence over anything in the old constitution on the question of municipal corporations, and I think that is absolutely essential.

Mr. LEETE: I move the previous question.

The main question was ordered.

The amendment offered by the delegate from Cuyahoga [Mr. CROSSER] was agreed to

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 104, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Okey,
Antrim,	Harris, Ashtabula,	Partington,
Baum,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Henderson,	Pettit,
Beyer,	Hoffman,	Pierce,
Bowdle,	Holtz,	Read,
Brown, Lucas,	Hoskins,	Redington,
Brown, Pike,	Hursh,	Riley,
Cassidy,	Johnson, Madison,	Rockel,
Cody,	Johnson, Williams,	Roehm,
Colton,	Jones,	Rorick,
Cordes,	Kehoe,	Shaffer,
Crites,	Keller,	Shaw,
Crosser,	Kerr,	Smith, Geauga,
Davio,	Kilpatrick,	Solether,
DeFrees,	King,	Stalter,
Donahey,	Knight,	Stamm,
Doty,	Kramer,	Stevens,
Dunlap,	Kunkel,	Stilwell,
Dwyer,	Lambert,	Stokes,
Earnhart,	Lampson,	Tallman,
Eby,	Leete,	Tannehill,
Elson,	Leslie,	Tetlow,
Evans,	Longstreth,	Thomas,
Fackler,	Ludey,	Ulmer,
Farnsworth,	Malin,	Wagner,
Farrell,	Matthews,	Walker,
Fess,	Mauck,	Watson,
FitzSimons,	McClelland,	Weybrecht,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Halfhill,	Nye,	

Those who voted in the negative are: Brattain, Campbell, Collett, Cunningham, Norris, Stewart.

So the proposal passed as follows:

Proposal No. 272—Mr. FitzSimons. To submit an amendment to the constitution.—Relative to the government of municipalities.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVIII.

MUNICIPAL CORPORATIONS

SECTION 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SECTION 2. The general assembly shall, by general laws, provide for the incorporation and government of cities and villages; and it may also enact additional laws for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SECTION 3. Municipalities shall have authority to exercise all powers of local self-government and to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SECTION 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SECTION 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility or to contract with any person or company therefor shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SECTION 6. Any municipality, owning or operating a public utility for the purpose of supplying

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the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SECTION 7. Any city or village may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SECTION 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors of the question "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation and provisions shall be made thereon for the election from the municipality at large of fifteen electors thereof who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provisions for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SECTION 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and shall be submitted by such legislative authority when a petition setting forth any such proposed amendment and signed by ten per centum of the electors of the municipality is filed therewith. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any amendment so submitted is approved by a majority of

the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto, within thirty days after adoption by a referendum vote, shall be certified to the secretary of state.

SECTION 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SECTION 10-a. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SECTION 11. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SECTION 12. The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SECTION 13. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors signing any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

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Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. PECK: I want to explain my vote. I vote for this proposal because as I understand it, after considerable study, it contains what seems to be in an awkward, confused way the main proposition that cities shall have the right of local self-government. I regard it as not a very good piece of constitution building, because it is overloaded with details and it is not clear in its provision. I would very much have preferred Mr. Halfhill's substitute with some amendment. I think that could have been made the basis for a much better law.

Mr. DOTY: I move that two thousand copies of

Proposal No. 272 be printed for use of the members and for general distribution.

Mr. HALFHILL: I desire to say I voted in the affirmative for this proposal because I could not get anything better.

Mr. DOTY: That is the reason I voted for it.

The motion to print was carried.

Leave of absence was granted Mr. Harter, of Huron.

Mr. WATSON: I move that we recess until 7:30 o'clock p. m.

Mr. ROEHM: I move that we adjourn until 10 o'clock tomorrow.

The motion to adjourn was carried and the Convention adjourned until tomorrow morning at 10 o'clock.

SIXTH-SIXTH DAY

MORNING SESSION.

WEDNESDAY, May 1, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and opened with prayer by the Rev. William H. Woodring, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. Peters rose to a question of privilege, and asked that his vote be recorded on the motion to lay the amendment of Mr. King to Proposal No. 272 on the table.

Consent was given, and his name being called Mr. Peters voted in the affirmative.

Mr. PECK: I would like to have permission at this time to offer two reports from the committee on Judiciary.

By unanimous consent Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 333—Mr. Peck, having had the same under consideration, reports it back, and recommends its passage.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

By unanimous consent Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 334—Mr. Jones, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 6 strike out the word "apparent."

Strike out lines 7 and 8 and the first nine words in line 9 and in lieu thereof insert the following:

"or other claims and interests in and to the lands the titles to which are so registered, insured, or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered."

In line 11 after the word "recorders" insert the words "or other officers."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck the proposal as amended was ordered printed.

SECOND READING OF PROPOSALS.

The PRESIDENT: The next order of business is second reading of proposals.

Proposal No. 329—Mr. Knight, was read the second time.

Mr. KNIGHT: I shall take about ten minutes to explain the history and the intent of this proposal. In

the original Proposal No. 272, upon which we acted yesterday, section 4, as introduced, proposed to confer upon all cities in the state practically sufficient power as cities over educational matters to make a very serious inroad upon the general system of education throughout the state. As a matter of fact, a considerable number, if not a majority of the municipalities, do not have boundaries coincident with the boundaries of school districts, and consequently to confer upon the municipalities as such this power that was proposed in section 4 of that original proposal would have been fatal, or at least the committee on Education, and from the very start a number of the committee on Municipal Government, believed it would have been fatal, to any great public school system in the state of Ohio. At the same time, however, it was and is recognized that there is a great need that city schools of the state, the independent school districts and other school districts shall have the right to determine for themselves the number of members of the district school boards and the organization of the boards, not, however—

Mr. MILLER, of Crawford: This says "section 3." Will this be an additional section?

Mr. KNIGHT: I will come to that in a moment. I am explaining the original proposal now. It is desirable that the school districts shall have the right to determine for themselves the number of members of their school boards, without in any way permitting their power to be independent, but leaving them subject to the general educational system of the state. By a conference between the Education committee and the committee on Municipal Government the agreement was reached that the old section 4 of Mr. FitzSimons' proposal should be dropped out entirely and that this proposal should be introduced here. It merely happens to bear the name of the present speaker. It might just as well bear the name of any other member of the Education committee, as it was ordered by them.

The proposal undertakes to add a section to the present article on the subject of education, which is article VI of the constitution, and to do two things, both of which the committee on Education thinks desirable:

1. In its first three lines it provides that the general assembly shall by law provide for the organization, administration and control of the public school and educational system of the state. It specifically lodges all the power in the lawmaking body of the state to organize, administer and control the educational system of the state. Desirable as this was prior to four o'clock yesterday, it is even more desirable this morning that it should be enacted. This Convention in the judgment of a good many members hastily and unwisely adopted a complete new substitute for section 7, in lieu of the one threshed out for months in the Municipal Government committee, and one of the guarding clauses of section 7 does not appear in the proposal as adopted yesterday, and it is altogether questionable whether under the proposal adopted any city having a charter for itself might not

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arrogate complete control over the educational system, and deprive the state of jurisdiction over educational matters in the city. It is a matter of great regret that the Convention, in one of those lapses which often happen, should have adopted without debate and without consideration a hastily prepared amendment, when the original section in the proposal was much better than the one adopted. In view of that, whatever else happens to this proposal, the first three lines must be adopted in order to establish definitely that the state shall for all time, until the constitution is further amended, have complete control over the educational system, and that no city, village or part of territory of the state can withdraw itself, under the guise of a charter, from the public educational system of the state. So much for the first part of the proposal.

2. The second part of the proposal wants to do what is practically and subsequently necessary for the jurisdiction of the various districts of the state in order to prevent, or in order to break down, what now exists, the apparent necessity for the same sized school board for all districts, regardless of the number of schools, the amount of money and, generally, the machinery of organization. Therefore, the latter part of the proposal undertakes to embody what was the substantial undertaking between the two large committees on Municipal Government and Education. It says that each school district within the state shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education. This in no wise touches the power of the district over the school affairs. It matters not what form or size the school board is, the power of that school board over school matters would be just the same throughout the state, and preserve the educational system of the state. Then there is a further clause, that the lawmaking power — the general assembly — shall make provision for the exercise of this right. It was not deemed necessary or advisable to undertake to provide in any such proposal as this the machinery by which the thing undertaken to be accomplished here shall be worked out. As long as the first part of the proposal places in the hands of the lawmaking body of the state the complete power over the educational system, it is certainly wise and safe to leave them to enact legislation necessary to provide for the referendum vote. That is all in the proposal, a unified control over the educational system of the state in the hands of the lawmaking body representing the whole of the state, with the privilege of the school districts of the state to modify or change the size of the organization of their school board as may be suited to their local conditions. I hope the proposal will pass. I think it has merit. I speak not because my name is at the head of the proposal, but simply as one interested in school affairs.

Mr. PETTIT: I was absent when action on the substitute for section 7 was taken, and I desire to ask whether, in your opinion, the substitution of that matter interfered with the school matter?

Mr. KNIGHT: In section 7?

Mr. PETTIT: Yes.

Mr. KNIGHT: As I said a moment ago, in the judgment of some of us the new section 7, which now appears in the proposal adopted yesterday, is at least open to a construction which might permit municipalities to do

the very thing which everybody interested in education in the state does not want them to do, and it is not necessary to municipal home rule. Beyond that I do not care to go into section 7 of yesterday's proposal.

Mr. PETTIT: If that is your opinion, why not reconsider that?

Mr. DOTY: I desire to offer an amendment to Proposal No. 329, correcting the wording.

The amendment was read as follows:

In line 8 strike out "The general assembly shall make" and insert after "provision" the following: "shall be made by law."

Mr. KNIGHT: I have no objection to that amendment.

The amendment was agreed to.

Mr. MILLER, of Crawford: What do you consider a school district?

Mr. KNIGHT: The township is a unit.

Mr. MILLER, of Crawford: Then under this proposal we could go back to the local directors for each district?

Mr. KNIGHT: I suppose it is possible, but I doubt whether in the present state of enlightenment in the state of Ohio there is any desire to go back to that, or that there will be any danger of going back. That was threshed out in the committee, and we thought that while there was power to do so, there was no probability of its being done.

Mr. HALFHILL: I offer an amendment.

The amendment was read as follows:

In line 6 strike out the colon, and insert a period, and commencing with the word "provided" in line 6 strike out all the rest of the proposal and the amendment thereto.

Mr. HALFHILL: Up to the point indicated the proposal is all right, but I think the rest of the proposal has no place in the constitutional law of this state, and does not coordinate with sections 1 and 2 of article VI.

It was the policy of those who established the educational system in the state of Ohio to make some very particular restrictions and provisions in relation thereto, and it seems to me that the educational system of the state, so far as the government in districts is concerned, ought to be left with the general assembly.

Mr. HARRIS, of Hamilton: I trust the Convention will not adopt the amendment of the member from Allen [Mr. HALFHILL]. In some of the cities the school board proposition is a very serious one. They have been clamoring for authority to regulate the size of their school board. Under the present law in cities containing over 50,000 inhabitants, the size of their school board can be regulated, providing the existing boards of education are willing to vote themselves out of office. We have that state of affairs in Cincinnati and in some of the other large cities in the state. The larger boards in the city refuse to vote themselves out of office, and this proposal now affords us an opportunity to remedy that condition. In Cincinnati we have thirty-three members.

Mr. HALFHILL: Is not that within the absolute control of the legislature?

Mr. HARRIS, of Hamilton: That is so. The legisla-

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ture could remedy it, but there is always enough influence brought to bear to prevent the legislature from making it mandatory. I speak to you of a condition that exists. Mr. Beatty informs me that there was a great effort to accomplish this very change in the legislature three years ago and it failed, and I know how serious that condition is in many of the larger cities. The committee on Municipal Government struck out section 4 entirely, as it came out from Cleveland, for good and sufficient reasons not necessary to be discussed here, but it was done unanimously, with an agreement of the committee on Education that they would attempt, so far as lay in their power, to remedy the defect by introducing a proposal covering the points named in this one. We have had considerable legislative enactment in many proposals, and there is a sound reason for doing so. You need not fear the criticism that will be raised on this proposition. It has been pointed out by the greatest publicists in this and other countries that the reason for putting legislative matters in the constitution in all the states of the United States—and it is not a matter of recent growth, but it has been developing during fifty years—is based on the fear of the people of undue influence that is brought to bear on the legislature. So certain broad fundamental matters, as we call them, or rather what might be termed statutory laws, that are far-reaching in their consequences are being incorporated by the states as part of their constitutions, this departure being based on lack of confidence in the legislature. I sincerely trust that this Convention will accept the proposal as it came from Professor Knight, with the grammatical amendment offered by the member from Cuyahoga [Mr. Doty].

Mr. WINN: Do I understand you to concede that the legislature has full power to do what is sought to be done here as to the number of members?

Mr. HARRIS, of Hamilton: Unquestionably, and I concede it and I submit to the Convention that when there is a question of sound public policy, as in this instance, there is no valid reason for refusing to make it constitutional just as we incorporated legislative provisions in other proposals.

Mr. WINN: This is one of the matters you are not willing to leave to the legislature?

Mr. HARRIS, of Hamilton: From my point of view, yes.

Mr. WINN: You made a very able speech a few days ago deploring our doing anything that the legislature could do. What influenced you to change your mind?

Mr. HARRIS, of Hamilton: I do not bow to the correctness of your memory. I have advocated many things legislative in character that should have been, ought to have been, and have been adopted by the Convention as part of the constitution. We have a proposal from the Judiciary committee in which many legislative matters are involved. There is a proposal for the initiative and referendum in which many legislative matters are embodied. Yesterday we adopted by an overwhelming vote the report of the committee on home rule for cities, and there was legislative matter in that, and the question of consistency rests with you and not with me.

Mr. DOTY: If there is any question of government in this state that the people think they know how to take

care of better than any other, it is the matter of the schools. Why we should start at this stage of the game to cut off the people from saying what kind of a board of education they should have in their community, is past my understanding. I can understand why the member from Allen [Mr. HALFHILL] should introduce such an amendment, being not particularly in favor of allowing the people to attend to their own business, but why the rest of us should favor such an amendment I cannot see. Oh, Mr. Halfhill is not a reactionary. There are many more reactionary than Mr. Halfhill. Still, I will say for Mr. Halfhill he is just not actually ready at all times to allow the people to transact their own business in their own way. Now the member from Defiance [Mr. WINN] has brought up the question of the right of the legislature at present to do what this proposal seeks to provide. I think the legislature has got as much power as ought to be granted here. There has been in the past ten years a continual effort to reform our local school laws. This demand has come from Cincinnati sometimes, and sometimes in spite of Cincinnati. It has come from Cleveland, sometimes, and sometimes not. And also from Toledo and other places. What the legislature attempted to do at one time was to pass a law which would allow, not the people of a school district, but the board of education of a school district, to say what kind of a board of education they should have. A perfectly preposterous situation; but the only thing they could do under the present constitution. Now that fits in with the notion, as I understand his notion, of the gentleman from Allen [Mr. HALFHILL], that the people shall elect first somebody who shall say what the people shall do. This proposal does not do that. This proposal says that the people of a school district shall say whether they shall have a large or a small board, a board by districts or a board attached to any district. They could have a town meeting under this. Any way they cared to run the business of the board, or any way they cared to make a board, they themselves can decide, and if you go into these larger school districts with which I am acquainted, you will find that the people think they know more and in fact they do know more about their school affairs than they probably do of any other single function of their government, and to most of the people the board of education work is the most important and interesting function they have. Now we are up to the proposition of allowing them to do their own business, with a referendum on the thing that they know more about than anything else. And still I am not surprised at the action of the member from Allen [Mr. HALFHILL], but I am surprised that the member from Franklin [Mr. KNIGHT] did not at once move to lay the amendment of the gentleman from Allen [Mr. HALFHILL] on the table, where it ought to go, but having made a speech, I do not like to make the motion myself.

Mr. ULMER: I move that the amendment offered by Mr. Halfhill be laid on the table.

Mr. HALFHILL: And I demand the yeas and nays on that.

The PRESIDENT: I have recognized the gentleman from Greene [Mr. FESS].

Mr. FESS: The situation that this proposal was designed to unravel was stated clearly by the member from Franklin [Mr. KNIGHT]. When the home rule proposi-

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tion for cities was brought to the attention of the committee on Education, there was one clause in it that did not seem to meet with the approval of the committee on Education, or at least that did not specialize. The subcommittee of the committee on Education was appointed to take the matter up with the Municipal committee, and after a hearing, at the suggestion of the gentleman from Hamilton [Mr. HARRIS], the committee omitted section 4, with the understanding that there would be a supplemental proposal offered by the committee on Education to fill in what section 4 of the municipal proposal was intended to do, and that is the reason why this proposal was agreed to be heard immediately after the proposal we disposed of yesterday. Now, I see that there is some fear that if you allow the school districts to name the number of its board by a referendum vote, there will be a lack of uniformity. That lack of uniformity can be just the same now as it can be under this proposal, for under the present law we have four classes of school districts, the city school district, the village school district, the township school district and the special school district.

Mr. HOSKINS: Would it not be possible that under the provisions of this proposal, instead of having four methods of governing the schools, just mentioned, we could have as many methods, with as many variations, as there are districts in the state?

Mr. FESS: No; we could have as many as the legislature prescribed. The legislature says that. We do not determine it.

Mr. HOSKINS: We can determine the number of members and the method of organization of the district boards?

Mr. FESS: But the district is defined.

Mr. HOSKINS: The method of organization?

Mr. FESS: Yes; as to the number, you could have as many as there are districts.

Mr. HOSKINS: Do you think that would go any farther than to make a difference in the number?

Mr. FESS: The number and the organization and the method—

Mr. DOTY: And the election.

Mr. FESS: Yes, and election. We do not have any uniformity now. We have four classes of school districts, and the law says in school districts of fifty thousand inhabitants or over the number of the school board is not to be less than two nor more than five, and for cities of less than fifty thousand, it is not uniform. The city district is fixed. The number is seven. That is fixed by law. This simply supplements the municipal form of government for cities that would come in conflict with the state law. The member from Franklin [Mr. KNIGHT] explained that. The municipal proposal simply applies to cities. Now, here are some school districts that may take in more than a city, and that municipal proposal cannot apply to them—absolutely impossible—and we wanted to supplement that so that the same privilege and principle involved in the proposal for municipalities could be utilized for the school districts. That is all there was in mind; nothing more.

Mr. MILLER, of Crawford: We have some uniformity throughout the country districts?

Mr. FESS: Yes.

Mr. MILLER, of Crawford: This would permit each township to name the number?

Mr. FESS: Yes. The thing that was in your mind that disturbed you was whether you might not change the unit, or have as many units as each district might want. That is not true. Under this proposal we could define the county as a unit if we wanted to. We can reach that by law. We can make the county the unit, or the township the unit instead of the county if we want to, but after that the number of members shall be left to each district, and also the organization.

Mr. MILLER, of Crawford: Under organization, do you think that means management?

Mr. FESS: Oh, I don't think it would include that.

Mr. MILLER of Crawford: It has nothing to do with the technical education?

Mr. FESS: No, nor the employing of teachers. It is nothing in the world except to give the school district that might go beyond the city the right to govern itself, as we gave the right to the city yesterday. We could not put that in the proposal yesterday as originally written, and could not go out beyond the city. The question is, Do you want to carry the principle of home rule in education to cities, with these limitations, that you cannot do certain things?

For example—I might as well be absolutely plain—we would not want to apply the funds of a public school for sectarian purposes, and under the original plan that might have been done, and we did not want to do it. We wanted to drop the taxing power out of section 4 altogether and supplement it with this proposal.

Mr. ULMER: I move to lay the amendment on the table.

Mr. PETTIT: I want to ask a question.

The PRESIDENT: The question is on the motion to table the amendment offered by the delegate from Allen [Mr. HALFHILL].

The motion was carried.

Mr. PETTIT: Now I want to ask a question of the gentleman who was last on the floor.

The PRESIDENT: The member from Mahoning is recognized.

Mr. ANDERSON: I yield to the gentleman from Adams if he wants to ask a question.

Mr. PETTIT: Does he—

The PRESIDENT: The member from Mahoning has the floor.

Mr. PETTIT: He yielded the floor to me. I want to ask the gentleman from Greene [Mr. FESS] if this proposal goes far enough to include subdistricts?

Mr. FESS: The wording does not put in subdistricts. The question of districting will be left to the legislature. We do not define that.

Mr. ANDERSON: I offer an amendment.

Mr. HALFHILL: I asked for the yeas and nays on that motion to table my amendment.

Mr. KNIGHT: The gentleman had asked for the yeas and nays sometime back.

Mr. DOTY: The member from Lucas [Mr. ULMER] moved to table this amendment at a time when he did not have the floor. He made that motion, which was not in order, he not having the floor, and the member from Allen called for the yeas and nays on the motion to table his amendment. Then further remarks were proffered by various members, and the delegate from Lucas [Mr. ULMER] again moved to lay the amendment

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on the table, but this time he had recognition and was entitled to make the motion, and that motion was put and carried by a viva voce vote.

Mr. HALFHILL: Now, I want the yeas and nays on that proposition, and I ask that the vote by which that amendment was laid on the table be reconsidered.

The PRESIDENT: Does the member from Mahoning yield?

Mr. ANDERSON: Yes.

The PRESIDENT: The motion is that the vote be reconsidered by which that amendment was laid on the table.

Mr. FESS: No; the motion should be to take it from the table.

Mr. DOTY: I move that the amendment be taken from the table.

The motion was carried.

Mr. HALFHILL: Now I ask that the yeas and nays be taken on the motion to lay my amendment on the table.

The PRESIDENT: The question is on the adoption of the amendment.

Mr. DOTY: No; on the motion to lay it on the table.

The PRESIDENT: No. It was laid on the table, and now on motion it has been taken from the table.

Mr. DOTY: In order to clarify the situation I move that we lay that amendment on the table.

The PRESIDENT: And on that the gentleman from Allen [Mr. HALFHILL] demands the yeas and nays.

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 80, nays 19, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Peck,
Baum,	Harris, Ashtabula,	Pettit,
Beatty, Wood,	Harris, Hamilton,	Pierce,
Beyer,	Harter, Stark,	Read,
Cassidy,	Hoffman,	Redington,
Cody,	Hursh,	Rockel,
Collett,	Johnson, Madison,	Roehm,
Colton,	Kehoe,	Rorick,
Cordes,	Keller,	Shaffer,
Crites,	Kerr,	Shaw,
Crosser,	Kilpatrick,	Smith, Geauga,
Davio,	King,	Solether,
DeFrees,	Knight,	Stamm,
Donahay,	Kramer,	Stilwell,
Doty,	Kunkel,	Stokes,
Dunlap,	Lambert,	Tallman,
Earnhart,	Leete,	Tannehill,
Eby,	Leslie,	Tetlow,
Elson,	Longstreth,	Thomas,
Fackler,	Malin,	Ulmer,
Farnsworth,	Marshall,	Wagner,
Farrell,	Matthews,	Watson,
Fess,	McClelland,	Winn,
FitzSimons,	Miller, Ottawa,	Wise,
Fox,	Moore,	Woods,
Hahn,	Nye,	Mr. President.
Halenkamp,	Okey,	

Those who voted in the negative are:

Beatty, Morrow,	Holtz,	Miller, Fairfield,
Brattain,	Hoskins,	Norris,
Campbell,	Johnson, Williams,	Partington,
Cunningham,	Ludey,	Stalter,
Evans,	Mauck,	Stevens,
Fluke,	Miller, Crawford,	Stewart,
Halfhill,		

So the amendment was again tabled.

The PRESIDENT: The gentleman from Mahoning now offers an amendment.

The amendment was read as follows:

At the end of line 5, strike out the word "of" and insert therefor "in and throughout."

Mr. ANDERSON: If the amendment is adopted it will then read, "The general assembly shall by law provide for the organization, administration and control of the public school and educational system in and throughout the state." I think that is a broader term.

Mr. WATSON: I move to lay that amendment on the table.

The PRESIDENT: The member from Mahoning [Mr. ANDERSON] still has the floor.

Mr. ANDERSON: I believe that the delegates ought to be willing to give the educators who have made a life study of it that which they ask, provided we cannot see any harm in what they ask. We must remember that Dr. Fess and Professor Knight have given the best years of their life to study, and when we take into consideration their knowledge of law, acquired in off minutes, the great knowledge of law they have, what a wonderful knowledge they must have of education! I think this journal of the Constitutional Convention of 1912 must be wrong. I find that in article VI, page 51 in the book, there is no section 3. I know that the gentlemen who present a proposal would not make a mistake, and yet this is offered as an amendment to section 3.

Mr. MILLER, of Crawford: You stated that the school people of the state were in favor of this proposal. Do you know that they all are?

Mr. ANDERSON: Supposedly, but there may be some opposed.

Mr. MILLER, of Crawford: I have a letter from the secretary of the school federation opposing this proposal.

Mr. ANDERSON: He is not a member of the Convention?

Mr. MILLER, of Crawford: No.

Mr. ANDERSON: They didn't think enough of him in his locality to send him here as a delegate.

Mr. MILLER, of Crawford: He was not a candidate. He had more important work.

The PRESIDENT: The question is on the adoption of the amendment.

Mr. WATSON: I move that the amendment be laid on the table.

Mr. KNIGHT: The amendment is not material either way. We used the word "of" thinking it applied to the public school system throughout the state. I do not believe the amendment offered improves it or hurts it in the least.

The PRESIDENT: The question is "Shall the amendment be laid on the table?"

The motion to table was carried.

Mr. DOTY: In the first amendment I made I overlooked the same trouble in another line. I now offer an amendment to cure that.

The amendment was read as follows:

In line 4 strike out "The general assembly shall by law provide", and insert "Provision shall be made by law".

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Mr. KNIGHT: In this instance no harm can be done by leaving the original form, and I hope the amendment will not be adopted.

Mr. DOTY: Of course, if the other correction were made, this correction should be made. There can be no question about that. It starts wrong, and I don't see any reason why we should allow it to start wrong. If this section is adopted it is going to be construed in the light of what is being done. Every place that we have run across that, "the general assembly shall provide," we have changed the language to "provision shall be made by law." That has been done in the committee on Arrangement and Phraseology.

Mr. KNIGHT: I do not want to be insistent, but it seems to me there is such a thing as overdoing a good thing, and there is no question that if left as it stands here, you give the people under the initiative and referendum the right to enact laws in the same way. I do not think any harm can result, and I think it looks better.

Mr. PARTINGTON: This question was before the committee on Education, and was ordered by that committee previous to the changing of the FitzSimons' proposal. I see no need of this third section to article VI. The school federation of the state of Ohio stated to the committee on Education that they saw no reason why the provisions in the constitution should be changed as they relate to the common schools. It has been only a few years since the educational people of Ohio were clamoring for a reform in township boards of education. At that time we had three subdirectors, and each little subdistrict was a law unto itself, and the school people of Ohio took the matter to the legislature, and the law now provides that the township board of education shall be composed of five members. A great many of the school people of the state of Ohio believe that is progress, and if this amendment goes into the constitution and is carried, we will be retrograding in our township schools. This will enable a township to have one or even three directors in a subdistrict school. It is absolutely with the people, and you are putting a provision into the constitution that will enable every little subdivision in Ohio to go back and be a law unto itself, so far as it relates to the number and the organization of its school boards. The member from Franklin [Mr. KNIGHT] said that the board of education so organized would have no power at all, outside of the mere number and the organization of the board.

It seems to me the amendment you have already voted down should have prevailed. I am unable to see how the first part of this surpasses in strength the power given to the legislature to act. In section 2 of this same article the general assembly is given power to provide for a thorough and efficient system of common schools throughout the state. That power is given now by our present constitution. There is no conflict with the municipal home rule proposal that this body passed yesterday, and I see no reason for this section 3. The people of a township should not go backward in their progress relating to the schools of the township. I do not believe there should be a provision in the constitution that will absolutely bar progress in a township. I hope the whole proposal will be voted down.

Mr. CROSSER: I think the amendment of my colleague [Mr. DOTY] should pass. Professor Knight says

it does not hurt anything, but this sounds better. I think there might be some doubt if we were to use the words "general assembly" here as to whether the people could do it. I do not want any doubt left about the matter.

The amendment was agreed to.

Mr. PETTIT: I offer an amendment.

The amendment was read as follows:

Insert after the word "district" in line 6, the following: "or subdistrict".

Mr. PETTIT: Mr. President and Gentlemen of the Convention. I cannot agree with the gentleman last on the floor. The little subdistricts have always been very dear to my heart. All the education I ever got from books I got in a subdistrict out in the country where the people under the old three-director system controlled their own schools. We speak about having progressed by appointing a board from the entire township. We have progressed as a crawfish progresses, backward. The township-five has not worked as satisfactorily as the old system. Very often the subdistricts have to take things that they do not want to take. Five men get together and parcel out the schools, and foist a teacher on one of the subdistricts that the district does not want. As far as I am concerned I believe in the old three-director system, and if we are giving the people a right to control their own affairs, why not give the subdistricts some rights the same as the township?

Mr. KNIGHT: I want to call your attention to the fact that the gentleman to my left, who spoke a few moments ago [Mr. PARTINGTON], seems to misunderstand or misreads the constitution as it now stands. The section he quotes does not put into the hands of the general assembly complete control over the school system. All it does say is that the school system shall provide funds, that there may be an adequate school system, but whether that school system shall be completely under the control of the state, or shall be parcelled out to different cities of the state, is nowhere provided in the present constitution, and it seems to me desirable that that should be specifically stated, so that there can be no question about the control of the school systems as well as the handling of the school funds.

As to the amendment just offered by the gentleman from Adams, I am distinctly opposed to it. The unit of our educational system is the school district, and not the subdistricts, and I move that that amendment be laid on the table.

The motion to table was carried.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken and resulted—yeas 91, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Cody,	Dunlap,
Antrim,	Collett,	Earnhart,
Baum,	Colton,	Eby,
Beatty, Morrow,	Cordes,	Elson,
Beatty, Wood,	Crites,	Evans,
Beyer,	Crosser,	Fackler,
Bowdle,	Cunningham,	Farnsworth,
Brown, Lucas,	Davio,	Farrell,
Brown, Pike,	DeFrees,	Fess,
Campbell,	Donahey,	FitzSimons,
Cassidy,	Doty,	Fluke,

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Fox,	Leete,	Smith, Geauga,
Hahn,	Leslie,	Solether,
Halehkamp,	Longstreth,	Stalter,
Harbarger,	Matthews,	Stamm,
Harris, Hamilton,	McClelland,	Stewart,
Harter, Stark,	Moore,	Stilwell,
Hoffman,	Norris,	Stokes,
Holtz,	Nye,	Tallman,
Hursh,	Okey,	Tannehill,
Johnson, Madison,	Peters,	Tetlow,
Jones,	Pettit,	Thomas,
Kehoe,	Pierce,	Ulmer,
Kerr,	Read,	Walker,
Kilpatrick,	Redington,	Watson,
King,	Rockel,	Winn,
Knight,	Roehm,	Wise,
Kramer,	Rorick,	Woods,
Kunkel,	Shaffer,	Mr. President.
Lambert,	Shaw,	
Lampson,		

Those who voted in the negative are:

Brattain,	Malin,	Miller, Ottawa,
Halfhill,	Marshall,	Partington,
Johnson, Williams,	Mauck,	Peck,
Keller,	Miller, Crawford,	Stevens,
Ludey,	Miller, Fairfield,	Wagner.

So the proposal passed as follows:

Proposal No. 329—Mr. Knight. To submit an amendment to article VI, section 3, of the constitution.—Relative to organization of the boards of education in school districts.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 3. Provision shall be made by law for the organization, administration and control of the public school and educational system of the state; provided, that each school district shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by the school districts.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. SOLETHER: I desire to offer a resolution.

Mr. DOTY: The regular order.

The PRESIDENT: Will the member state the nature of the resolution.

Mr. SOLETHER: I have only introduced one proposal so far, and my voice has not been heard upon this floor before this time, and I now desire to offer a resolution.

The PRESIDENT: Has the gentleman unanimous consent?

Mr. DOTY: We don't care to agree until we find out what the resolution is.

DELEGATES: Agreed.

The PRESIDENT: The gentleman can offer the resolution.

The resolution was read as follows:

Resolution No. 113:

WHEREAS, That in the course of human events the Lord God said, "It is not good that man should be alone, I will make an helpmeet for him;" and

WHEREAS, That one of our worthy and much respected members of this Convention has taken unto himself "an helpmeet"; therefore

Be it resolved by the Constitutional Convention, That we pause one minute in our deliberations in deference to the gentleman from Ashland, Mr. Fluke, and his happy bride.

DELEGATES: Speech.

The PRESIDENT: The member from Ashland [Mr. FLUKE] has the floor.

Mr. FLUKE: President and Gentlemen of the Convention: I appreciate the kindness you are showing me. Of course, I recognize the fact that the matter under discussion, while of a good deal of importance to me, has nothing whatever to do with the business of the Convention or with a constitution for the state of Ohio. At this time I can say to you that I appreciate very much your consideration and good will for my wife and for myself.

Mr. KING: I move that the rules be suspended and the resolution put on its passage.

The rules were suspended and the resolution was unanimously adopted.

The PRESIDENT: The next business in order is Proposal No. 170, a majority report and a minority report, which the secretary will read.

The reports were again read.

The PRESIDENT: The chair recognizes the gentleman from Portage [Mr. COLTON].

Mr. DOTY: Before the gentleman proceeds I desire to call attention to one matter. Technically we will be under the five-minute debate on this proposal at this stage. Unlimited debate would not come until this proposal has reached its second reading. I think it is understood that whatever is done at this time will practically be final, and I therefore move that so far as this debate is concerned this question shall be considered as if on second reading.

The motion was carried.

Mr. COLTON: Gentlemen of the Convention: The members of the Taxation committee, after having considered very carefully the large number of proposals presented to them, and after having discussed them all in the utmost amicability, decided upon one thing unanimously, and that was that they could not agree on the subject of taxation. Hence it is that you have before you this morning these two reports. I am sure that neither the majority of the committee nor the minority have any idea that they can present to the Convention a report which will pass the Convention without modification and considerable amendment. I understand that the question before us now is simply whether the minority report shall be substituted for the majority report, and that no amendments at present are in order.

It is essential, in order that we may discuss this question properly, that we should get a clear idea of the differences and similarities of the two reports, and I propose to go over them somewhat hastily. If I do not state the similarities and differences correctly, any member of the committee can correct me. I cannot go into the details as closely as perhaps might be desirable under certain conditions. If this discussion had occurred earlier in the session of this Convention, it would have fur-

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nished an excellent opportunity for one to branch out into certain discursive discussions, but time is now precious, and I shall seek to confine myself closely to the questions that are germane to this proposition.

In the first place, let us consider these things that I think are substantially the same in the two reports, those in which there may be slight differences, but in which the differences are not important.

In the first place, I should say that each of these reports is a substitute for the entire article on taxation. You will find these reports following Proposal No. 169 in your proposal book.

Section 1 of the majority report concerns the poll tax. The same idea is embodied in the minority report also, that there shall never be levied a poll tax. There are some differences in the wording, but they are not material. The majority report forbids the requiring of work on the roads, as required now. This, I believe, is not considered technically a poll tax. Under the law the enforcement of this is optional with the trustees of the townships and the councils of villages. It is only enforced where public sentiment favors it, and the law may be repealed if public sentiment is opposed to it. The minority report leaves this matter as it stands in the present constitution. I do not consider that this is a matter of serious difference, and the minority will not insist on the exact wording of section 1, as they have it.

Both reports provide for an inheritance tax. In the report of the minority the uniform rule of taxation, which I shall consider a little later, is retained, and hence it is necessary to be a little more specific in the provisions concerning the inheritance tax. If you will turn to section 8 of the minority report, you will find that we have written it out quite fully:

SECTION 8. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value. A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax.

It was thought to be necessary to be so explicit in order to be sure to secure the end sought.

The next thing is the income tax. This is provided for in both reports, but in the report of the minority the provision about the income tax is written out more fully, so that a progressive income tax can be provided for.

Mr. DOTY: In your opinion the majority report provides sufficiently for a graduated income and inheritance tax?

Mr. COLTON: Yes. The majority report does not include the uniform rate of taxation, and the inheritance tax is sufficiently provided for in that report.

Mr. HARRIS, of Ashtabula: As I understand, in the inheritance tax you provide for an exemption of \$20,000. Is that an exemption to each heir or each estate?

Mr. COLTON: Each estate, not each heir.

Mr. HARRIS, of Ashtabula: What is meant by the language: "A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax?"

Mr. COLTON: I do not know that I can make it any

plainer than that language. Not exceeding \$20,000 may be exempted from the estate, and the remainder must be taxed.

Mr. HARRIS, of Ashtabula: The inheritance tax heretofore attempted has provided where the individual share exceeded such an amount it should be taxed.

Mr. COLTON: This is not worded in that way.

Mr. PARTINGTON: Would the general assembly have the right to make a difference where there was a direct heir, or where there was one or ten heirs, in the setting aside of that portion?

Mr. COLTON: No.

Mr. PARTINGTON: The legislature would not be empowered to do that under this provision?

Mr. COLTON: I think not, under this provision. Those are provisions in which the two reports concur, and I do not think it is necessary to go very carefully over those.

The separation of the local and state tax is another point in which the reports agree. You will find in the majority report that matter expressed in section 2, just before the conclusion of it. After having enumerated the various ways in which the state may raise revenue, it says finally, "or so many of the sources of revenue aforesaid as the general assembly may deem best." The same provision is in both reports and it does not constitute one of the differences upon which we shall decide which report shall constitute the basis for the work of the Convention.

Mr. PECK: Will you state what are the reasons for that language in line 14? We are entitled to know the reasons even if the committee does agree. The Convention may not agree with the committee.

Mr. COLTON: In the first place, since the state raises its tax as it does now, by assessment on the counties in proportion to valuation, there results a tendency for the various counties to depress the valuation of their property for the purpose of evading the state tax. For instance, a given county may assess property at a value one-third of its real value, and the rate of taxes may be three times as much as it ought to be, and thus the county collects the same tax, but it evades a part of the state tax, paying only one-third as much as it regularly would pay. Again, on account of the variation in the assessed valuation it is necessary to have a state board of equalization, and that board attempts to place the valuation of property in the different counties on the same basis. They are undertaking a work that no board of men working at the capital is equal to. They cannot do it satisfactorily. If we arrange it so that the state takes whatever tax it needs to obtain by assessment, by assessing each county in proportion to its expenditures, the state board of equalization will not be longer necessary.

Then there is another point. This method of collecting state tax tends to economy in the county. Each county will be assessed in proportion to its expenditures for the little balance of the state tax which it may be necessary to collect from the county, and the tendency is rather to economy than to extravagance in the management of county affairs.

Mr. MILLER, of Crawford: The whole object of this is to eliminate the state tax?

Mr. COLTON: That is the final purpose we hope

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to attain. It does not at once eliminate the state tax. The tendency, however, is well marked in all the taxing authorities of the state, to eliminate the state tax finally, so far as the direct tax upon the property of the people is concerned.

Mr. DOTY: Are you concluding your remarks on the elimination of the state tax?

Mr. COLTON: Yes.

Mr. DOTY: I want to ask a question upon that before you leave it. While both reports provide for the elimination of the state tax, is it not true that the minority report, if it should be adopted, has not made any provision for the university school fund, and therefore, there is a difference between the two reports on that important matter?

Mr. COLTON: I will speak about that later. Another difference is found in the fact that section 3 of the original article in our present constitution, referring to taxing banks, is entirely omitted from the majority report:

The general assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description, (without deduction) of all banks, now existing, or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden of taxation, equal to that imposed on the property of individuals.

It was thought by the committee that this section had become obsolete, banks being taxed by a different method, and it was entirely omitted from the majority report. When the minority came to discuss the matter, it was thought that if this constitution goes before the people, and this section is omitted, someone will say that they have omitted that section requiring that property of banks shall be taxed like the property of individuals, and they will be able to use that as a weapon in attacking this proposal. So the minority decided to retain the words "All property employed in banking, shall always bear a burden of taxation, equal to that imposed on the property of the individuals."

It is possible that does not mean very much, but to retain these lines will certainly remove a club from the hands of those who, if nothing is said on that subject, might use it to defeat the constitution.

The minority report retains the uniform rate of taxation on all property. The majority report provides for a kind of classification which I shall discuss more fully later. I need only mention that fact now.

The majority report provides for the exemption of municipal bonds, school bonds, etc., from taxation, just as our present constitution does. The minority report does not exempt bonds, and if it is adopted bonds will be placed on the duplicate as they were before the constitutional amendment of 1905 became effective.

Then in the minority report there is included a tax limit not stated in the majority report. It is provided in section 7 that the maximum rate of tax shall be that which is now designated in what is known as the one per cent tax law, one per cent with the possibility of one and one-half per cent under certain conditions. We are all familiar with that. This is not included in

the report of the majority. The same section includes also a debt limit, which applies to counties, townships, villages and cities. I am not going to discuss now the correctness of the limits there designated. I call your attention simply to the fact that it provides a debt limit.

It also provides in the last clause, that "No indebtedness not payable out of current receipts shall hereafter be created, incurred, refunded, renewed, or extended, without at the same time a coincidental tax being levied, which shall be maintained sufficient to pay principle and interest at maturity."

Then in section 10, line 56 of the minority report, there is a provision that is not in the majority report: "Taxes may be imposed upon the production of coal, oil, gas, and other minerals." That is what is known as a production tax.

Now, with respect to section 2 of the majority report: "The general assembly shall provide for raising revenue for each year sufficient to pay the expenses of the state, the interest on the state debt, the state common school fund of not less than two dollars per capita of the school enumeration and the university fund of not less than seven hundred and fifty thousand dollars to be distributed between the state supported universities as may be provided by law." Here is a point of difference to which the gentleman from Cuyahoga, [Mr. Doty] called attention a while ago.

Our present constitution simply provides that the general assembly shall provide for raising revenue sufficient to pay the expenses of the state and interest on the state debt. Under that provision revenue has always been raised sufficient to provide for the common school fund and for the universities supported by the state. We thought we might, therefore, readily omit this from the constitution, since the power has been exercised under the present constitution, and since our paragraph is the same as the present constitution.

There is another point which I should mention. Notice that the minimum fund that shall be provided each year for the support of these state supported universities shall be \$750,000. Now, while we are not in any way hostile to state supported universities, and are in favor of seeing them well supported, and desirous of seeing our state universities rank with the great universities of other states, we did not think we ought to provide in the constitution for a minimum sum of \$750,000 yearly for the state supported universities, especially in view of the fact that they have never received from the state in any one year for their running expenses, and that is all that is included, more than \$608,000. If I had the figures correct the sum named is almost \$150,000 greater than the state supported universities have ever received in any one year. I don't say it is too great, but it is nearly \$150,000 greater than they received in 1910. We thought that to put that provision into the constitution would, as in the other case to which I called attention, put a club into someone's hand with which to attack the taxation provision.

Mr. DOTY: Of course, you do not undertake to say that the \$150,000 is a matter of principle?

Mr. COLTON: No.

Mr. DOTY: And you do know that the \$750,000 was only put in tentatively for the consideration of the Con-

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vention and that the Convention could fix what it should be?

Mr. ANTRIM: Are we to understand that the schools referred to are the State University, and the school at Athens and the one at Oxford?

Mr. COLTON: Yes.

Mr. ANTRIM: The normal schools are not included?

Mr. COLTON: The "State supported universities" would not include the normal schools.

Mr. ANTRIM: What was the object in omitting them?

Mr. COLTON: I do not know.

Mr. ANTRIM: Why put those universities in? Why not enumerate them all?

Mr. COLTON: They are not enumerated in the minority report. They are enumerated in the majority report, but are omitted from the minority report. The enumeration of the sources of revenue which the state may use is given in this section 2, but it is by no means complete, and it is possible that the enumeration of these particular sources of revenue to which the state may resort may be construed to exclude the state from resorting to other forms of revenue not mentioned here.

Now, I believe I have pointed out with sufficient fullness the respects in which the two reports agree and the respects in which they differ. Some differences are minor, and may not figure very largely in the preliminary discussions at least.

Now I want to call attention to the subject in general, more especially to the differences which exist between the two which may lead us to decide which one would form the best basis for our future work.

Mr. JONES: May I ask why in the minority report there was left out provision for taxing businesses and franchises?

Mr. COLTON: That is not in the present constitution, and we understood that the legislature had full power to do that.

Mr. JONES: That is not included in the minority report?

Mr. COLTON: No. It is in the majority report, but we did not insert it in the minority report, because we think the legislature has the power. That is a form of taxation already used.

Mr. JONES: Was the question raised in your committee that there was grave doubt as to the extent to which the rights and privileges of franchises may be taxed under the present constitution?

Mr. COLTON: I do not think it was. I am sure the minority would be glad to accept an amendment including those words, if necessary, because they are thoroughly in accord with the idea that that source of revenue should be used by the state.

Mr. OKEY: Do you think that under your minority report all classes of franchises would be taxed?

Mr. COLTON: I could not say, but I suppose they would. It was certainly intended it should be so.

Mr. HALFHILL: Does the minority report intend to preserve as a cardinal principle the uniform rule of valuation provided for in section 2 of article XII?

Mr. COLTON: That was our intention, that property should be valued according to its true value in money.

Mr. OKEY: In what way have you extended or helped business conditions in that regard?

Mr. COLTON: We have not changed the essential wording of the present constitution in that respect, although we have changed it slightly. Section 2, line 5, says "Property shall never be so classified as to permit taxes to be levied at different rates for different classes, but all real and personal property, tangible and intangible, shall be taxed by a uniform rule, according to its true value." This is somewhat different from the wording of the present constitution.

Mr. HALFHILL: Do any of these other things or items of property in any way bar the operation of the present constitutional provisions?

Mr. COLTON: I don't think so.

Mr. HALFHILL: Is there ample authority to reach everything that is in the minority report?

Mr. COLTON: We suppose so.

Mr. HALFHILL: Under the existing provisions?

Mr. COLTON: We suppose so.

Mr. HALFHILL: Then where have you helped it?

Mr. COLTON: None in that respect.

Mr. HALFHILL: Have you in any material respect improved upon the existing constitution, section 2, article XII?

Mr. COLTON: We have not improved upon it, except that we have restored bonds to taxation; it remains the same with that exception.

Mr. THOMAS: You have provided for income and inheritance taxes?

Mr. COLTON: Not in section 2.

Mr. HARRIS, of Ashtabula: It seems to me that the member from Allen [Mr. HALFHILL] must have reference to excise taxes, as they are taxes imposed in Ohio, and have been accepted by judicial interpretation, and the query is, are they provided for in this minority report?

Mr. COLTON: We have not specifically designated excise taxes.

Mr. HARRIS, of Ashtabula: The majority report seems to do that?

Mr. COLTON: The majority report does do that.

Mr. DOTY: If the gentleman will yield, I move that we recess until 1:30 o'clock this afternoon.

The motion was carried.

AFTERNOON SESSION.

The Convention was called to order by the president, who immediately yielded the gavel to Mr. Cassidy.

Mr. SHAFFER: I demand a call of the Convention.

The PRESIDENT PRO TEM: A call of the Convention has been demanded. The sergeant at arms will close the doors, and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Brown, Highland,	Jones,	Norris,
Brown, Lucas,	Keller,	Nye,
Campbell,	Kerr,	Okey,
Davio,	Lampson,	Price,
Dunn,	Longstreth,	Smith, Hamilton,
Evans,	Marriott,	Thomas,
Harris, Ashtabula,	Matthews,	Weybrecht,
Harter, Huron,	Miller, Crawford,	Worthington.
Harter, Stark,		

The president announced that ninety-four members had answered to their names.

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Mr. KERR: I move that further proceedings under the call be dispensed with.

The motion was carried.

Consideration of Proposal No. 170 was resumed, and the delegate from Portage [Mr. COLTON], having yielded the floor for a motion to recess, was again recognized.

Mr. COLTON: Before proceeding with my remarks, I wish to add a little to what I said this morning in reply to a question from the member from Allen [Mr. HALFHILL] which may not have been understood by all the members of the Convention. The question was whether we intended to have our proposal cover the question of excise and franchise taxes completely. I want everyone to understand that we intend to cover that, that we are in favor of full taxation of franchises, and we want to have the constitution so written that excise taxes are permitted, and if the wording copied from the old constitution does not fully cover both of those sorts of taxes we shall accept an amendment to make it sufficiently explicit in that respect.

One other thing: I spoke about the debt limit and the tax limit. We incorporate in our minority report Proposal No. 309 by Dr. Brown of Highland, word for word, and in that proposal the debt limit and the tax limit are fixed. We expected Dr. Brown to be here to defend his proposal, which forms part of our report. Personally I do not swear by this debt limit at all, and I do not propose to discuss it in my talk this afternoon, but I believe it essential that a debt limit should be placed in the constitution, and especially do I believe that the tax rates should be limited in the constitution rather than by law.

It is scarcely necessary for me to say that modern government is a very expensive institution. It is evident that the expenses that are necessary to carry on modern government must come from contributions from its citizens. Thus far we are agreed, but when we reach the question of how those contributions shall be taken, how the tax burden shall be distributed over the population, we reach somewhat disputed questions. I may say that in the early history of the government contributions for the support of the government were taken in an arbitrary and even a forceable way, but in these modern times such methods are not countenanced, and we insist that taxes shall be required from the citizens in such way as to distribute the tax burdens as justly and as fairly as it is possible to distribute them.

Economists have stated two principles which they thought controlled the distribution of tax burdens. These principles attempt to outline a method by which approximate justice may be secured:

First, it was said that each citizen ought to contribute to the support of the government in proportion to the benefits he receives from the government, benefits of all kinds. This was the earliest proposition announced by economists for controlling the distribution of taxes. This proposition has been practically abandoned for the reason that it has been found practically impossible to determine what are the real benefits which different citizens receive from the government, so that we can not distribute the taxes in accordance with that principle.

The second principle, the more modern, and the one now practically universally accepted by economists, is the statement that each citizen should contribute to the

expenses of government according to his ability or faculty. It assumes that communities or governments are associations of people for the common good, and that each ought to contribute toward the expenses of the government under which he lives in accordance with his ability to contribute.

Now there are two ways of determining ability to contribute to the expenses of government which may be determined. One of these is the value or the extent of the citizen's possessions, the amount of property which he holds and owns, and the other is the income which he receives. I am an advocate of income taxation. I believe a tax distributed in proportion to the income a man receives would be distributed in the most just and fair way that it is possible to distribute it; but we are not under an income tax, and it is impossible for us to pass from the property tax, under which we are now proceeding, to an income tax in any abrupt and positive way. If we have to pass to the basis of an income tax, we must pass to it gradually. The income tax is at present in an experimental stage. It has been successfully used in the old world, but thus far, as used by our states, it cannot be pronounced a success. The state of Wisconsin is the first state to adopt a very elaborate income tax, modeled after the income tax provisions of the Old World, and there the experiment of income tax is being tried out. All of the states are watching the outcome of the Wisconsin experiment, but the income tax, by itself now, is out of the question.

We are on the basis of a property tax. Now it is assumed by those who accept the value of one's property as the best measure that we have of one's ability to pay, that all property ought to be taxed at a uniform rate. I admit that the value of one's property does not furnish an accurate measure of his ability to pay. The man behind the property is an element which the property tax does not take account of in estimating the income that may be derived from the property. We may say that the value of property is in the long run proportional to the income it will yield and the amount of property a man possesses is in the long run, or in a general way, a measure of his income. This does not take into account the man himself, the man behind the property, which is a mighty element in determining what income will be gotten from it. But we cannot take that into account in the property tax, and we are left to assume that the amount of property that a man possesses is the best possible measure we have of his ability to pay taxes. That being the measure of his ability, we believe that the whole amount of property that a man possesses should be taxed at the same rate.

Now, the classification of property involves a division of property into different classes for the purpose of levying upon those different classes different rates. The rates are to be uniform throughout the same class, but different in different classes. All of these classification schemes that I know anything about place real estate—land—in one class, and they designate a variety of classes, downward from real estate, the last class mentioned on the other extreme being intangible personal property. All of these schemes contemplate placing the highest rate of tax upon land, and the lowest rate of tax upon intangible personal property. Many of those who maintain that classification is the correct method

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would be very well satisfied if we could exempt intangible personal property altogether from taxation, and tax only material tangible property. The classificationists, therefore, attack the theory of a general property tax based upon a uniform rate from different standpoints. Some of them maintain that intangible personal property ought not to pay any taxes at all. They maintain that only material wealth should be taxed. When, for instance, I sell a horse and take a note for it, there is no increase in the material wealth of the community. I have a piece of paper with certain writing upon it, but the value of that paper as material wealth is nothing. These people maintain that the note ought not to be taxed, since it is not material wealth. In reply to that we say that we do not confine our taxes to material wealth. We tax franchises; we tax corporations, not in proportion to the wealth they possess, but as going concerns. An express company operating in this state may have very little material wealth. We do not simply tax its material wealth, but we tax it in proportion to its value as a business, its value as an income-producing institution. We are taxing its material wealth to a certain extent, but the larger portion of the tax collected from an express company is not upon material wealth, but upon something nonmaterial and intangible.

In the second place I maintain that the note is property, and I presume no one here would dispute me, though I believe a court in California has decided that a note is not property. A note is property. It has value, it has market value. It can pass from hand to hand and be exchanged for money or for commodities. Not only has it a market value, but it is income producing property, and if we were on the basis of an income tax the income from that note would be taxed, just as the income from a farm or a mine or any other sort of a business is taxed.

I maintain, therefore, that a note or a bond—intangible property of that sort—is a proper subject for taxation. I may say in addition to this that the note is under the protection of the law, and if you have difficulty in collecting it the machinery of the law will be put in operation to collect it, just as the machinery of the law will be put in operation to aid you in recovering a stolen horse. So I maintain that a note, or intangible personal property, is a proper subject for taxation.

Other classificationists who admit that a note is a proper subject for taxation, assert that the note should not be taxed at the same rate as other property, and they make this assertion commonly because, as they say, intangible personal property does not bring the same income, and it ought not to be taxed at the same rate as other property. Their point of attack is deposits in bank—savings banks. Money in savings banks yields, say, four per cent, and assuming that the rate of tax is one per cent, which I believe we are going to realize in the near future, twenty-five per cent of the income is paid in taxes and they say that is so large as to be unjust. I want to say that the classificationists in choosing this line of argument are choosing the most forcible presentation of the subject possible for them. It is not quite fair. In the first place no one deposits money in a savings bank as a real investment at all. People who deposit money at four per cent in savings banks do it because that is the most convenient way to deposit it for the time being; there is

no worry or trouble about it; it is safe, and they just drop it into the savings bank and let it rest there; and then there is another reason, and that is that money in a savings bank is within easy reach all the time. We can get it when we want it. Those three things determine whether one shall deposit money there or not, and those who deposit money in this way sacrifice something in interest because of these other considerations.

Now, to apply this argument in fairness we must take the money as it is loaned commonly by business men. It is an easy matter to lend money at six per cent, and sometimes at seven per cent interest, on good security. Suppose a man lends money at six per cent interest and is taxed one per cent. He gets five per cent net on his investment. Take the higher rate, and suppose that the tax is one and a half per cent and that would leave him four and a half per cent net on his investment.

Now, I assert that three-fourths of the farmers of the state would be willing to take a net income of five per cent on the value of their farms. Let the farmer charge up against the farm his own labor, the labor of his teams, the amount paid out for labor, insurance, taxes and the deterioration of fences, buildings and farm machinery, and if his net profit is five per cent, or even four and a half per cent, three-fourths of the farmers of the state would be satisfied with their incomes. Believing that, I say that the man who loans money out at six per cent, and who pays the extreme limit of tax of one and a half per cent, thus realizing four and a half per cent, is not being dealt with unfairly. Again, there are classificationists who maintain that while it is right to tax intangible property, it is not expedient to tax it as other property is taxed. They say you are not able to get this intangible property on the tax duplicate when you tax it at the same rate at which other property is taxed. You therefore do not derive the revenue you ought to from this kind of property. If you tax it at a merely nominal rate, they claim that this property will be so thoroughly reported, that it will come from its hiding places so generally, that the revenue received from it will be greater than that received under present conditions, and as a matter of expediency, a matter of getting the greatest income from intangible property, they advocate reducing the rate to a very low point.

This method of proceeding violates my sense of what is right. I do not believe in passing a law which will release these people from the obligation to pay taxes on intangible property simply because they persistently refuse to do so. Suppose there were in our midst a group of people constantly pilfering. We cannot prove it, but we know they are constantly doing it. We cannot subject them to penalties to which ordinary pilferers are subject. Suppose finally in our despair, not being able to convict these people, we say to them "We are going to change our laws concerning you. We are satisfied you are pilfering and are subject to punishment, but we are going to change the law, so that you will not be subject to punishment. We are going to relieve you of the disgrace of being called criminals. We expect you to go on just as you have been with your pilfering, but we expect you, in return for the immunity which we grant you, to turn over to the community a small part of the amount you henceforth pilfer." That is the way the classificationists approach the people who are not reporting their

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intangible property. "Because you are not reporting it, although you ought to report it, we are going to change our laws so that it will not be required that you pay in full. We are going to reduce greatly the amount you would have to pay, but we expect in return for the privilege we are extending to you that you will voluntarily donate to the community a certain small portion of what you are permitted to withhold from it."

These people argue that the low rate will bring out the intangible property to a large extent, and they cite the experience of the city of Baltimore, which seems to indicate that when the rate of taxes upon intangible property is made very low the income is considerably increased. I do not believe that this result will persist. There may be an increase in the amount of intangible property reported the first year, and it may be that taxes on that amount will increase the total taxes, but left to themselves the people will soon lapse into the old method of withholding from taxation at the low rate just as generally as they did at the high rate.

Professor Bullock, who is an ardent classificationist, makes the statement that all schemes of taxation which contemplate the taxing of intangible personal property at a low rate presume a radical overhauling in the administration of the tax laws, and in connection with that a change in the penalties which are assessed for withholding or falsely reporting one's property.

Let me refer again to Wisconsin. Wisconsin is trying an expensive experiment with the income tax. They have exempted intangible personal property from taxation by the property tax. The property tax does not apply to that, while it does still apply to other forms of property. They apply to intangible property the income tax, at a special rate equivalent to a property tax of from three-fourths of a mill to four mills, depending on the size of the income. With that rate Wisconsin is not going to get very much from personal property unless the personal property is pretty generally reported. Remember that that is a rate that varies from three-quarters of a mill to four mills on the dollar, depending on the size of the income. Now, in connection with this rate, which so largely relieves intangible personal property from taxation, they have provided by law that any man who falsely reports his income, or who refuses to report his income, shall be punished—not as in this state—for perjury, or by having his taxes increased by fifty per cent, but such a man is fined not to exceed \$500 and imprisoned not to exceed one year, or both. That is the way Wisconsin gets at the people who refuse to report incomes on intangible personal property as they ought.

Now, unless you accompany the reduction of rates, as advocated by the classificationists, with additional penalties, as they have in Wisconsin for false or incomplete reports, I do not believe the lowering of the rates will be effective permanently. It may for a time bring out more intangible personal property, and it may for a time increase the amount of taxes derived from intangible personal property over what we now get, but unless penalties, and severe penalties, are imposed the people will soon lapse into the old ways.

This proposition advocates a peculiar kind of classification. It is piecemeal classification. You will notice that it provides local option in classification. Counties that vote to do so can adopt classification according to

a general law passed by the legislature. The legislature will designate the classes of property and fix the rates on some of them, but not on all of them. There must be flexibility. The total rate of taxes in some counties will be greater than in others, so there must be some power in the local authorities to fix and determine the rate. I think this is classification in its worst form. If we are to have classification at all, let us have it state-wide and universal, and not classification of property in piecemeal.

Now let us see what will happen under these conditions. Suppose a certain county votes to adopt this classification plan of taxation, and suppose it does what is usually done in such cases; it reduces the tax on manufacturing companies almost to nothing, practically allowing them to operate free of tax in that territory. Of course, while the surrounding counties tax everything at a uniform rate, manufacturers looking for a location would drift into the counties that relieve them from taxation, and with the incoming of those manufacturing institutions there will be an increase of population, increased demands for laborers, carpenters, material men, merchants, and every other class of people almost, and the result is there will be a sort of boom in those counties. When these manufacturing companies begin operations and begin to compete with other companies in adjoining counties, the other companies will say to the authorities of the other counties, "Here, we can't stand this. Over there a few miles, occupying a position just as favorable for operations as ours, there are manufacturing concerns making cheaper than we are the same products that we are selling. You will have to reduce the tax here or we will have to emigrate." The result will be that the other counties will have to come down to a classification basis, and we shall have classification by piecemeal all over the state, and that entirely independent of the question whether it will be better, when the end is achieved, to be on a classification basis or on the uniform rate basis, because the counties will be compelled to classify to protect themselves against counties that have gone over on the classification basis. I believe that would be worse than if the entire state were on the basis right at once. I do not believe, as you all know, in classification. I believe least of all in piecemeal classification as outlined in the majority report.

Now these classificationists tell us that our property tax applied to intangible personal property has broken down. Three years ago if one had made that proposition to me I should have assented to it most thoroughly, and if I had seen no relief I should have been looking around for some relief in the matter of taxation. Now, why has the property tax applied in a general way at a uniform rate to intangible property broken down? It has broken down for reasons which it seems to me are rather apparent.

First, it broke down because we left the tax laws to administer themselves. Our assessors have been going about a good deal like colporteurs, leaving tax blanks as the colporteurs leave tracts. Each person fills the blank for himself and often signs the oath with a mental reservation. With this sort of assessment it is not to be expected that any system of property tax would work reasonably well. The assessor has not been a positive force. He has not been exercising the powers that the law requires he should exercise. The assessor is elected from

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the community in which he lives, and must assess the property of his neighbors—a very delicate thing to do. Assessors ought to be appointed by a power outside of the community, and they should be placed under the control of some central authority to make it certain that they shall make their assessments on some definite and fixed or uniform plan.

In Wisconsin the assessor may be fined for dereliction of duty, and for every blank left in the paper, unless he can give a proper reason why the blank was not filled. We ought to have something of that kind in this state.

In response to a question by Judge Peck I said something about both of these reports advocating a separation of the state tax from the local tax. One of the reasons for this is the tendency of each county to evade the state tax by undervaluing its property. The result is that real estate has seldom been valued at half of its real value, and sometimes for not more than a quarter or a third of its real value. Now it is easy for an assessor to say, "I don't know what this land is worth," and the result of the whole thing is that the land goes in at one-third or one-fourth of its value. But when the owner of a note reports it to the assessor, that note, if it is a good note, must go in at its full face value. It cannot be put in at one-third or one-fourth of its value. Therefore, the owner of the note, knowing that the owner of the land has only put in his land at one-fourth of its value, and not being able to put in his note at one-fourth of its value, simply does not return his note. I do not know that I blame him. I do not say that every man who does this is dishonest. I have not done it myself, but perhaps I have escaped because of lack of temptation.

Then there is another objection. If the valuation is very low, of course the rate of tax must be increased correspondingly, for the county or taxing district must have sufficient income to meet its needs, and this increases the burden on the man who has intangible personal property and makes him less inclined to report it.

There is another reason why our tax system broke down, and this is the fact that municipal bonds have been exempted from taxation. I might say here that our report would restore bonds to the tax list. I firmly believe that they ought to be restored to the tax list. There is no reason why a city should be able to give its bond, which is simply a note, under conditions which relieve the holder from taxation, when if a citizen gives his note the holder of it is taxed. I cannot see any difference between the note of a city and that of an individual, so far as that is concerned. Of course, when a city can issue its notes or bonds free of taxes, it pays a lower rate of interest. It would be a nice thing for me if I could issue my notes free from taxation. I could profit also by a lower rate of interest. And it is just as fair that I should be relieved from paying a high rate of interest as that the city should.

Mr. HARRIS, of Hamilton: Do you believe that the city should pay taxes on the money it has in bank?

Mr. COLTON: I rather think so.

Mr. ANTRIM: Do you believe a city should pay taxes on its city buildings?

Mr. COLTON: No. But I was saying that the exemption of municipal bonds from taxation tends to break down our tax system. Here is a man who has money out at interest loaned in the ordinary way. His

neighbor has an equal amount invested in bonds upon which he pays no taxes. The man who has loaned his money in the ordinary way says to himself, "Why should I pay taxes on my money, loaned out in the ordinary way, when my neighbor has the same amount invested in bonds and he does not pay anything at all? So, he simply withholds his notes from taxation.

Mr. HARRIS, of Hamilton: Do you believe an individual should pay taxes on his debts?

Mr. COLTON: No, sir.

Mr. HARRIS, of Hamilton: Then if you do not believe an individual should pay taxes on his debts, why do you believe a city should pay taxes on its debts, namely, its bonds?

Mr. COLTON: I think a note is a proper subject of taxation, and I believe a note given by a city is just as proper a subject of taxation as a note given by an individual.

Mr. TALLMAN: By what process would you get upon the tax duplicate the bonds issued by municipal corporations, where they are sold to bonding houses, then sold in the New York market and are owned by the people of the state of New York, and it is impossible for us to find out who are the owners of the bonds?

Mr. COLTON: I have no process to expound to cover that difficulty, and there are other difficulties I know that will arise.

Mr. TALLMAN: Is not that one reason why municipal bonds should be exempted, because the municipality would get the taxes out of it right along in the decreased interest?

Mr. COLTON: Yes, that is the reason commonly urged.

Mr. STOKES: In answer to a question to the gentleman from Hamilton [Mr. HARRIS] you say that the municipality should pay taxes on its bonds?

Mr. COLTON: Not the municipality, the holder of the bonds.

Mr. STOKES: They are not the city's bonds. They are the individual's bonds after they have been bought by him. That is the bond I am talking about.

Mr. COLTON: I do not mean that the city should pay taxes on its bonds. If I used that expression it was inadvertent. All other bonds should pay taxes. I was saying that it is of advantage to the city to sell its bonds tax free, because it can float its bonds at a lower rate of interest, just as it would be of advantage to the individual. Suppose one goes to a farmer and says, "I am interested in the city. It is a large city and I can sell its bonds free from tax, and you ought not to object to it—"

Mr. DWYER: Is it not a fact the reason given for exempting the bonds of a municipality from taxation is that the home investors buy the bonds, and the money stays in the city? Is not that the main reason given for exempting bonds, that they are purchased at home, and the money instead of going out of the state, stays in the state?

Mr. COLTON: That is urged sometimes. Of course, if they go out of the state they are taxed. There are only two states in the Union whose constitutions exempt bonds, Arizona and New Mexico. They are not taxed at the same rate in a few other states, but in a majority of the states they are taxed just the same as

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other property. Now suppose an Ohio bond subject to tax, and consequently bearing a high rate of interest, is sold in Pennsylvania, where the rate is four mills on the dollar. It will be sold at a premium, and thus the city will be recompensed for the higher rate it pays on account of the fact that bonds are taxed in this state. If the interest rate named on the bond is higher than money is bringing in Pennsylvania, the bond will sell at a premium, so that if the city issues bonds with the rate a little higher on account of the taxation, they would sell in a state where they are exempt from taxation at a premium, which would recompense the city for the difference in the rate.

But I was speaking about the farmer. Suppose there are in my town two men, one owning a farm worth \$10,000 and another has money invested in notes loaned out to farmers to the extent of \$10,000. Each of these is taxed, the one on his farm and the other on his notes, and they pay taxes at the rate of one per cent, which would be \$100 each year. That is divided between the township and county, and a small portion goes to the state. Then these two men help to pay the expenses of the local and state governments. Now the second man, who has his money invested in ordinary notes, changes his investment to bonds. He gets a little less income, it is true, if he buys tax-free bonds bearing a little lower rate, but he is willing to do that because he escapes taxation. He lives right beside his friend, but he pays nothing toward the expenses of the county or the township in which he lives. Is this just?

This man with \$10,000 in bonds, who lives right beside the farmer, is paying nothing, and hence increased burdens fall on the farmer. Of course, if this man who transfers his money to bonds is relieved of local taxation, anyone can see that the result is, since the same amount has to be raised, that there will be \$10,000 less of taxable property, and the others have to pay a little more in taxes. You make the farmer bear an added burden in order that the city may get the advantage of a low rate of interest.

"But," someone says to the farmer, "the growth and prosperity of the city means the growth and prosperity of the country, and your interest in the city ought to be such that you will not object to the exemption of its bonds from taxation." It will be very difficult to so thoroughly convince the farmer by this line of reasoning that he will say to the city: "Build your palatial public buildings and your lofty viaducts, pave your streets, purchase and adorn your spacious parks and connect them with broad and sweeping boulevards, borrow the money with which to pay for them, and, so great is our desire for your welfare that we will gladly bear increased burdens of taxation in order to help you pay the interest on your debt."

Now I think I have discussed this matter as fully as I ought to, but there is one other thing that I want to say. I think the rate of taxation of one per cent, or the extreme limit of one and a half per cent, as provided by our present law, ought to go into the constitution, because people ought to know what to depend on in the way of taxation. I believe if the people were satisfied that the present tax law would be continued in force more property would be returned for assessment, and when we fix it in the constitution, the people will know

that that is settled, they will know what to depend upon, and it is likely to bring out much more intangible property than we have now.

Mr. PETTIT: I have not had a chance to read your proposal. Is there anything in there in reference to double taxation?

Mr. COLTON: Nothing said of it. Three years ago I would have agreed with anyone who condemned our system of taxation. It had broken down. In fourteen cities the tax rate was over four per cent. In one city the tax rate was over five per cent. In many cities the tax rate was three per cent. The tax rate was often higher than the interest rate paid by banks. Under those conditions no authority would have felt like going to a man who had money deposited in a bank, which was drawing four per cent, and saying to him that he must pay five per cent taxes on it. Such a condition as that precludes the forcible administration of any tax law. But bring the taxes down to a reasonable rate, one per cent, or, in an extreme case, one and a half per cent, and the taxing authorities of the state have some heart in trying to enforce the law. The legislature will have some heart in putting penalties on, so as to bring out intangible personal property. I do not suppose we are going to get it all out. I do not look forward to that condition, but I do look forward to the time when we shall get out a much larger proportion of it than we have now on the tax books, and to a time when the income from it will be much larger than it would be under any ordinary system of classification that is likely to be adopted.

Mr. WATSON: Take a farmer now, and what encouragement would there be for a man to put \$10,000 in a farm appraised at \$10,000 if he did not know that there was a fixity in the constitution concerning the rate of taxation on the farm? Suppose he would buy that and the general assembly might mark the rate up to two per cent —

Mr. DWYER: You mean the maximum rate—

Mr. COLTON: He would take that into account, and he would be less likely to invest than under other conditions.

Now I am not here to defend the Smith one per cent law. I am not posing as its champion. But I do defend a limitation of the tax rate in the constitution. I do believe that we should secure that for all time by incorporating it in the constitution.

In conclusion, may I be allowed to express a hope which embodies somewhat my idea of what we ought to look forward to in the line of taxation? My hope is that the uniform rule of taxation may be continued. We are under the property tax, and if we pass to classification we cannot avoid many of the difficulties that exist under the present uniform rule. The difficulties of assessments, etc., under classification will be the same as now. I hope that we will continue under the uniform property tax, changing the constitution so that we can have an income tax. Then I hope we will watch the experiment in Wisconsin, and if that succeeds, as I feel confident it will succeed, I hope that our state will apply the income tax with low rates at first, which will be increased as time goes on, with a corresponding decrease of the rate of the general property tax, until by and by the property tax will practically disappear, and we shall be placed on an income tax basis, the fairest possible way

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in which the tax burden can be distributed over the people.

Mr. DWYER: What would be your plan for taxing land encumbered by a mortgage?

Mr. COLTON: That brings up the question of the so-called double taxation. I ought not to take time to answer that fully. I think double taxation is largely a bugaboo. Double taxation is magnified in its importance and bearing on this question.

In the first place, if I have made my position clear a note ought to be taxed. When a note is taxed I know that it increases the rate that will have to be paid by the man who borrows the money sufficient to cover the tax. That is, if the rate of tax is one per cent, and if the money could be borrowed if the note were not taxed, at five per cent, if it is taxed, the man who borrows the money would have to pay six per cent. That is all right. A horse is taxed. If I hire that horse, theoretically, and perhaps actually, I have to pay more for the horse because the horse is taxed, and if a man borrows money he will have to pay more because it is taxed. It is not double taxation, but it is simply a shifting of taxes. Our whole taxation system is full of examples of the shifting of taxes.

Have you ever noticed how patiently a corporation submits to taxes? They don't care how much they are taxed. They simply increase, if competition permits, the price of the product, or cut down the quality of the material, or diminish wages, and shift the burden from themselves to someone else.

The same thing is true of all corporations except railroads. We have put a limit to the charges which railroads may make for carrying freight and passengers. Under this condition the railroads cannot shift the tax levied upon them so well. We have the railroad companies between the upper and the nether mill stone, but the ordinary corporation shifts its burdens easily. In the same manner if notes are taxed, there is a shifting of the tax onto the shoulders of the borrower.

Mr. PETTIT: How would a man who has a farm valued at \$10,000, and has a \$5,000 mortgage on it, shift that?

Mr. COLTON: That burden would shift onto him.

Mr. KNIGHT: I want to be sure that I understand the gentleman rightly. Take the illustration the gentleman from Adams [Mr. PETTIT] has given. If I own a farm appraised at \$10,000, and have to borrow \$5,000 on a mortgage in order to pay for that farm, do I understand the gentleman to say that the man who lends me the \$5,000 shifts the burden over onto me, so that I practically pay the taxes?

Mr. COLTON: Yes.

Mr. KNIGHT: Then, if that is the case, I pay taxes on the \$10,000 farm?

Mr. COLTON: Yes.

Mr. KNIGHT: And on the \$5,000 mortgage?

Mr. COLTON: Yes.

Mr. KNIGHT: \$15,000?

Mr. COLTON: Yes.

Mr. KNIGHT: And all the property I have is a \$10,000 farm. Is that right?

Mr. COLTON: Yes.

Mr. KNIGHT: But the farmer pays the tax on the mortgage on his farm?

Mr. COLTON: Yes; it is shifted onto him.

Mr. CUNNINGHAM: Take the example of the gentleman from Adams [Mr. PETTIT]. He puts the proposition that the farmer buys a farm for \$10,000, pays \$5,000 cash and gives a mortgage for \$5,000. Is there any justice in that? Does he not buy the farm subject to the lien for taxes, and does he not buy it for less than he would if it were free from taxes?

Mr. COLTON: He pays less than if it were free from taxes?

Mr. FLUKE: If I own a farm and give a \$5,000 mortgage on it, is there any rule of right or equity whereby the man who holds that mortgage against me should be exempted from paying taxes on it?

Mr. COLTON: No.

Mr. HALFHILL: I would like to know what is the scope and effect of section 10: "Taxes may be imposed upon the production of coal, oil, gas, and other minerals"?

Mr. COLTON: That is a production tax, or excise tax. It might be laid on every barrel of oil produced, or on every ton of coal mined.

Mr. HALFHILL: Is there any contention on behalf of the minority of the committee that excise taxes cannot be levied under the present constitution?

Mr. COLTON: There was the impression that it was necessary to put in the constitution a provision to permit a production tax of that kind to be levied.

Mr. DOTY: Are you not fearful that section 10, carried to its logical conclusion, might result in the single tax?

Mr. WINN: Is it "safeguarded"?

Mr. DOTY: Do you realize where you are landing?

Mr. COLTON: The rate of taxation must be very low.

Mr. DOTY: It does not say so.

Mr. COLTON: You must tax the coal very low, or you close down the mines on account of the competition from adjacent states.

Mr. DOTY: Then you acknowledge that taxation on an industry does affect the value of the industry?

Mr. COLTON: Certainly.

Mr. DOTY: You acknowledge that?

Mr. COLTON: Yes.

Mr. DOTY: We are making progress.

Mr. MOORE: Does not section 10 simply assume that society has a secondary interest in the natural production of the earth?

Mr. COLTON: Yes, and very rightly.

Mr. DOTY: Why, may I ask?

Mr. COLTON: The people in a certain way are interested in the natural resources of the state. We are all interested in those natural resources, although they are now claimed by the individuals who hold the deeds. Mr. DOTY: You admit the state should exercise some proprietary right?

Mr. COLTON: I think the state should lay a small tax.

Mr. DOTY: Why not a large tax?

Mr. COLTON: I do not think it should be or could be a large tax.

Mr. ANTRIM: I want to ask about that man with a \$10,000 farm, and the other man with a \$10,000 note. The man who has the \$10,000 farm pays \$44 a year in

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taxes, because the rate in the township where the farm is located is .44, .06 less than one-half of 1 per cent. Now this other man lives in town. In town the rate is 1.38, and he would pay \$138. In addition to that this farm is worth \$50 an acre more than it was when he bought it in at \$10,000. Do you not think the farmer has much the advantage of the man who has the \$10,000 note, if the man with the note pays on the full \$10,000?

Mr. COLTON: As far as that is concerned, our real estate ought to be frequently appraised.

Mr. ANTRIM: It was worth that much when it was appraised, but it has gone up since.

Mr. COLTON: There might be a little injustice because the appraisal has not been sufficiently recent, but the man in town is paying a rate of taxes for the conveniences which he has of living in town, and he ought not complain of that.

Mr. FACKLER: What reason did the committee have in fixing the bond limit of cities in changing the present law, which exempts waterworks bonds from being figured in the computation of the one cent limit, to a plan which considered all as municipal debts?

Mr. COLTON: I suppose you were not here when I made this explanation at the beginning of my remarks. This section which embodies that peculiarity you refer to was the proposal of Dr. Brown, of Highland, and, without investigating it very much, we incorporated it in our report. I would not swear by the debt limit at all, and I do not propose to defend that on the floor of the Convention. Dr. Brown was to have been here to defend his proposal. He does not seem to be here.

Mr. DWYER: Suppose a man has a farm worth \$10,000 and he owes \$5,000. At present the land is valued at its cash value. Heretofore it was appraised at about two-thirds, but now it is at its full value. He has to pay taxes on \$10,000 while he owns only \$5,000. Would it not be fair every year when the assessor goes around to have an affidavit attached to the blank by which the man could swear as to the amount of interest he had in the land, and ought you not to assess him on what he owns and not on what he owes? Would not that be fair?

Mr. COLTON: It would seem to be fair, but it is wholly impracticable. I do not think we can put into practice any scheme of that kind that will work.

Mr. DWYER: You have to return your personal property every year, and why not let what he owes be deducted?

Mr. COLTON: It would tend to the reporting of fictitious mortgages.

Mr. DWYER: It looks to me as if that would be the fair thing to do.

Mr. COLTON: Suppose you bought a horse and you gave a note for it. Would not there be as much reason to exempt that horse as to exempt the land in your supposed case?

Mr. DWYER: That is exceptional. That is one of the great grievances we have. The great trouble with our present system in double taxation, paying on something that you do not own. That is one of the greatest complaints we have. If we could eliminate that complaint we could do very much toward relieving the difficulties of the question of taxation.

Mr. COLTON: There was a large number of ap-

plications and appeals sent to the Taxation committee bearing upon a point like that, but to grant that really exempts all notes from taxation, for every note covers something. There is no more reason for exempting from taxation a note given for the purchase of land than for the purchase of a piano, a horse, goods out of a store or anything else.

Mr. DWYER: I am not exempting the notes, but exempting the man who owes the note.

Mr. HALFHILL: Has your portion of the committee considered stock certificates?

Mr. COLTON: No, sir.

Mr. HALFHILL: Or shares in a corporation?

Mr. COLTON: I think not. It was intended in the minority report to leave those things as they were, believing that they would adjust themselves, and that it would be better to leave them as they are than to change the constitution already understood.

Mr. HALFHILL: Then your portion of the committee are contending that the way the present constitution is construed, that is to say, that corporations may be assessed on their intangible property and the owners of shares of stock shall not be taxed on those shares, is correct?

Mr. COLTON: If the corporation pays tax on its stock the owner of the stock ought not to be taxed. There is a difference between stocks and bonds. The stockholders are the partners in the business.

Mr. HARRIS, of Hamilton: Are not the citizens a partnership in the municipality, and do you contend that the bonds of a municipality should be subject to taxation, while the stocks in private corporations should be exempt from taxation?

Mr. COLTON: The stocks in the private corporations are taxed at the source.

Mr. HARRIS, of Hamilton: Is not all the property of the city—the municipality—the property of its citizens? And don't they pay taxes on their private property?

Mr. COLTON: Yes, but the city pays no taxes on its public property.

Mr. REDINGTON: I wish to have the attention of the Convention for a short time. I am not in favor of either of these proposals as introduced. I want to preface my remarks by saying that I am in favor of the classification of property. I want that understood at the outset. I also want it understood at the outset that I am here defending the thousands of corporations which are doing business in the small towns and cities of this state, who furnish the labor for the men who build up those towns, and I am here to speak a good word for them. I am now interested and have been interested in them. I am also here to speak as a person interested in real estate and as one who pays taxes on real estate; and as a man interested in real estate and as a man interested in the manufacturing industries I am in favor of the classification of property. Nearly every tax commission for twenty years that has investigated the uniform rule established in Ohio in 1851 has condemned it.

At the time the constitution of 1851 was adopted there were no large corporations in this state. There was not very much intangible property in the state, and I take it that a great many persons who went to that convention went to the convention on horseback. I take it that in

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1851 one-half of the houses on the farms in Ohio were log houses and that farmers used oxen instead of horses. They had very little personal property and everybody knew what everybody else had. Each person knew exactly what his neighbor had, and at such a time and under such circumstances the uniform rule of taxation might have been just. As corporations increased, and by reason thereof intangible property increased in amount, the uniform rule of taxation began to work badly. I venture the assertion that today the intangible personal property of the state of Ohio is more than double that of real estate, and yet not six per cent of the intangible personal property goes upon the tax duplicate; and as a man interested in manufacturing and real estate I protest against such conditions. You never have been able under the uniform rule to bring out that intangible personal property, and you never will be able to do so.

I have read the reports of many tax commissions and have considered their reasons for their conclusions, and, without quoting their opinions or giving their reasons, I have taken down what I consider a concrete statement that seems to embody the consensus of their opinions as expressed by them. I believe that the following statement which I have written down properly represents those ideas.

The well known failure of our present system to reach classes of property other than real estate is known to practically everybody, and the demoralizing results of such system have been increased and magnified as the business interests of the state have grown in size and complexity. Grave evils have resulted from our attempts to administer laws which cannot be enforced, and the greatest depression and injustice has been cast upon classes in the community least able to bear the burdens of taxation. The laws induce perjury, they invite concealment, and the system is but a policy of evasion and dishonesty which has weakened the very fabric of government. The habit of disregarding the laws of the state must reflect a disastrous result upon private morality and public conscience, and we are faced with a great moral problem which demands a remedy, in addition to any problem which we have with reference to the financial needs of the state itself.

Many good citizens, while admitting that chaos reigns throughout the state, believe that the blame for the unequal enforcement of our tax laws lies with the public officials, but such is not the case, for the majority of people are agreed that Ohio has come to be known as the leader in its efforts to enforce the general property tax system. The strictest of inquisitorial policies have been applied, grave penalties, threats of prosecution for perjury, and the tax-inquisitor system, with its large money inducement for the recovery of property, all these have but demonstrated the futility of further attempts to correct a weak system, which is universally regarded as unjust and unequal in its result, and which the people refuse to respect, and which no one can contend has not been entirely inadequate in bringing out for taxation personal property such as stocks and bonds and money in the bank.

Furthermore, the belief is becoming more and more universal that these so-called intangible classes of property should not be required to pay a rate of three or more per cent, as is the case in many localities, and with this

growing belief comes the fact that the situation cannot be controlled for the reason that these forms of intangible securities are so constituted that they may be concealed by the simplest methods, and if we were to discover them the owner would inflict the severest punishment upon the community, for the securities, as well as the capitalist, would remove from the state. It is a well-known rule of taxation never to levy a tax which will drive capital from the state or prevent it from coming into it.

Our efforts in the past to enforce unjust and unreasonable taxes have deprived Ohio of hundreds of millions of capital. Capital is the very life of an industrial community and of an industrial civilization such as we are enjoying at present. Real estate is of no value whatever except as money is invested and creates a demand for it. Take away the money from Cleveland, Cincinnati or Columbus and stagnation would result. Economic laws inflict their own punishment upon the community which dares oppose their warning.

I say that the laws of Ohio have not been enforced in taxation matters. Hundreds of pages have been written into our statutes giving directions to the auditor and the assessor as to how they should proceed to bring out intangible property for taxation, and all of no avail. Those who should pay taxes on intangible property have not done so. The taxdodgers have allowed matters to run along, and when after a period of time some have been caught they have been able to settle for a very small part of what they really should have paid, and so they have gained even though they have been caught in the end.

Before I proceed to the general question of taxation I beg pardon of the Convention for taking up one or two side issues. As I am speaking offhand I want to get rid of them while I think about them.

Double taxation has been mentioned and discussed. I will give my idea of this by way of an illustration. Take Mr. Jones, for instance. He has \$20,000 and is willing to loan this money at six per cent. A, a farmer, or a man owning ground in a city, comes to Jones to borrow \$5,000. Jones is willing to loan the money to A, provided he will sign a note for \$5,000, due in one year, and secure that note by a mortgage on his real estate. The terms are agreed to, the note is executed, and as collateral for the loan the mortgage is executed and delivered. The mortgage and note are laid on the table and the money handed over to the borrower, who goes away with it, leaving the mortgage and note on the table. B desires to borrow \$5,000 from Jones and says to Jones "I have brought with me \$10,000 worth of bonds (or some other intangible property) as security." "All right," says Jones. "I know that your security is good, give me your note for the \$5,000 and I will take your collateral as security." The note is executed and the note and collateral are left with Jones and the money is taken away by B. Jones now has two notes upon his table, one secured by real estate and the other by collateral. C wishes to borrow \$5,000 from Jones and he brings with him his neighbor, Mr. Smith, who is willing to sign a note with C. C says to Jones, "I want \$5,000 for one year at six per cent.", and Jones, being willing, agrees to accept all the terms. So C and his neighbor Smith give their joint note for one year at six per cent. C takes the \$5,000 away with him and now

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Jones has three notes upon his table. D wishes to borrow \$5,000. Being well known in the community and a man of considerable property, he arranges with Jones for his \$5,000 by giving his own promissory note.

Now Jones has loaned his \$20,000 and has four notes therefor. You now propose to favor Mr. Jones by making provision that the note given by A and secured by a mortgage on real estate shall only pay a recording tax of one-half of one per cent., while the other three notes must go upon the tax duplicate at their full value. Why do you favor Mr. Jones because he exacted the very earth as security for his loan? Are you going to establish some rule of taxation giving a premium to Jones for demanding the earth for security? If I were to punish Jones I would make him pay more for having taken a mortgage on a man's home. Now, why do I say that? Because the other three notes pay taxes and the mortgage would be exempt, except the recording tax. These notes should all pay taxes on the same basis. Each man received the money borrowed and each gave security as demanded, and all should be treated alike. If it is double taxation in the case where Jones loaned the money to A, it is also double taxation in the case where Jones loaned the money to B and C, and if you are to make any exemption on account of a security being given for the loan, then I can see no reason why you should not exempt the loans made to B and C as well as the loan made to A.

Now, in a year from that time these men all come back. This constitutional proposal has been adopted and it is now in effect. A asks to renew his paper and Jones says to him, "They have changed the law. The law is now different from what it was before. We now have a recording tax and I will have to pay one-half of one per cent when I record this mortgage. If you will take the loan for five years I will pay that recording tax myself. If you want it for only one year you will have to pay it for me, as I want six per cent for my money." It is agreed, and the loan is made. B comes to Jones and says "I would like to renew the \$5,000 note for another year." Jones says to him, "You know they have changed the law. If I loan money upon a mortgage I only have to pay a recording tax and will have to pay no other tax upon the loan. Now, if you want this money for another year you will have to give me a mortgage or pay extra interest to cover my taxes." "But," says B, "I don't own any real estate". Jones replies "Go out and buy some vacant lot for say \$200 and I will loan you the \$5,000 upon it. Just so it is a real estate loan, that is all I must have and that saves me my taxes." B goes out and buys a vacant lot for \$200 and comes back and executes a mortgage upon it and gets his \$5,000 by leaving the same collateral with Jones for safekeeping. Isn't it a fact that if you pursue that system you will turn all loans into mortgage loans, and will not mortgage loans be the basis of all other loans, and will it not drive us to single tax? Land will be the basis of all loans. If people want to borrow on collateral they will have to pay one per cent extra for taxation. In other words, if a person puts up any other kind of collateral than a real estate mortgage he must make the money lender good on the tax. And why is one secured debt we have mentioned any more double taxation than the other?

I am against the whole proposition, because I do not believe in single tax or believe the system just. I do not believe that real estate should be made the basis of all loans. I do not believe that it is fair to the manufacturer and the business men who have to borrow large sums of money to keep their business going. I think they should have the right to borrow money under the same terms and conditions as a man who has real estate.

Take public bonds. You propose to place them on the tax duplicate. Before they were exempt from taxation large cities like Cincinnati and Cleveland could issue a four or a four-and-a-half per cent bond and get a premium for it. Why? Because they were known in the market, they were large cities and wealthy, they had a standing in the financial world and people would buy those bonds because they could get their money next day for them if they wanted to sell them. But if you pick out some small city or town or small school district you will find that its financial condition is not known and its bonds are not sought after, and the rate of interest that it will have to pay will be about six per cent. They will have to prepare an abstract and every legal step in the issue of the bonds will have to be watched and looked after. The valuation of their property will be taken into account and the bonds will have to be sold to some bond house, and you will have to ask them to put in a bid for the bonds, and they will not be any-too willing to do so. The result will be that these places will have to pay six per cent for money and the taxpayers of these small cities, towns and school districts will be compelled to pay an extra tax for money and the bonds will never be returned for taxation in those particular places where the bonds are issued.

Now, where would the bonds go? You could never find them. In the past the bond houses sold the bonds elsewhere and when the fellows who had the bonds clipped off the coupons for interest they would send them to the bond house either in Cleveland, Cincinnati or Toledo and demand payment, and the money would be paid to the local bank and the local bank would send the money to the bond house and the bond house would send the money on to the people who owned the bonds, and you never could find out who actually did own the bonds. At best they would never be returned for taxation. If the bonds remained in the state of Ohio they never would be returned for taxation, for the reason that they could be easily concealed and disposed of. For instance, Ashtabula issued \$50,000 of bonds for a school house or for some other improvement in the city, and they had to pay six per cent interest on the money borrowed. Afterwards the tax duplicate of that city would never show that a single bond of that city was owned by any person within that city and no bonds would be returned for taxation, and that city and the people living in that city would receive no benefit by reason of the bonds being placed upon the duplicate, but would be penalized by having to pay each year a higher rate of interest for the money borrowed. When bonds were upon the tax duplicate seventy-five per cent of the bonds left the state. People living in the state might want to buy them and might be willing to pay a premium, but they would not take them on account of the tax, unless they received them through some bond house, whereby they could conceal the fact that they owned them. The bond

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houses were simply a fence between the city and the bondholders.

What has happened since the change and the bonds are exempt? Here is a little community, say, building a schoolhouse. Now a little city or a village can issue bonds at four or four and a half per cent and there is a market for them. About seventy-five per cent of them are owned locally and only about twenty-five per cent of them leave the taxation district where they are issued. What is the result? Every school district, every small village and city and county is able to borrow money for about two per cent less than could have been done under the old regime. This results in a local benefit to the people of that district. But I want to tell you that in no case will you ever collect any taxes on these bonds, whether they are exempt or not. The point is this: If you keep the bonds exempt from taxes the community is benefited one per cent at least by having the right to borrow the money where it is cheaper. What sense is there in putting it on the tax duplicate when it will go out of the community where the bonds are issued and you will never find them for taxation? I remember twenty years ago or more there was \$35,000 of bonds issued by a village in Lorain county and they were issued at six per cent. They were advertised and there was not a bidder found for those bonds, and as I was then interested in a bank I got the officers of the bank to put in a bid at par. That bank carried those bonds a year and could not sell them at par. Finally I went to a bond house in Toledo and negotiated a sale of the bonds and the bank lost \$400 in the transaction. These bonds were good and safe, but people did not want to buy them, as they did not know about the financial condition of the village issuing the bonds. And I know you cannot sell village bonds if they are taxable. Take the bonds of the big cities and there is a constant demand for them and the price is not affected so very much whether they are on the tax duplicate or not. They don't vary in price more than one-eighth of one per cent. I have not seen a daily paper lately or noticed the quotations, but I know exactly what the bonds of the big cities are selling for, they vary so little. The large cities are not interested as much as the small cities, towns and school districts.

Now, I have discussed these two side issues as to double taxation and public bonds, and possibly I may not have made myself clear. I have my own ideas and I have tried to give them to you, and I hope you won't take any offense if I speak earnestly. I am very earnest upon this subject. I want you to bear with me if I trespass upon your patience a little. There may be people in this Convention, and I presume there are many, who have had more experience than I have had, but I have had a little and my education is from experience and is not academic, and I have not obtained my information only by using a pencil in an office; I have been out in the world some.

There may be persons at the head of tax commissions who are very learned, scholarly men, who have had great experience in manufacturing and all other industries and may have made their millions and been successful, who may be in favor of the uniform rule of taxation and may think all property should be taxed at its full value, but I doubt it, for that has not been my experience. I know in most towns we have boards of trade and chambers of commerce that want to secure factories and have

factories come into their towns to build up the towns, to open up new additions to the town and to bring laboring men into the town for the purpose of helping the farmers and the merchants in selling their goods, and these people are all in favor of classification of property. How many of us have been solicited to contribute to a fund of ten or fifty thousand dollars to aid in getting manufacturing industries established in our small cities and villages, and how many of us have paid our money and never received a dividend in return! How many small corporations are operating in the small towns and villages that never pay dividends, and yet they furnish labor for hundreds of employees! I have stood at midnight as it were watching manufacturing establishments, some that I have helped to build, and I have seen hundreds of men working and a large amount of smoke pouring out of the tall smokestack, and I have wondered what the workmen would think if they really knew the financial condition of that institution. That institution may have been working night and day for three or more years, with the men who are managing it breaking their backs in an effort to get money for a payroll and to keep the institution running, but the state never hesitates to take its taxes and assessments upon the full cost of the plant, whether the machinery or property has a real earning capacity or not, and whether the fixtures owned have any true value or not. When an accident occurs, the moment it does occur lawyers are ever looking for a job, and in many cases corporations are compelled to delay a just claim to a person injured for the reason that they have not the money to pay the claim.

Take the street railway companies and interurban railway companies. You perhaps have helped to build some of them. They issue their preferred stock and common stock and bonds, and maybe a second or third mortgage bond, and after they are built and in operation what is the stock worth? Who knows what their stock or their bonds are worth? The preferred stock is quoted usually at about thirty-five cents, the common stock about four cents, the first mortgage bonds about ninety-five to ninety-eight cents, and the second mortgage bonds about eighty, and the third mortgage bonds about sixty or seventy, but who knows what those bonds are actually worth? How many interurban railways have you put your money into when you did not get anything back for several years, and then finally they went into the hands of a receiver, because sometimes it only takes one large accident to put such a company into the hands of a receiver. I have heard it said here in this Convention that the attorneys who represented the injured persons were benefactors. I know oftentimes that the attorneys for the corporations were the best friends that the injured people had, because those attorneys have staved off the time of settlement that the injured person might get some compensation and there might be some money at that time to make settlement with, whereas if a judgment had been rendered and execution issued when first the suit was started there would not have been a cent, the company would have become insolvent. I know of several instances where by getting time companies were able to pay their claims. As a general thing there is a certain class of attorneys who have their heads out of the window all the time watching for the ambulance, and when they represent an injured person they want

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two amounts, one for themselves and one for the man injured. Many times we hear talk about the heartless and soulless corporations delaying payment to the poor fellow who is injured when they have not the money to pay him with and could not get the money at any bank, and the only way they can pay the poor fellow who is injured is to get an extension of time until they can earn the same or get the money from some other source.

Now, by classification of intangible property or by classification of all property, you can do justice to these corporations that are having a hard time to succeed and not help to force a failure and thereby create a loss for the owners who have put their money into the enterprise, as well as the workmen who work in those factories and the people who live in those towns. If you can classify property you can protect a lot of these manufacturing institutions that furnish the labor for so many people who built up these small towns. This does not apply to big standard stock companies. Take the large industrial companies, the Standard Oil Company and the Tobacco Trust, and their stock is quoted on the New York stock exchange. The value of their stock is fixed by their income. They make reports every three or four months and everybody knows how much is invested and everybody knows all about the management of the institution, and their stock goes up or down according to the reports as made every three or four months, and people don't take much of a chance in investing in these standard stocks. But what is the truth about the smaller companies in small towns? If you don't have classification of property they oftentimes go down, through some cause or other, and cannot survive. If you have classification, so that those people who have their money invested for the benefit of towns would not have to pay full tax on their machinery and pay franchise taxes and property taxes and all that sort of thing, they might run and furnish labor and pay wages and build up the city or village in which they are operating. If it is the proper thing for standard corporations to have their intangible property valued according to earning power, then why not value the intangible property of our small, struggling corporations according to their earning power, and not according to the visible conditions of their property?

Coming now to money in banks, who is it that has money in banks? Is it the enterprising, hustling city builders? You know it is not. It is the old people, who don't want to take the hazard of putting their money in industrials; young people, minors, widows and workmen. Go to the savings banks of Cincinnati and Cleveland and find out who the depositors are. The deposits will average along about \$500 for each depositor. It is not the rich people who have their money in banks; it is not the big manufacturers; they are the borrowers, and they borrow to build up the industries that go to make up the cities. These people who have been putting their money in banks have neglected to return it for taxation, and if you will take the reports of the various banks throughout the state of Ohio and then go to the auditors of the various counties and find out how much property is returned for taxation you will see that not more than six per cent of the cash admitted to be in banks is returned on the tax duplicate. Why not have classification of property, so that you can say to the

banks that they shall pay the taxes on this money, say five mills on the dollar?

Now, if there is twelve million dollars of money deposited in banks, that means a large amount of income that you don't get at all now. It would help the banks. Everybody would bring his money and place it in the banks, because it would be exempt from taxation so far as they are concerned. They can say, "We have money in bank". As to the individual, his money in bank would not have to pay taxes. The banks would pay the depositors less interest. But when they go on the theory that the property must be listed at its full value and pay some of the rates of taxation that towns have imposed, it simply takes from some of the depositors the full income. Say a person has \$10,000 in bank at four per cent. If this is returned for taxation, or had been in times gone by, it would take all the interest and some of the principal to pay the taxes.

No matter what we may say we all know that many of the small corporations throughout the state are not paying dividends. I know of one instance in my town where a manufacturing concern, with machinery and real estate costing in the neighborhood of \$200,000, went into the hands of a receiver and the plant stood idle for two years or more, and it was then sold for \$35,000. The machinery was not adapted for anything else than that for which it was originally designed. Now, what are you going to do? Tax that property at its full value? What was its value? Was it not its earning power that fixed its value? Just look what the result would be if you did tax it at its full visible value. Is there any inducement to anybody to put his money into an industrial corporation to bring laboring men to a town that the city may be built up if you indorse such a system? I will say this in conclusion, that I believe that we should at this time recognize the fact that we have more than double the amount of intangible property than we have of tangible property, and we should adopt some rule whereby we can get at that intangible property and make it pay taxes according to its ability to pay, according to its earning capacity, and I say that it is not the true way to tax intangible property at its full value unless it is earning an amount equal to at least six per cent.

Under the Smith law the one per cent authorized to be levied will take twenty-five per cent of the income on the money deposited in banks. An assessor comes to my home and wants me to make out my return for taxation. I may have \$10,000 borrowed from some bank, and I may have \$20,000 of securities and bonds up as collateral for that loan. I do not really know if those bonds or that collateral are worth enough to pay that note. I have not got them in my possession and how easy it is to say that I have not got them, I don't own them, the title has been transferred and I don't know whether they would pay the debt, and therefore avoid returning them for taxation. I don't know that I will ever own them or have them in my possession. I may have four or five such loans as that. Everybody does business at several banks, not at just one bank. The hustling city builder, the man who comes rolling down town in his automobile, never has idle money. He always has his stocks and bonds up in some bank for money borrowed and used in the enterprises in which he is engaged.

I tell you, gentlemen, there should be some relief. Here

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we are as a Constitutional Convention. The Convention will not meet again for a long time. The people should have some relief, and if there is no one else in the state of Ohio who will tell the truth about it, I will, and you can do as you please. I know it is a fact that if you can classify property tax matters can be so arranged as to bring in much more income than now, and you can avoid many of the hardships due to the present system.

I am interested in farming. I have owned several farms, and being the owner of farms I want classification of property so that the taxes can be lowered on the farms. It is a benefit to the farmer to have classification of property; it is a benefit to the manufacturing concerns who employ labor. You should not be kicking at the corporations all the time. What are you going to do if they quit furnishing the opportunity for people to labor? Therefore, I am opposed to the recording tax for mortgages, I am opposed to putting public bonds back upon the tax duplicate, and I am opposed to the uniform rule whereby all property must be taxed at its full value regardless of its earning capacity.

Mr. WATSON: You speak about lessening the rate of taxation upon enterprises for the purpose of building up a city or a town. At different periods in my life I have owned blooded stock. Why should not the state tax on blooded farm animals be lessened so as to let a fine lot of cattle be built up? Isn't that just as necessary as building up a manufacturing plant, and isn't one who engages in that just as much benefiting the farming community as the manufacturer benefits the city?

Mr. REDINGTON: I think such property is taxed at its value, and that is correct. You brought my attention to one thing that I omitted, and I am glad you mentioned that matter.

I would exempt farming implements from taxation, and I wouldn't tax nondividend-bearing stock, and I wouldn't tax household goods. Here a young couple gets married, and they have about \$125 or \$150 worth of household goods. Do you think they should pay taxes on those?

Mr. WINN: I want to say that as I understand you, you are in favor of classification of property for taxation?

Mr. REDINGTON: Yes.

Mr. WINN: You are opposed to exempting bonds, notes or securities from taxation?

Mr. REDINGTON: I am opposed to exempting private bonds from taxation, but I think municipal, county, state and all public bonds should be exempted.

Mr. WINN: How about individual notes?

Mr. REDINGTON: I gave an illustration of that, of Jones who made the four loans. And I say, if you are going to exempt one, you should exempt the others. I would tax them all alike.

Mr. WINN: You are opposed to exempting public bonds. Are you opposed to the same extent to exempting private notes and securities of that sort?

Mr. REDINGTON: I am not opposed to exempting public bonds. As to private notes and securities of that sort—I am in favor of taxing telephone company securities and street railway bonds and securities of that character—when you don't know how to list them, and don't know what they are worth, I would be in favor of

classification, so that they can be put down at what they are worth, judged by what they produce, their income.

Mr. WINN: You are in favor of exempting manufacturing institutions?

Mr. REDINGTON: I never said that. I said I was in favor of the classification of property, so that some fair rule could be adopted, and that they could be taxed according to their ability to pay dividends.

Mr. WINN: You are in favor of making the tax light?

Mr. REDINGTON: Upon those institutions?

Mr. WINN: Upon those that are unprofitable.

Mr. REDINGTON: If there were an unfortunate institution in your town not paying a cent of dividend, and the chances are that it won't pay, I do not think it should pay taxes.

Mr. WINN: Is not that the law?

Mr. REDINGTON: No, sir; the real estate is appraised every ten years. I believe it is appraised every four now, and the real estate and machinery and permanent fixtures are taken into account, and if that particular plant should fail, and that machinery had to be sold, not being designed for any other purpose, it is worth next to nothing. Many an institution, not worth a dollar, has gone on hoping against hope that it might make a success, but finally has gone down and the people who had their money in it never got a cent.

Mr. STOKES: Do you think it wise to classify in the constitution rather than putting it up to the legislature?

Mr. REDINGTON: It is a legislative matter. I think the constitution should simply give the right, and that the legislature should make the law. However, I realize that we have been making laws, and if I could not get it in any other way I would be willing to get it through the constitution.

Mr. WATSON: The point I was trying to draw out in the question I asked a while ago was, whether you do not think it is wrong for the state to start in building up enterprises for you as a manufacturing industry and not for me as an agriculturist?

Mr. REDINGTON: I never advocated that.

Mr. WATSON: The point you made was that you would lessen the rate of taxation.

Mr. REDINGTON: Evidently, I have not made myself clear. I say where there is a plant the stocks and bonds of which are paying nothing, there should be some rule whereby you could give them some relief.

Mr. WATSON: Does not that question also arise with the farmer?

Mr. REDINGTON: If he is lazy.

Mr. WATSON: When you infer that the man on the farm is lazy, may we not also infer that the people running the manufacturing concerns are lazy, and that that is the cause of their not making any money?

Mr. REDINGTON: No, sir; it is different in the business world.

Mr. WATSON: Is not the agriculturists as much a business man as a man who engages in any other enterprise?

Mr. REDINGTON: No, sir; he has not all the temptations nor all the opportunities for a loss that assail the manufacturing man. I admit it takes a very shrewd man to be a successful farmer. I don't believe

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any fool can make a success in farming, when it comes down to marketing crops and running a farm, but it is a different proposition when you get in an enterprise where you have to meet your payrolls, and have to go into the market and get the raw material, and where you have to do the manufacturing and selling. The farmers needn't think they have the only hard jobs.

Mr. WATSON: Don't you think you circumscribe that word "business man" by entirely too narrow limits, when you say it takes in the one and not the other?

Mr. REDINGTON: I don't say it doesn't take in the farmer, but I say there is a difference between the farmer and the manufacturer.

Mr. ELSON: In the classification of property, you know that the great obstacle in this state would be the rural vote?

Mr. REDINGTON: I hope not.

Mr. ELSON: Would you be willing to fix the maximum limit beyond which real estate should not be taxed?

Mr. REDINGTON: Yes; and I think this substitute proposal of ten mills, plus five mills under certain circumstances, is right and fair.

Mr. WALKER: If I understood you correctly, you favor concessions to corporations and industries to prevent their going out of the state? Did I correctly understand you on that?

Mr. REDINGTON: I said if you tax money unreasonably it will go out of the state, and you all know that is what they have done. There are people who claim their residence in New York who are doing business in Cleveland.

Mr. WALKER: You are in favor of granting concessions?

Mr. REDINGTON: No; I don't say grant any concessions to those people, but I say that money in bank should be paid on by the banks, and all intangible property should bear taxes according to its earning capacity.

Mr. WALKER: Say the tax rate is one per cent on real estate. You are in favor of reducing the tax rate on some other kind of property below one per cent?

Mr. REDINGTON: If it could not bear it; I would not take any of the principal.

Mr. WALKER: Would not that same principle apply also to the farmer in order to make farming profitable?

Mr. REDINGTON: I don't think the matter is analogous at all.

Mr. WALKER: If it is right to grant anything in the way of a concession in the one instance, is it not proper to grant it in the other? And is it just for the state to punish a legislator for bribery, and then itself bribe the business men in here by giving them concessions in the way of taxes?

Mr. REDINGTON: If you pass a law that will permit manufacturers to live you are not bribing anybody.

Mr. KING: Is it not a fact that in the three western provinces of Canada every municipal manufacturing corporation is relieved of taxation until an examination of their books show a profit?

Mr. REDINGTON: That is true, but I did not want to refer to it for fear they would say I was a single taxer.

Mr. COLTON: Did I understand you correctly when

I understood you to say that if you would take the money away from Cleveland stagnation would result?

Mr. REDINGTON: Not exactly that. I said this: That, as a general proposition, without money, any community would not have any use for business houses.

Mr. COLTON: It is a good thing for a community to have money?

Mr. REDINGTON: Yes, and a good thing for a man to have some too.

Mr. COLTON: Didn't you say that if you taxed the bonds, that they would go out into other states?

Mr. REDINGTON: Yes, I expressed that idea.

Mr. COLTON: Would not the money come back into this state, and why would not it be a good thing to have the bonds go out and the money come in?

Mr. REDINGTON: And the increased interest would be paid by our material men, our laboring men and our workmen, no matter where the bonds were, and the state would get no taxes on them either.

Mr. MILLER, of Crawford: I believe you said you believe that classification of property would reduce the taxes that are now paid generally by the people?

Mr. REDINGTON: Yes. I say that if you bring upon the tax duplicate a large volume of property that is not now there, it will help to bear the burden and reduce the burden on the lesser amount that now bears the whole of the burden.

Mr. MILLER, of Crawford: You also said, I believe, that one object of classification was to reduce the burden on the manufacturer?

Mr. REDINGTON: I say that it is unfair to tax the manufacturer that does not make any dividend. If you come to a dividend producing company that is a different thing, but as long as they do not pay dividends why tax them so extremely?

Mr. MILLER, of Crawford: If we reduced the taxes on these items where would the taxes come from?

Mr. REDINGTON: Thousands and thousands of dollars of intangible property would go upon the tax duplicate. There are hundreds of millions of dollars in Ohio that are not taxed at all now.

Mr. MILLER, of Crawford: You know that this system in New York has not been entirely satisfactory?

Mr. REDINGTON: I am not familiar with the system in New York in detail. I have not the knowledge that would let me speak on that subject. All I ask is that we do not put an iron-clad uniform rule into the constitution so that the legislature can not classify property on some uniform basis that will be fair or just to the owner.

Mr. MILLER, of Crawford: Then we ought to refer it to the legislature?

Mr. REDINGTON: If you have men smart enough here to provide for it in the constitution I will vote for it.

Mr. WOODS: Do you infer that the men in this Constitutional Convention are not smart enough to be legislators?

Mr. REDINGTON: No, but if you have men here smart enough to do it I will vote for it.

Mr. WOODS: I understood you to say that the general assembly could classify it, but we couldn't classify it.

Mr. REDINGTON: Possibly I am not understood all the way through as I intended. I assume, in addressing the Convention, that all the Convention would do would

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be to confer the right on the legislature to investigate and devise a reasonable tax law, but if this Convention is prepared here and now to say what would be a reasonable tax law, and put it into the constitution, I would not object to it.

Mr. LAMPSON: Whenever you reduce the tax burden upon one class of property, do you not necessarily increase it upon some other class?

Mr. REDINGTON: No; not if you produce a new class of property to put the taxes on.

Mr. LAMPSON: How are you going to produce a new class?

Mr. REDINGTON: By bringing out money from the banks. Before I close, I want to refer to the states that have exempted municipal bonds and the dates when the exemption was made:

Maine, 1909; Vermont, 1907; Massachusetts, 1909; New York, 1909; New Jersey, 1893; Indiana, 1903; Michigan, 1909; Iowa, 1909; Kansas, 1907; Wyoming, 1907; Oklahoma, 1907; California, 1902; Washington, 1907; South Carolina, 1903; Georgia, 1907; Wisconsin, 1911; Minnesota, 1911; Ohio, 1906.

Now, you see the trend of nearly of those states during the last few years is to exempt public bonds.

Mr. STOKES: What is the object of exempting municipal bonds from taxation?

Mr. REDINGTON: I thought I made that clear. Because they don't pay any revenue anyhow, and you borrow the money at a much less rate if you exempt them.

Mr. STOKES: Don't you think the farmer then might be exempted from taxation so that he might sell cheaper?

Mr. REDINGTON: Do you think it would make the farmer sell cheaper?

Mr. LAMPSON: Don't you think all of those exemptions to which you have referred were obtained through the influence of powerful lobbies in the legislature?

Mr. REDINGTON: If they were, for one time the lobby was right.

Mr. EBY: You made an illustration of an industrial corporation that was furnishing work for a lot of laborers, but said that the corporation paid no dividends. If I understand you you would reduce the taxes on such an institution or let that institution be tax free?

Mr. REDINGTON: No, I do not understand that the classification of property means tax free.

Mr. EBY: Didn't you say it would make it easy for them?

Mr. REDINGTON: They would certainly have to pay on their real estate and buildings, but under the rule of classification some reasonable and just provision should be prepared so that those people would not be unreasonably taxed if they are not paying a dividend.

Mr. PIERCE: What are you going to do with the farms that don't pay dividends?

Mr. REDINGTON: I didn't suggest anything.

Mr. EBY: I know of a dozen farmers who, after they pay their running expenses and the interest on the mortgage, are hardly ever able to make a living for themselves and families.

Mr. REDINGTON: You do not expect that any committee that would prepare a bill for the classification

of property would make any such distinction on real estate, because it is assumed that real estate will pay something. You have to pay taxes on vacant property that yields no income whatever.

Mr. EBY: Under the present state tax system that property should be taxed according to its earning capacity.

Mr. WOODS: What classes of people are asking for classification of property?

Mr. REDINGTON: So many that I haven't time to tell. I think the farmer ought to ask for it. The man who owns real estate should ask for it. The banker and manufacturer—all of those should ask for it.

Mr. WOODS: Is the owner of real estate?

Mr. REDINGTON: Up our way they are.

Mr. WOODS: You say that a farmer should ask for it. Why should a farmer ask for classification? Does he want to pay more taxes?

Mr. REDINGTON: If the farmer asks for classification he does it because he realizes that there is a lot of intangible property that is not paying taxes, and by bringing that in it will reduce the taxes on his real estate. It does not stand to reason that he would ask for classification if he expected by classification to pay more taxes.

Mr. WOODS: Well, if anybody pays less under classification, somebody will pay more. If you let one class out for less than it is now taxed, somebody will have to pay that additional burden.

Mr. REDINGTON: But the class that you refer to as being allowed to get out at less are practically getting out for nothing now. They are not paying taxes at all. Our banks in our county will show \$15,000,000 of money on deposit in the savings accounts. If you go to the auditor you will find that there is very little of that returned for taxation. There is not \$1,000,000. Not to exceed one-twelfth of the actual money in bank is returned. Now, if you bring out that money from the banks and put it on the tax duplicate, why will it not produce new revenue, which will lessen the amount to be paid by those heretofore paying all the revenue?

Mr. COLTON: You gave eighteen states that exempted municipal bonds from taxation?

Mr. REDINGTON: Yes.

Mr. COLTON: Have you consulted the digest of the constitutions that we have here on that point?

Mr. REDINGTON: No.

Mr. COLTON: Does not that say that Arizona and New Mexico are the ones that have exempted the bonds?

Mr. KING: Well, if it says that it is not so.

Mr. COLTON: The book I got my information from gives that.

Mr. WATSON: You said, I believe, that the farmer and the coal miner were asking for classification?

Mr. REDINGTON: They are.

Mr. WATSON: Is it not the state board of commerce and similar institutions?

Mr. REDINGTON: I have not consulted them. I'm not here indorsing the State Board of Commerce or speaking for them. I am speaking for H. C. Redington.

Mr. DOTY: Do you not know that the State Board of Commerce is opposed to the majority report?

Mr. REDINGTON: No; I didn't know that.

Mr. MILLER, of Crawford: Do you know that the

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National Tax Commission is in favor of classification of property?

Mr. REDINGTON: I know that the National Tax Commission made their report in January of this year and passed a resolution.

Mr. MILLER, of Crawford: Mr. Foote is president of that association.

Mr. REDINGTON: I don't know anything about Mr. Foote. I don't know who he is. I have gotten some leaflets signed by him, but I don't know anything else about him.

Mr. MILLER, of Crawford: Do you know who constitute the Ohio Tax Association?

Mr. REDINGTON: I know there is such an organization.

Mr. MILLER, of Crawford: And that they are in favor of classification?

Mr. REDINGTON: If they are, they are right.

Mr. PIERCE: Would there be any necessity for classification of property if the people would honestly return their property for taxation?

Mr. REDINGTON: That is a moral question. I can only answer that by saying they never have done it.

Mr. PIERCE: But that does not answer it.

Mr. REDINGTON: I know where there was an estate of a million and a half up in my section, and they made out an inventory of appraisement that showed \$600,000. They had never paid taxes on that, and suit was brought, and finally, after eight years, they came in and paid \$5,600 and got a clear bill. Then they found another lot of property against the estate, and the estate had to come in and pay \$1,500 the second time, and yet even then they didn't pay one-fifth of what they should have paid. The whole thing was exposed in our probate court, and there was no reason why it was not collected.

Mr. PIERCE: Is it not a fact that you are asking for the classification of property because people do not return property for taxation?

Mr. REDINGTON: If everybody would return property honestly and fairly that would be another thing, but still if they won't, and if they are not paying anything, and you had a \$2500 bond that I knew of I would feel like a robber to ask you to pay taxes on that.

Mr. TANNEHILL: Will you map out some simple plan of classification and tell us how you would classify the property? If you won't do it, will you not get some other classification man to do it?

Mr. REDINGTON: Do you realize what you are asking? To get up a proper classification ought we not to have a commission formed to study the subject thoroughly and prepare a bill with due care? Do you think that Redington offhand is going to attempt to give such a bill? I am in favor of the principle, but I am not going into details.

Mr. TANNEHILL: Do you not think that the classification members of the Convention ought to submit to us simple-minded members something along that line so we can study and see what it is?

Mr. REDINGTON: I wish they could. I was on that committee, but they couldn't agree on anything.

Mr. WOODS: Did not the general assembly three years ago create a tax commission, and did not that law provide that that tax commission should make recommendations?

Mr. REDINGTON: Yes.

Mr. WOODS: Has not the president of the tax commission appeared before the committee on Taxation and made recommendations?

Mr. REDINGTON: There was a tax commission, I believe, appointed in 1906 or 1908, and after two years' study of this question they recommended classification of property.

Mr. WOODS: I am talking about the present tax commission of Ohio?

Mr. REDINGTON: I cannot answer what that tax commission has done.

Mr. WOODS: Did not the law provide that they should make recommendations?

Mr. REDINGTON: Then why didn't they do it?

Mr. WOODS: Have they not done it? Did not Judge Ditty appear here and advise your Tax committee, of which you are a member, of what they thought should be done?

Mr. REDINGTON: From what little I heard, I thought he was in favor of the uniform rule.

Mr. WALKER: Referring to that \$15,000,000 and \$1,000,000 on the tax duplicate, don't you think it would do better to have all of that on the tax duplicate?

Mr. REDINGTON: If you could do it that would be a very good thing, but there had been a habit growing up of not giving it in until the Smith law was passed. The taxes sometimes were four or five per cent, and the income would only be four per cent, so if the person gave the property in he would lose all the interest that it yielded him and some of the principal, and do you blame him for not uncovering property paying less than the taxes?

Mr. WALKER: That is not the question. That \$15,000,000 has not been returned because of the constitutional provision about the impairment of contract. Is not that it?

Mr. REDINGTON: No; I don't know any provision of the constitution or the law that exempts that from taxation, but it simply is not reported.

Mr. WALKER: Is it not true that the legislation has been declared unconstitutional because it would impair the obligations of a contract; in other words, that the assessor could not compel the holder of the note to present it for taxing purposes or permitting it to be stamped because thereby the value of that note would be impaired? Is it not true that no legislation has been possible because of that constitutional limitation?

Mr. REDINGTON: I don't understand it that way. I understand the auditor can put you under oath and ask you, and if he doesn't believe you he can subpoena the bank. They simply don't do it.

Mr. WALKER: If there is nothing in the constitution preventing it, could not the assessor carry a stamp and stamp all of that sort of property, and could we not have a law refusing the use of the courts for purposes of collection unless it was stamped, and would not that be a way out?

Mr. REDINGTON: No, sir; not the way you put it. I would not be in favor of taxing intangible property as other property if it is not dividend-paying property. I do not believe in taking off any of the principal when there is no income.

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Mr. WALKER: Your basis for taxation could be on the amount of income?

Mr. REDINGTON: On intangible property only.

Mr. WALKER: Why not tangible as well?

Mr. REDINGTON: Tangible property can be seen, and lots of it can be seen. I would even exempt some tangible property—farming implements and household goods.

Mr. WALKER: If I own a farm worth \$10,000, and I am a poor farmer and do not make proper provisions for the farm or run it properly, my debts keep on increasing until finally I am hopelessly gone; but all the time I haven't been making anything. Why am I compelled to pay taxes?

Mr. REDINGTON: I cannot conceive that a man can run a farm worth \$10,000 right straight along and not make anything. A man on a hundred acres of land ought certainly to make a living. If he cannot make a living on a hundred acres of land as a steady thing right along, he ought to be put in the feeble-minded institute.

Mr. MILLER, of Crawford: You say that under the one per cent law the taxes are higher than before?

Mr. REDINGTON: I understand that from the newspaper articles.

Mr. MILLER, of Crawford: Can I make a statement?

Mr. REDINGTON: You can make a statement if you want to.

Mr. MILLER, of Crawford: An inquiry was sent out by the secretary of agriculture in March, and one of the questions addressed to all was whether the taxes were higher or lower under the one per cent law than they had been before. Five hundred and sixty-two who answered said they were higher; ten hundred and sixty-four said they were lower. Nearly double the number answered that they were lower.

Mr. REDINGTON: My understanding has been that it has increased the taxes considerably. I do not want to be personal, but the taxes on what little real estate I had increased greatly.

Mr. KELLER: I understood you to say that real estate paid more taxes under the Smith one per cent law than prior to that time?

Mr. REDINGTON: I so understand.

Mr. KELLER: Do you not know that all buildings are included in real property?

Mr. REDINGTON: Yes.

Mr. KELLER: I wish to state this—and then I have a question—that the increase of valuation under the Smith law was 62 per cent upon real property and 61.4 per cent upon personal property, which in the aggregate, as you gave it a while ago, bore out the impression that real property was paying more taxes than before. That was the impression I got from your answer, that the farmers were paying more taxes. Do you not know that all of the tangible property is upon the tax duplicate for 1911 and at practically the same figures as 1910, and that that 61.4 per cent increase upon personal property has been almost exclusively upon intangible property?

Mr. REDINGTON: No; I do not know that.

Mr. KELLER: It is a fact. It certainly is a fact in my county. I can only speak for my own county.

Mr. LAMPSON: This is given, not as an argument

one way or the other, but simply as a statement of fact: In Ashtabula county the gross amount of taxes to be paid in dollars and cents into the treasury on real estate was increased by forty-two thousand and some odd dollars, and there was almost a corresponding decrease upon the gross amount paid upon personal property, and of the decrease the Lake Shore Railroad saved \$34,000 and the banks \$12,654.

Mr. REDINGTON: I am satisfied that is correct. In Lorain county the increase in valuation in 1911 over 1910 was \$77,000,000, and about sixty-five per cent was on real estate.

Mr. HARRIS, of Ashtabula: I understood you to say that in your county some fifteen millions of intangible property or thereabouts was not listed for taxation, while a million was?

Mr. REDINGTON: That was approximately.

Mr. HARRIS, of Ashtabula: And your justification for not listing it was that the rate was 41 mills?

Mr. REDINGTON: I didn't say it was.

Mr. HARRIS, of Ashtabula: Well say 40 mills, with \$1,000,000 listed and \$15,000,000 not listed. Suppose the \$15,000,000 had been listed voluntarily, what would the rate have been?

Mr. REDINGTON: Necessarily lower.

Mr. HARRIS, of Ashtabula: Forty divided by fifteen?

Mr. REDINGTON: No, because there was more property than that.

Mr. HARRIS, of Ashtabula: It would have been enormously reduced?

Mr. REDINGTON: I think so.

Mr. HARRIS, of Ashtabula: If it had all been brought out the rate would have been greatly reduced?

Mr. REDINGTON: Can you bring it out? We can't.

Mr. HARRIS, of Ashtabula: You say you can't bring it out. How do you know?

Mr. REDINGTON: We never have.

Mr. HARRIS, of Ashtabula: That doesn't prove anything.

Mr. REDINGTON: You ought to be elected auditor of some county. You would learn some things.

Mr. MOORE: You say it would be unjust to tax nondividend-paying bonds. Does not this proposal provide that they shall be listed at their true value in money? What would be their true value?

Mr. REDINGTON: I will try to answer that. When the assessor comes around, how can he tell the value of telephone, interurban or any industrial bonds that have not paid any dividend yet, but may pay some day? It ought to pay some tax, but it is not worth its face value, and who can tell what value ought to be placed on it?

Mr. MOORE: Should you not sell them the same as a farmer sells what he has?

Mr. REDINGTON: I've got some I would like to sell.

Mr. STOKES: Speaking of the \$15,000,000 that you failed to get upon the tax duplicate of Lorain county—you spoke about those securities being held by the widows and orphans, or poor people, or something like that. Do you wish us to understand that the poor people are the ones who left out that property?

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Mr. REDINGTON: I think I said old people, the people who do not care to take their money from bank and put it into industrials. Many a man when he reaches a certain age just wants a certain income, and he will put it in bank at a small per cent, but the fellows engaged in business in your town and my town, too, are not leaving much money on deposit.

Mr. STOKES: Are these people who have that \$15,000,000 the poor people that you are referring to?

Mr. REDINGTON: They are the clerks and the orphans and the widows and the farmers and the old people who don't understand how to invest money.

Mr. EBY: You speak of the vast amount of intangible property not listed. What would you have pay taxes under classification that is not available now?

Mr. REDINGTON: I would have the banks make four reports a year. I would take the average amount during the year, and I would say they would have to pay taxes upon the whole volume, and I would exempt the people who had deposited it. That would put \$6,000,000 on the tax duplicate.

Mr. EBY: Is not that available now?

Mr. REDINGTON: You don't do it now. They have not been able to do it, and never can.

Mr. JOHNSON, of Madison: Do you know what part of that \$15,000,000 was invested in nontaxable bonds about a week before the assessor came around?

Mr. REDINGTON: I presume that some of it was. I will say that that money is the life of the city, that it is the fund that is drawn on to build up the city. That is the money that is loaned out everywhere, and is really an indication of the prosperity of the city.

Mr. JOHNSON, of Madison: You recognize the fact that at the present time they are using nontaxable bonds to escape paying taxes—simply putting their money in nontaxable bonds just before the assessor comes around?

Mr. REDINGTON: I don't think there is a great deal of that. They don't have so many bonds around.

Mr. JOHNSON, of Madison: They have to have but a few.

Mr. REDINGTON: Oh, there are other schemes than that that they use to dodge taxation.

Mr. JONES: Is it not true that a large amount of what is called intangible property is not in the form of money in banks?

Mr. REDINGTON: Yes.

Mr. JONES: Can you suggest any other way than those we have already, and with which we are familiar, that we may now adopt that will bring out this intangible property?

Mr. REDINGTON: Yes; classification.

Mr. JONES: That could accomplish it, as I understand your argument, merely by reducing the rate. If you are fair with the people by reducing the rate, and by making everybody pay the taxation would it not accomplish bringing out the property just as well now by reducing the rate as by classification?

Mr. REDINGTON: I do not think it works that way.

Mr. JONES: Why not? We have never attempted in Ohio to enforce the tax laws. If we make an honest attempt to do that, and assess everybody, and attempt to bring out all this property, and then reduce the rate,

why would not that be just as effective as to reduce it by classification?

Mr. REDINGTON: You say we have never made an attempt. You may be right in Fayette county, but not in Lorain. We have.

Mr. JONES: Haven't you said that you only got one dollar out of fifteen brought out?

Mr. REDINGTON: That is what I complain of.

Mr. JONES: Don't that argue strongly that there has not been any serious attempt made. But if every man who owned it were to pay on it the rate would be very much below one per cent?

Mr. REDINGTON: Yes.

Mr. JONES: Is it not entirely possible that means can be employed by the state to bring out that property under existing laws?

Mr. REDINGTON: If you could get the officers to enforce them. I know men in our county that have everything they possess on the tax duplicate, and I know other men who have ten or fifteen times as much, and everybody knows they have it, and they don't list their property. If we could get the county officers to do their duty it might be a little better.

Leave of absence was here granted Mr. Tallman for tomorrow.

Mr. WATSON: A few years ago, when the one per cent law was being discussed, the largest corporation attorney in our county argued that if we would consent to have our farms listed at the full value they would come out and list their money.

Mr. REDINGTON: What is the significance of that?

Mr. WATSON: The significance is this, that that very corporation attorney, together with the banking interests, have written to me to favor classification of property as against the uniform rule. Now, what is the significance of his statement made to the farmers and his present action?

Mr. REDINGTON: He may have been a poor guesser, and I don't know his motives. I am not responsible for anyone's motives either.

Mr. WATSON: Is it not significant that the farmer and miner and mill owner are memorializing me to stand for the uniform rule, while the bankers and corporation lawyers are memorializing me to stand for classification?

Mr. REDINGTON: I do not know the view they take. I think I am right, and I am fearless enough to stand up and tell you that I think I am right. My argument may not be entertaining, but I think I am right, and I do not believe the other side is right, and I would discuss it with them, and attempt to convince them.

Mr. FOX: How do you get at the \$15,000,000 on deposit? I understood you to say that the money is on interest in banks. You would get that income from the bank?

Mr. REDINGTON: Yes.

Mr. FOX: Would you do that twice a year?

Mr. REDINGTON: What?

Mr. FOX: Arrange with the bank twice a year to look after that money?

Mr. REDINGTON: I said that every bank has to make a public statement and publish it in the newspapers whenever the national bank authorities call on them. They have to give the average amount of their deposits, and if you would tax that at one-half of one per cent and

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exempt the people who have the money in the bank from paying any tax, it would give us a large revenue.

Mr. FOX: Suppose they would withdraw the money for a few days, or put it on call?

Mr. REDINGTON: That has been suggested, but what effect would that have on the bank? Under my rule it would be the average, and if it were drawn out just before the tax time and put back shortly afterwards it would have very little effect.

Mr. FLUKE: Under the law now \$14,000,000 of property in Lorain county is not listed for taxation?

Mr. REDINGTON: In round figures.

Mr. FLUKE: And the rate approximately is one per cent?

Mr. REDINGTON: Yes.

Mr. FLUKE: Now, in your opinion, what rate of taxation would secure the placing of that \$14,000,000 of withheld property on the tax duplicate?

Mr. REDINGTON: I just answered that a moment ago. I said take the average amount deposited in bank, and put say five mills upon it, one-half of one per cent, and make the bank pay it, and the bank would pay it. Every bank in Lorain county pays four per cent on deposits.

Mr. FLUKE: Under the plan that is provided here, we could get that property just as well at a one per cent limit as at a one-quarter of one? Couldn't you get it at one per cent as well as at one-quarter of one per cent?

Mr. REDINGTON: I think not.

Mr. PIERCE: Mr. President and Gentlemen of the Convention: I am in favor of the substitution and adoption of the minority for the majority report on taxation because I believe it is more in the interests of the people. I am opposed to the classification of property for the purpose of taxation, whether it is secured by direct or indirect methods. If the people of the state want the real estate owners to pay the highest rate of taxation, and those owning personal property of various kinds to pay the least rates, I have nothing to say; but I am opposed to any plan by which a taxing unit less than the whole state itself shall say what kind of a system the people may have.

It is an insidious attempt to secure classification—to favor one class at the expense of another—and it is our duty as representatives of the people to oppose it.

We should adopt the uniform rule, which is absolutely fair to all interests. I want to see all bonds of every kind restored to taxation. It will be argued that they cannot be taxed, and if they are it will result in raising the rate of interest upon the people.

They can be taxed if the public demands it. It might raise the interest rate to the extent of the tax imposed, but this should be the penalty paid by the people for being foolish enough to issue bonds.

We should relieve the debtor class from double taxation. All debts should be deducted from returns for taxation whether secured by mortgage or not.

There is no good reason why a person who has \$5,000 worth of real estate in his name and which is mortgaged for \$2,500 should pay on \$5,000. He is paying on what he does not own. In other words, he is paying on his debts, which is unreasonable and unfair.

I hope to see this Convention correct this evil. If so,

it will do more to commend its work to the people than any other act that it has so far passed.

I believe a graduated income and inheritance tax would not only be popular but just. I would not touch any income of less than \$5,000, but those above that amount would be subject to taxation.

The question of taxation is the most important before this Convention, because it touches each individual in the state. That of good roads, the liquor traffic, the initiative and referendum, the short ballot, the abolition of capital punishment and the right of equal suffrage are of minor importance compared to it. It is the most important question before the people, for the right to tax involves the right to destroy. The supreme court of the United States has defined unjust taxation as "larceny in the form of law."

One of the most difficult problems the delegates to this Convention have to deal with, if it tries to do equal and exact justice to all classes of people, is that under consideration. It is a question which requires deep thought and study and should not be lightly passed by the representatives of the people.

An attempt has been made, so far as real estate is concerned at least, to list property at its full value for the purpose of taxation. Heretofore it has been placed on the tax duplicate at all kinds of ridiculous prices, ranging from a small per cent of its actual value to many times its real value. But hereafter it will be appraised at its true value as nearly as the fairness, judgment and honesty of the appraisers will permit. As this was the first attempt to appraise real estate at its actual value in money, it is not strange that gross injustices have been done in many instances, but they can be equalized and corrected in time.

It is said many of the cities cannot live under the one per cent tax rate, which may be true. For years they have been plunging headlong into debt with unparalleled extravagance, issuing bonds on slight provocation until they find it hard to economize to a degree commensurate to public necessity. But, notwithstanding, this law should be given a fair trial, and I am satisfied, if officials of municipalities will make the public dollar reach as far as the private dollar, there need be no trouble on this score. A little more economy and a little less extravagance on the part of officials will be a good thing for the taxpayers. The tax eaters may not relish it as well, but it is time to quit seasoning our official acts to the esthetic tastes of the politicians. If the cities complaining of the one per cent tax law will reduce salaries of officials commensurate to the services rendered, cut off hundreds of supernumeraries who are leeches on the body politic, and make an honest effort to live under the law, there will be much less complaint. The sooner the people take their affairs into their own hands and manage them, uninfluenced by those who devour instead of adding to the wealth of the country, the better for them.

There is another element that should not be overlooked by the taxpayers. It is the tendency to increase the rate of taxation. With the people's property appraised at its full value, and in many instances at more than it is worth, if the rate is allowed to increase above the one per cent mark, it will be virtual confiscation to thousands of property owners. It will rob them under the aegis of law of their savings of a lifetime, because

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they cannot afford to pay the taxes, and their property will be thrown on the market and sold for less than cost because others will not want it on account of high taxes. If half the effort were expended along the lines of retrenchment and reform in the expenditure of public money that there is for a large tax duplicate the burdens of the people would be materially reduced. Therefore, it is wise to limit and restrict by fundamental law the expenditures of public money. There should be a limit beyond which the politicians could not go without submitting the question to a referendum vote.

The question of taxation is as old as government itself. It grows out of the very necessity of government, consequently it is coincident with it.

It is necessary to raise sufficient revenue for the purpose of conducting public affairs. How to raise it has been a question that has engaged the attention of statesmen from time immemorial. Various schemes have been resorted to at different times. Political economists have advocated the proportional, progressive and economic methods as the most just. Adam Smith contended that "the subjects of every state ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities." Whether this is true or not is not important, but if a citizen is compelled by law to pay more toward the support of the government than he ought to, while his neighbor is required to pay less by the same law, the system is unjust, because it relieves one of his just share of taxes while it adds to the burden of the other. If one escapes taxation, no difference to what extent, it imposes a hardship upon the other, because it is necessary to raise a fixed amount of revenue, and if the one is overtaxed the other is under-taxed. It has been said, "Unjust taxation is bad enough when the inequality is due to the frailty of human judgment, but it is worse when it is due to deliberate effort upon the part of those who desire to shirk their share of the burdens of government."

It is now proposed to classify property for the purpose of taxation, which, in my humble judgment, is the most reprehensible method yet devised by the ingenuity of man. It is illegal, unjust and wrong. It absolutely has no merit, and is an insidious attempt to shift the burden of government upon those least able to bear it. It is robbery under the guise of law, as fatal to justice and equity as the breath of the upas is to life. It should not be tolerated by a free people, and a people who tolerate it will not long be free. It will reduce them to slavery on the one hand while it will build up a privileged aristocracy on the other. It is class legislation of the most vicious kind, and if adopted the knell of this republic has been sounded. Its tomb may as well be erected and its epitaph should read, "Perished through class legislation."

Do the people of this state fully comprehend the significance of the classification of property for the purpose of taxation? Do the farmers realize what it means to them? Do the small property owners understand it? I fear not. If they did there would be such a protest against it that no man could advocate it and remain in public life. It would forever destroy all chances of political preferment.

Just think of the monstrous doctrine of letting the legislature of the state, beset by rich and powerful cor-

porate lobbies, say what rate of taxation one form of property shall bear, and what rate another form shall bear! It would be just as reasonable to have the foxes guard the chickens or the wolf protect the sheep. Both would have the same protection that the average citizen would get from the legislature, and its proponents under all the circumstances could not reasonably expect more.

It is admitted that real estate would be in a class all to itself and that the highest rate of taxation would be imposed upon it. Classification will not benefit real estate owners. They would have the highest rate to pay.

Now whom would it benefit? It would benefit the money-lender, the man who holds mortgages, stocks and bonds, and the owners of tangible and intangible property.

The legislature would have the power, if the question of taxation is left to it, to classify it so fine that the people of the state could have practically single tax under the system.

It could provide a small recording tax for mortgages when filed and thereafter they would be exempt, as some states have done. It could do the same thing with other forms of property, and gradually but surely shift the burdens upon those who own real estate. It will be argued that this method of taxation will produce more revenue than under the present system. It was argued that the one per cent tax rate would bring out much additional personal property for taxation, but such is not the fact. It has been found that people who would conceal their property on account of excessive rates of taxation will conceal it for the one per cent. It is not the amount that either makes the individual honest or dishonest, but it is due to his standard of morality. But it is not a question of more revenue; it is a question of right and wrong. It is the duty of this Convention to recommend a just system of taxation to the people. When it has done that it has fulfilled its mission in that respect. It should not concern itself whether a few individuals return all their personal property for taxation or not, or whether it would not be possible by adopting an unjust system to have a little more property returned by the assessor. The thing to do is to make the system just to all the people, and if some of them evade the law let the responsibility rest with them.

There is only one just way of doing this, which is by the uniform rule. Our fathers adopted it sixty years ago and it would still be in force except for the rascally acts of the republican and democratic parties in exempting bonds from its provisions. This was done by a trick of the parties, and bonds of all kinds should be restored to taxation as far as possible.

The question of double taxation should receive the serious consideration of this Convention. It ought to be avoided as far as possible. It is bad enough to tax property once, but when it comes to taxing it two or three times it is a serious matter. A person should pay taxes on what he owns, not on his debts as now. If a person owns a piece of real estate and has it mortgaged he pays on the full value of his property, which is wrong. He should be relieved to the extent of the mortgage, but no feasible plan has so far been presented. I hope some one will present a plan whereby double taxation may be avoided and justice be done to those who are so unfortunate as to be in debt. All bona fide debts

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should be relieved of taxation, whether secured by mortgage or not. To tax them is wrong in principle.

But the taxgatherer is ever busy. He is constantly watching the hive of industry that he may exact every cent of tribute it will stand. New objects of taxation are constantly sought. The sunshine of heaven is not permitted to bring warmth and health into our homes without a tax. The very air we breathe would be loaded with a tax if the slimy hand of the taxgatherer could be laid upon it. Hardly an article the people, eat, drink, wear or enjoy escapes its tribute.

It is time to call a halt. The government is being diverted from its rightful functions. It has no moral right to exact from the hand of toil one cent more than that necessary to protect its citizens in the enjoyment of their rights.

It would be far better, more humane, it seems to me, to try to relieve the people of onerous and burdensome taxation than to grant special favors to a certain class by permitting the legislature to exempt their property altogether, or to place a mere nominal tax upon it, while other forms of property are taxed to their full limit. Why not tax the bondholder, the money lender, and exempt from taxation the man who is constantly toiling to secure himself a little home? Why not exempt him to the extent of \$500 or \$1,000 that he may get a home to shelter his wife and children?

It would be far better to exempt from taxation the woodland of the farmer to encourage forestry building. The farmer, owing to the high rate of taxation at present, cannot afford to either plant woods or withhold them from pasturage. Woodland, either natural or artificial, should be absolutely exempt from taxation, provided it is used exclusively for the purpose of reforesting the country. If the municipal bonds of the state were restored to taxation, where possible, and bonds to be issued hereafter were taxed as other property, as they should be in all justice and equity, it would furnish enough additional tax to relieve woodland of taxation to a large extent without any diminution of revenue to the state. I am confident it would be of more service to humanity in general to reforest a reasonable percentage of the country than to exempt from taxation the bonds of municipalities, and I think it the duty of this Convention to provide for the exemption of woodland from taxation, as it is certainly wisdom to provide for the future in a matter so essentially important to the people of the whole state. I trust the Convention will adopt some such measure.

If it is thought expedient, I would like to see this Convention exempt from taxation real estate to the extent of \$500 or even \$1,000 to encourage people to own their own homes. The number of home-owners is constantly decreasing in proportion to the population. If the poor man could hold free of taxes a little home it would encourage him to acquire it and I believe have a beneficial effect upon society. It would be an act of justice and is worthy of the serious thought of this Convention.

It is not the intention of the advocates of the classification of property to assist the poor man. It is done in the interest of avarice and greed, and there is nothing equitable or just about it. The proposition should be voted down and in its place a system of taxation recom-

mended that will appeal to the heart and conscience of the people.

The principal reason advanced for the classification of property by its advocates is that under the present system it is impossible to collect taxes on personal property. This may be true. It is a notorious fact that much personal property escapes taxation, but because it does is no reason why the uniform rule should be abolished. If it is classified no one pretends that all of it would be returned for taxation; hence if it is competent to classify it, it is equally competent to make and enforce laws for its collection if public sentiment demands it. Of the two evils, it is wisdom to choose the least, and I prefer that some property escape its just share of taxes rather than adopt a system which I feel is unjust to the great mass of people.

One of the chief advocates of classification claims "the value of property is not a just basis for taxation." He contends that "earnings and business profits, not property," should pay the taxes. If such is the case why not abolish taxes on both real and personal property? Why pretend to tax them at all?

Property, not the individuals, should pay the taxes. Earnings and business profits should belong to those able to make them, not to the state.

Taxes are levied for the support and maintenance of government, and each man, woman and child should contribute toward its support. They should pay in proportion to what they have, whether it consists of lands, money, stocks, bonds or other property. If a man accumulates \$10,000 and invests it in land, there is no good reason why he should pay all the tax while his neighbor pays nothing because he invests a like amount in bonds. Place them on an exact equality before the law and it will work no hardship upon any class of citizens.

I have heard some fear expressed here that the people are drifting toward single tax. Perhaps worse things could happen to the state, but I want to remind the gentlemen who have such fear that there are two ways to get single tax. One is by classification of property, the other by the Henry George plan, and of the two methods I prefer the latter.

It was once said in congress, "The time will come when the poor man will not be able to wash his shirt without paying a tax."

The man who gave voice to this sentiment had the prophetic eye of a philosopher. The time has long been here that the poor man, nor the rich man for that matter, could wash his shirt without paying tribute to some one. If the water is free it is because the taxgatherer has not been able to appropriate it to private use and dole it out at so much per gallon.

The tendency is to tax everything on, above, and under the earth, and if anything escapes its annual tribute it is due to an oversight of the lawmakers, because they do not aim to let anything of value escape—except a part of the personal property of the rich.

All kinds of plans and schemes are being constantly devised whereby the property of one class of citizens may practically escape taxation. It follows as constantly "as night follows day" that in proportion as one class of property is released of taxation an equal amount is added to other property, because it is absolutely necessary for the state to collect a definite amount of revenue, and if

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it is not collected from all the property it is collected from a part of it. This is axiomatically true.

To induce the people of a state to adopt some such inequitable system of taxation, which is unjust from every standpoint, a number of catchy phrases are coined by special interests, such as—

"The taxation of personal property is in inverse ratio to its quantity; the more it increases the less it pays."

"Instead of being a tax upon personal property it has in effect become a tax upon ignorance and honesty."

"It puts a premium on perjury and a penalty on integrity."

"It results in debauching the moral sense and is a school of perjury, imposing unjust burdens on the man who is scrupulously honest."

That much personal property, both tangible and intangible, escapes taxation is admitted. Many persons deliberately perjure themselves in order to escape and practice all kinds of chicanery. This is to be expected. It has always been so, and no doubt will continue to be so until the end of time.

But has there been any better system provided? If so, what is it? Who is the author of it, where is it in force, and how does it work?

It is claimed by the advocates of classification that it will work wonders. What evidence have they of it, where has it been a conspicuous success? Will its advocates point out to this Convention what per cent of the intangible property of New York compared to the whole amount is put on the tax duplicate for taxation by reason of classification? It is no answer to say the tax duplicate has increased so many million dollars. Has it increased to the extent it should? If not, classification is a failure just as the present system. If the only difference is in the amount collected when neither plan collects practically the whole amount, it can not be defended as just.

No tax system has ever been devised, none ever will be devised, that will lay its hands upon all property alike for taxation. The cunning, the dishonest, the unscrupulous, the farseeing will always find a way to shift a part of their taxes upon the shoulders of their less fortunate brothers and sisters. This is true under the present system and it will be true under so-called classification.

The most ardent advocates of classification that have appeared before the committee on Taxation admit that they would not ask for it if the people would honestly return their personal property for taxes. Because they do not make honest returns classificationists admit they will reward their dishonesty by giving them the advantage of a lower rate. What does the average citizen think of putting a premium on dishonesty? Would it not be better to reward the honest and punish the dishonest? Why let a man take advantage of his own wrong and reward him in the bargain? Where is the equity in such a course? It may be well to be generous, but it is more important to be just. But those who advocate classification do not propose to be either, because they expect to take from one and give to another. This is neither generous nor just to either class, and when the people realize its unfairness to all they will condemn it by an overwhelming vote.

But I want to say do not increase the burden of the

farmer by taxing him more. His load is already too heavy. For years he has paid more than his equitable share of taxes, and if you impose still more upon him it will be a great injustice.

Agriculture is the basis of all wealth and property. It should be fostered and encouraged, not by any undue advantage, but by equality before the law. The farmers do not ask any advantage over any other industry. All they want is absolute justice, which should be accorded them.

The farmer is the bone and sinew of the nation. He is its most valuable asset. If you destroy him, your cities will perish, because they are the product of his toil. The grass would soon grow in your streets and your property would become valueless. Let him withhold his labor from the soil for a few years and our great cities, as opulent and prosperous as they are now, would fall into decay. It should be remembered that the people are dependent upon each other. While we need the farmer, the farmer needs us, and it is wrong—criminally wrong—to array one class against another. The farmer has fed and clothed us in spite of his ill treatment in onerous and burdensome taxation, and it is unfair to longer discriminate against him. The farmer has been reasonably prosperous because of his intelligence and industry, not the favor of government.

We cannot destroy the farmer—the bulwark of the nation—by class legislation such as the classification of property without destroying ourselves, because we are absolutely dependent upon him. If he should refuse to apply his labor to the natural resources of the country we would soon be asking for bread and there would be none to give us.

The question of taxation is a serious problem—the most important that has confronted this Convention—and the happiness, prosperity and welfare of the present generation as well as the generations to come are vitally interested in its solution. It is our duty to study it well, reflect upon it seriously, ponder it thoroughly, before relieving one class of citizens of their just share of taxes and placing them upon another who have too long borne the heat and burden of the day. Do not, I beseech you, crucify the farmer on the cross of class legislation.

The thing for this Convention to do, under all circumstances, is to treat the farmer, laborer, manufacturer and business man alike when it comes to taxation. If we recommend a just system to the people and they fail to adopt it, the blame will rest with them, not with us.

There is no just rule except that of uniformity; hence the minority report should be adopted. It will restore bonds to taxation, or at least tax all those that may be issued in future, and tax property alike, whether it is in the hands of the rich or poor. If you will do this and try to hold up the hands of the tax commission of the state in its efforts to reach all personal property, I am confident the cities will be enabled to get along on the one per cent rate, and even less in many instances.

I am satisfied when the one per cent tax law has been given a fair trial, and the people realize it is to be a permanent thing, millions upon millions of personal property will come out of hiding to be placed on the duplicate. I am of the opinion we shall get as much, if not more, than we would under classification because it would rest equally upon all.

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The classification of property is a far more dangerous proposition to the farmer and the small real estate owner than that of single tax. Beware of it!

Mr. Doty was here recognized, and yielded to a motion to recess, which was put and lost.

Mr. DOTY: The farmer has been crucified for sixty years, and all of a sudden we find the farmers standing up and saying, "For Heaven's sake, don't crucify the farmer." It is strange to me, after listening to some of the high-up officials of farmers' organizations, that the farmers should feel as they do about taxation, and at the same time should not strive for something better. We have had a scheme of taxation in this state for about sixty years, and in all of that time the farmer has had the short end of it. He is having the short end of it today, and the farmers in this Convention are now proposing to continue the short end of it for the farmer. We are confronted with a situation here that perhaps needs some analysis. The member from Portage [Mr. COLTON] has made a very careful comparison of the two measures before you, the majority report and the minority report. The question now before the Convention is the substitution of the minority for the majority report. Let us examine first the minority report.

We find in section 1 a straight, simple declaration that the general assembly shall never levy a poll tax. That has been in the constitution for about sixty years with a few more words surrounding it for a frame, but that is the essence of the declaration, and yet we have a poll tax. There is an effort in this proposal to do away with that which we now have, which is really a poll tax.

Mr. BEYER: The old constitution says that the poll tax should never be levied for county or state purposes. The levying of a poll tax was restricted in that regard, but this is a general provision. Will not this do away with it everywhere?

Mr. DOTY: It does not do away with the possibility of passing a law that citizens may pay their road tax by service. But that is a minor matter.

The fundamental difference between the two proposals is one that we may describe simply this way: One is in favor of the classification of property for the purpose of taxation, and the other is in favor of a uniform rule—the property tax.

Now, I do not know whether you gentlemen have noticed it, but the speech of the member from Portage [Mr. COLTON], and of the member from Butler [Mr. PIERCE], and the constitution as we have it today, are all based upon the idea that property pays taxes. That idea ran all through both of those speeches. The description of this scheme of taxation is called the property tax, and the member from Butler and the member from Portage distinctly said that property pays taxes. In their proposal, in section 10 is found this statement: "Taxes may be imposed upon the production of coal, oil, gas and other minerals." In section 3, "All property employed in banking shall always bear a burden of taxation," etc.

Now the theory that the property pays the tax is one of the fundamental troubles with all our thought upon taxation. Property does not pay taxes. Property never did pay taxes, and property never can be made to pay taxes, and yet our whole thought runs in that direction. Our constitution for sixty years has been keyed up on

that theory. The support of that theory is made upon the straight declaration that property pays taxes, and it has been written out directly in words in the minority proposal that property pays taxes. Until we come to the conclusion that people are the ones who do the tax paying, we shall not arrive anywhere, or have any basis for building tax notions and schemes and plans. You may say that people pay the taxes, and that is true, but after all, when you get to thinking of it, you always think of property paying the taxes. All the questions that have been asked are under the theory that the farm paid the taxes, and that certain property produces income. Property does not produce income. The use of certain property by people will produce income, and the use of some other kind of property by people will not produce income, but all the thinking, and all the underlying notions of the addresses here and in your farmers' institute, and by your farmer members, as they appeared before the committee and as expressed by the tax commission of the state of Ohio, are based entirely upon the fundamental idea that property pays the taxes. That never happened yet. When we get to the point where we consider that people pay the taxes, we can build upon something true and tangible and certain. Remember that all of your double tax and your single tax and your property tax come back to the fact that men must earn money to pay taxes. Property cannot do it. That may be academic, and not germane to the question, but I have been going up and down the country for the past three years, talking on collateral tax matters, and I find that that notion that is expressed here is the notion of most people, and therefore that is the reason why I have taken this occasion thus to express this view.

The proposal that we have I think, is without exception the very worst I have ever seen put upon paper upon the subject of taxation. I have thought our present taxation plan of the state of Ohio was as bad as could be devised, and it is the worst in actual practice, so the experts say. But what do we find in this minority report? Here is one representative of the minority standing here and telling you that he is absolutely opposed to classification of property for tax purposes, and then he comes to section 10, and in answer to a question from the member from Allen [Mr. HALPHILL], he says that he feels that coal, oil, gas and other minerals ought to be taxed at a lower rate. That is all anybody ever contended for in the classification of property. In other words, the member from Portage [Mr. COLTON] is really for the classification of property, provided it is only on oil, gas, coal and other minerals. But that is a classification of property for taxation. I do not call attention to this to cast any reflections on the member from Portage [Mr. COLTON]. I only call attention to the fact that even the member from Portage [Mr. COLTON], with all his objections to classification of property, in a thoughtless moment, feeling that something ought to be done on that kind of property different from any other property, and not just for the moment realizing where it landed him, came out for the classification of those kinds of property.

Mr. EBY: Do you not realize that the constitution says that all property shall be taxed uniformly, and has it not been held that the tax you have mentioned—production tax—is not on the land, is not a property tax, and that there is a distinction between a property tax and a

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production tax, and that the levying of the production tax does not violate the present uniform rule?

Mr. DOTY: I do not just grasp the meaning of the member's question.

Mr. EBY: Is not the uniform rule based on the uniform property tax?

Mr. DOTY: It is supposed to be, but it is not.

Mr. EBY: Well, do you say that this section 10, that "taxes may be imposed upon the production of coal, oil, gas and other minerals" is a property tax—is not that a production tax? And is that a classification tax?

Mr. DOTY: Yes, sir; a classification of property for taxation purposes, and nothing else.

Mr. EBY: Do you not understand that the advocacy of a production tax does not violate the principle of uniform taxation?

Mr. DOTY: I do not understand any such a thing. I understand that the member from Portage [Mr. COLTON] and those who agree with him say they are opposed to the classification of property for taxation purposes, and then they propose that there shall be one little bit of classification on the production of coal, oil, gas and other minerals.

Mr. EBY: Has not the state of Ohio for three years been levying special taxes, franchise, excise, and on businesses of corporations?

Mr. DOTY: There are so many kinds of those taxes on everything that I can't keep run of them, but I am willing to agree that you are right.

Mr. EBY: Have not the courts decided that that is not a violation of the uniform rule?

Mr. DOTY: I have been compelled to admit on several occasions that my legal education is limited. I do not know about that, but if you say so, I will admit it.

Mr. LAMPSON: In that provision is not the tax proposed or authorized to be levied upon production, and not upon the coal, and not upon the oil, and not upon the minerals?

Mr. DOTY: Really it is a tax upon the man that does the work of producing coal and oil. That is what it is.

Mr. LAMPSON: It is not the same kind of tax that would be levied upon oil stored in tanks and barrels instead of being stored in the earth?

Mr. DOTY: That is right.

Mr. LAMPSON: It is a tax upon the opportunity to get the oil out of the earth?

Mr. DOTY: It is the classification of property for taxation purposes.

Mr. LAMPSON: In other words, a tax upon a certain franchise?

Mr. DOTY: Call it that if you want to. We have all sorts of classification of property now.

Mr. LAMPSON: But that cannot be classification of property.

Mr. DOTY: Well, call it a classification of effort then, because property is the result of effort.

Mr. LAMPSON: It is not classification or a tax upon coal, oil, or mineral or any other property; it is a tax upon the production of certain things.

Mr. DOTY: That is, a tax upon the man producing.

Mr. LAMPSON: A tax on production.

Mr. DOTY: Upon the man who produces.

Mr. LAMPSON: The man is not property.

Mr. DOTY: But the man pays the taxes. The property doesn't pay it.

Mr. LAMPSON: The man pays the taxes, and that would accord with your theory—

Mr. DOTY: Certainly.

Mr. LAMPSON: That it is not property that pays the taxes, but the man?

Mr. DOTY: Certainly.

Mr. LAMPSON: But that is a tax upon the effort of a man?

Mr. DOTY: Yes, and all property except land value is the result of effort, and to tax it is putting a tax upon labor. Now, I am not objecting to the tax, but I am calling your attention to the fact that in your groping for relief and for changes, while you do not see the classification, you grope toward classification or something similar.

Mr. HARRIS, of Hamilton: Is it not a fact, and may we not call it a principle already recognized by the courts, that classification is justifiable if they can overcome the constitutional inhibition by calling it any other name, and so while they call it production, and they call it excise or some other thing, as a matter of fact, is not the principle exactly the same, that they are putting different kinds of property in different classes, because from their practical experiences and knowledge they say that is the only practical way of securing revenue? Is not that a fact?

Mr. DOTY: That bears out the remark I made but a moment ago, that we have had classification of property for sixty years.

Mr. EBY: May I ask you a question?

Mr. DOTY: Wait a minute, one question at a time. I can get on fine, or at least I think I can, if you will just come at me singly. We have had classification for many years. For sixty years a uniform tax has been required by the constitution, but we have had classification a great part of the time. People have arbitrarily by their assessments classified their property, and that has been going on for years, and, as the member from Hamilton [Mr. HARRIS] has shown, they have had excise taxes, and now they are putting in another little piece of classification, and the member from Ashtabula [Mr. LAMPSON] is careful to show you that it is not classification. If you call it classification, it is unholy, but if you get at classification in some other way it is as holy as anything else.

Mr. DWYER: Is it not rather enumeration instead of classification?

Mr. DOTY: Enumeration is another word that they use if they don't want to use classification. It is just a matter of using words. They don't want to use something that they are afraid to say.

Mr. DWYER: Is it not an enumeration when they say, we will levy a tax on the production of oil, gas, coal, etc.?

Mr. DOTY: Yes.

Mr. BEATTY, of Wood: If you don't mention them in your list how are you going to tax them?

Mr. DOTY: You have misunderstood me. I don't oppose it.

Mr. BEATTY, of Wood: Don't answer until I get through.

Mr. DOTY: You asked the question, and I started

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to answer, but if you want me to stop, I will stop, and let you ask all you want to.

As a matter of fact, the member from Wood [Mr. BEATTY] did not understand me. I am not criticising, by way of objection, that section; I am simply calling attention to the fact that it is there, and that it is just another classification of property, and you people who are for the so-called uniform rule that was never uniform, and you know it was never uniform, are just trying to hide yourselves from anything that is called classification. You think if you can just go by the graveyard and whistle, you won't see the ghost. That is classification, but you don't want to say classification. Judge Dwyer calls it enumeration. This minority report calls it a production tax, and then before that it was called an excise tax. We have been classifying property for thirty years by assessing it differently.

Mr. BEATTY, of Wood: We never assessed oil.

Mr. DOTY: Never assessed oil! It was just in a class by itself, right in with the churches.

Mr. BEATTY, of Wood: Have you not valued the oil land at a higher rate than the other land?

Mr. DOTY: It ought to be. I don't know whether it is or not. I am surprised to know that it is valued higher. I know that it ought to be, and if it was valued high enough, you would not have to put in the production tax?

Mr. BEATTY, of Wood: You would, because one farm might have oil and the other not a drop.

Mr. DOTY: Well, I am talking about land with oil on it.

Mr. BEATTY, of Wood: You could not tell until you drilled.

Mr. DOTY: Oh, yes, you could.

Mr. BEATTY, of Wood: No, you can't.

Mr. DOTY: Oh, yes, you can. You have made your money doing it.

Mr. LAMPSON: Suppose under this proposal the production of coal could be taxed, and 100,000 tons of coal is produced, and it pays taxes on its production. Now when the 100,000 tons of coal is brought to the surface and stored in a bin, and could be found by the assessor, would it not be subject to another tax, a property tax under the uniform rule?

Mr. DOTY: Under the theory that all property must be taxed uniformly, it could not, but as it is, likely you are right.

Mr. RORICK: Along the line of the question asked by the member from Wood [Mr. BEATTY]. I wish to say that I represented that county on the state board of equalization in 1901, and that question came up. They wanted to raise the value of farm lands in Wood county because of the value of oil in them. I took the position that the oil was personal property, and I kept the board of equalization from raising the value of the land on the theory that the farms were one thing and the oil was another. I think that will settle the question.

Mr. DOTY: Your theory is right, if it would work.

Mr. EBY: May I trouble you with a question?

Mr. DOTY: You don't trouble me; I enjoy it.

Mr. EBY: If you and I have a farm producing an income of \$3,000 a year and there is a tax imposed on that income, is not that income tax a tax upon that property?

Mr. DOTY: Of course, it is a tax upon the man that made the income. The property didn't make the income.

Mr. EBY: Is it a tax upon that property?

Mr. DOTY: No.

Mr. EBY: Then our contention that an excise tax is only a tax on incomes—

Mr. DOTY: But I haven't disputed that; I have not criticised it, nor have I approved it. I am only calling attention to the fact that the people favoring the uniform rule of taxation cannot themselves keep from classifying. They do not want classification now, and we really have always had classification. Most of our classification, however, has been by assessment.

Mr. LAMPSON: After all, ought not those people who have never asked for special exemptions be permitted to hunt around for something to make up for the burden that is unloaded on them?

Mr. DOTY: Yes; I think they should be allowed to grope around in the right direction, if they want to. Here are three or four hundred thousand people in the state of Ohio who are groping around for some way out. Most of them are asking that mortgages be free from taxation. That is nearest at hand and they can see the injustice of double taxation, and they are asking for relief in that direction. I presume that four-fifths of the people on this bunch of petitions that I have here on this desk, asking for exemption from taxation of mortgages, if you were to put the proposition up to them for the so-called uniform taxation, they would stand up just as the member from Ashtabula [Mr. LAMPSON] and talk for a uniform rule of taxation until their arms fall palsied by their side and their tongues cleave to the roofs of their mouths, over the wrongs of the farmers, and yet where they see a concrete case where it does do an injustice they want relief.

Mr. WOODS: Is it or not a fact that it is the people who own the mortgages that are asking relief, and not those who give them?

Mr. DOTY: Both kinds.

Mr. WOODS: Give the names.

Mr. DOTY: I have not sorted them out that way. It is too tedious. Now, here is one from the Jewish Orphan Asylum at Cleveland. It is a perfectly disinterested concern. The Jewish Orphan Asylum officials see the trouble of this uniform scheme, and they ask for relief, and they want property so classified that certain kinds of property can be made exempt.

Mr. WOODS: And they are asking for that just simply because they will be benefited if it is done.

Mr. DOTY: Did you ever know of anybody to ask for anything that was not for his benefit, or that he did not think was for his benefit?

Mr. WOODS: I am opposed to classification—

Mr. DOTY: Yes, because you have an idea that the farmers ought to pay more taxes than their just share.

Mr. WOODS: We farmers—

Mr. DOTY: We farmers! The farmers in the state of Ohio are paying taxes on their labor and on their land value, and members like the member from Guernsey [Mr. WATSON], who says he is farmer, and the member from Medina, who is not a farmer at all, but a lawyer, come up here and want to enact this iniquitous scheme compelling the farmer to pay some of the taxes

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of the city man. You can shake your head all you want to, but you can't prove anything to the contrary.

Mr. WATSON: Will you show me how the farmers of Guernsey county are going to compel the city man to pay his taxes?

Mr. DOTY: What is the name of the city in your county?

Mr. WATSON: Just take any cities, the farmers of Ohio. I am talking generally.

Mr. DOTY: Just keep to your own fireside. Maybe you can see something then. Cambridge is your city, is it not?

Mr. WATSON: Yes.

Mr. DOTY: Any other cities?

Mr. WATSON: That is all.

Mr. DOTY: The people of Cambridge are imposing upon Mr. Watson, and Mr. Watson does not know it. That is the fact of the matter, and there is no living man on earth who can make Watson see it. Now, I will show you how inconsistent Watson is. Watson is a friend of mine. I have nothing against Watson except that he is wrong on so many things. Now, I will go back to a little history on this thing. We started out progressive. Watson was a great progressive. He and I sat up at nights trying to beat the reactionaries, and we nearly did it. Then we came down to the initiative and referendum fight, and we had quite a fight about that.

Mr. WATSON: Watson didn't want it "safeguarded".

Mr. DOTY: No, sir; but he now wants the farmers safeguarded so that they will get it square in the neck. He is for safeguards all right. Then he got into this taxation fight, and you remember how vigilant Watson was.

Mr. WOODS: Mr. President—

Mr. DOTY: You just wait a minute. I will take care of you after I get through with Watson. Watson stood up here and fought the fight of the people on the initiative and referendum. We were not afraid of the people. We were not afraid of letting the people say what they wanted. The people were great. They never made a mistake, or if they did, they were entitled to make it. Watson was a very good soldier. He went right up and down with the rest of us. He was for the people. What do we find now?

Mr. KING: How about Watson on the recall?

Mr. WATSON: And what do the people think about the Cuyahoga delegation on the initiative and referendum?

Mr. DOTY: Don't you worry about the Cuyahoga members. They can keep their end up on the progressive game with you. Now what do we find? I find in 1891, twenty years ago, there were 303,000 people in the state of Ohio who voted for classification of property. That is quite a respectable bunch of people so far as numbers, but that was the first time they had a chance to vote for it, and it might have been a flash in the pan. Some fellows like me might have gone around and fooled them. We do recognize the fact that progressives can be fooled occasionally. Then we find that in 1893, two years later, we had another vote, and 323,000 people voted for classification of property, an increase of 19,000. So it evi-

dently was not a flash in the pan, and they really wanted properly classified for taxation purposes.

Mr. WATSON: A question.

Mr. DOTY: Just let me go for a minute. It ran along ten years and then 326,600 people voted for classification, another slight increase. Five years later 339,000 so voted. You see every time they had a chance the number of people who voted for classification increased. The people of the state of Ohio were actually foolish enough to want a change in their taxation arrangement. Now we find that Mr. Watson, notwithstanding that there are 300,000 people in Ohio who want to vote on this question, is afraid to put up the Worthington proposal to the people of Ohio, and mind you the Worthington proposal is only a halfway proposal for classification. It perpetuates the present so-called uniform scheme, and provides for classification for counties whose people vote for it, the people that Brother Watson and I are not afraid of on the initiative and referendum proposition, but of whom Brother Watson is afraid of on this proposition.

Mr. WATSON: I am not afraid of the people—

Mr. DOTY: I say you are afraid, and you know you are afraid, and you are not the only member of that committee who is afraid of the people. There are several of the members who signed this minority report that know better. There is Donahey. He knows better. I don't know whether Mr. Fluke does, but Donahey knows better. He is a valiant singletaxer. Donahey's name is signed to that report. And here is Brother Tetlow. He is not afraid of the people except when it comes to taxation. Brother Tetlow stated in a speech a while ago that he has not studied the question of taxation much, and he doesn't pretend to know where he ought to be. I think he is least to be blamed of any man on this report. I skip over Brother Colton and Brother Cunningham. They are always afraid of the people. They are never willing to trust the people.

Now, come to Brother Pierce. Brother Pierce knows better. He does know that the farmers in his community are paying more than their share of the taxes, and they are paying part of the taxes of the city of Hamilton, but unconsciously he is attempting to continue a system that will perpetuate that situation and compel the farmers of Butler county to pay the taxes of the city of Hamilton, and he is also afraid to allow the people to vote upon this question and let the people of the various counties say what they shall have in the way of taxation. Then here is Mr. Crites. He did say to me privately that he didn't think much of either report, and I will let him out.

Mr. CRITES: Do you know that I am one of the largest manufacturers and landowners in the Convention, and do you know that I have sense enough to know that we don't want classification of property?

Mr. DOTY: I don't want to have to pass upon the good sense of any member.

Mr. MARSHALL: Do you not think that all the farmers of the house—

Mr. DOTY: Wait a minute. I don't want to criticise anybody with the idea of saying that they haven't sense enough to know this or that. The member from Pickaway makes an assertion that no doubt is true, and I say when the member from Pickaway goes into Pickaway county and puts up a manufacturing institution, he is do-

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ing a good thing for that county regardless of whether he is doing a good thing for himself or not. We, of course, know that he is doing a good thing for himself, or thinks he is, or he would not do it. But when he puts up that manufacturing institution in Pickaway, he does do something good for the county. Instead of being applauded for what he has done you say that he ought to be fined for doing it. I say that is immoral and an outrage upon him, and you not only do that this year, but the next and the next. Of course, as long as you keep on fining a man for doing a thing he is more apt to do that thing. So they want the farmer to keep on just as he has been, paying more taxes than he ought to.

Mr. MARSHALL: I want to ask you if while you are talking for the farmer, you are really a singletaxer?

Mr. DOTY: That is absolutely true. I am talking for the farmer, and I am telling him what is so, but I couldn't make you believe it.

Mr. MARSHALL: Do you not believe in single tax?

Mr. DOTY: Yes.

Mr. MARSHALL: And you are talking about the farmer paying too much now, and you want to saddle it all on him?

Mr. DOTY: I never said and no singletaxer ever did say that he was in favor of a tax on land. That is the trouble. You don't know what it means.

Mr. WALKER: I want you to finish an idea that you started in answer to Mr. Watson's question. You said you were going to—

Mr. DOTY: I didn't say I was going to, but I said I would.

Mr. WALKER: Well, finish that idea.

Mr. DOTY: Well, I will attempt to tell you a little of what the single tax theory is, a little of what makes land values. Take a farm in a county of 50,000 inhabitants. That farm in worth \$75 an acre. All the farms in that neighborhood are worth \$75 an acre. That is what we are taxing. How much of that \$75 an acre was produced by Mr. Watson, say, if he owns a farm, or his predecessor, and how much by the fact that there are 50,000 people in that county? The fact that 50,000 people live in a county produces a certain amount of land value. It is greater nearer the centers, where people can get to it.

Now, how much of that \$75 is due to the fact that there are 50,000 people there—\$5 or \$10? Now, that is the part that should be taxed. Because we tax more than that is the reason why farmers are paying taxes above what they should be.

Mr. MOORE: Does not every burden of taxation—interest, dividends, tariff, increased rates, charges of all kinds, increased burdens of all kinds—fall in every case in its last analysis on the most defenseless class of society?

Mr. DOTY: That is a pretty long question, and you have to assume who are the most defenseless class of society and several other things. I expect there is some truth in it, though. You cannot produce anything, however, except land values, without labor.

On motion the Convention here took a recess until 7:30 o'clock this evening.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the vice president.

Mr. Doty, having yielded the floor for a motion to recess, was again recognized.

Mr. DOTY: I think you all know I am always willing to attempt to answer questions, and I tried to do that this afternoon. I do not want to be understood this evening as declining to answer questions, but I ask the indulgence of the Convention that I may say a few things in as connected a way as it is possible for me to say them, reserving the time for questions until a little later.

There is a matter on this question of classification to which I would like to call attention by illustration only, to show how a certain class of our business men are striving for classification of property for taxation, as the member from Medina [Mr. Woods] says, because they have an interest in that phase of taxation. Before one of the meetings of the tax committee the member from Montgomery [Mr. Stokes] appeared with several building and loan and savings bank men of his city, asking us for a classification of property to the extent of allowing a different rate of taxes to be paid upon money in bank, and we had a hearing to that end. That is one of the phases that appears from time to time. Here is a set of business men in Dayton—they are in every city—and they are up against a situation that appears to affect their business. That is the reason they can see it. That is one phase of it. I apprehend that the members from Montgomery—I don't know, but from the indications and the questions one or two of them asked, and the general trend of things, it made me believe that the members from Montgomery are not in favor of the classification of property for taxation, and yet one of the members of that delegation appeared before the committee and asked to have us recommend that to the Convention.

That is one of the gropings we find on the part of the business men toward some relief from this fast, iron-clad scheme that we have now bound around our heads in the matter of taxation. I have referred already to these petitions. I shall not read them. There are too many. Most of them are in favor of doing away with the tax on mortgages. Some are for relief in other directions.

We have the same manifestation of this groping toward some change in this Convention itself. Did you ever realize what the members of the Convention have been doing toward some relief from the present method of taxation? Omitting the one by the member from Ash-tabula, inasmuch as that was not in regard to taxation anyhow, we have to do with Proposal No. 19 by Mr. Eby, relative to taxation. It appears to be a modification of the present tax scheme, and winds up by saying that no direct property tax shall ever be levied for the support of the state except in time of war. That seems to be all the new things in that.

Mr. Brown, of Pike, brought before us a proposal, to make the maximum rate on all taxable property one and one-half per cent, showing that in his mind and in the minds of the people in his part of the country there is something the matter with our present scheme. They have an idea it is the tax rate. That is the thing they can see easiest. It is the thing people talk most about. Why, the speeches of the member from Portage

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and of the member from Butler were made up largely of the tax rate. And it is no wonder that the people of Pike county got that idea, and that Mr. Brown of Pike, introduced his proposal. We have one from Mr. Watson. He is quite an expert. This is one of the earliest, Proposal No. 28. That re-enacts the present uniform tax rate, but this is the one that takes out the tax exemption of municipal bonds. He knows there is something the matter with the present scheme. So he introduced this to correct the evil that he could see.

So I might go through the proposals, and all through, there is some attempt at doing one thing and another attempt at doing another, but all the proposals show an indication that there is in the minds of somebody somewhere the idea that there is something rotten in Denmark on this taxation matter, that there is something the matter with the present scheme of taxation. They may not all be right. I am not saying whether any are right or any are wrong. I am only showing you how widespread this unrest is. It is not only manifested in these petitions from various parts of the state, it is not only manifested by the appearance of the member from Montgomery [Mr. STOKES] with his constituents in the banking business, but it is also manifested throughout the various counties, as shown by the action of the members in introducing proposals, first one and then another scheme or change in the present taxation laws. There is something the matter and these proposals are proof that a great number of you believe that there is something the matter, but never until this minority report, as it is called, was made had a proposal that combined as many evils in the one document been shown. They are scattered through the proposals, but this combines them all into one place, so that we can see them grouped together.

There is one particular feature of the minority report to which I desire to call attention; section 7:

The maximum rate of taxes that may be levied for all purposes shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school district, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all purposes, on each dollar of the total value of all the property therein, etc.

This incorporates the so-called Smith tax law into the constitution. But before I go any farther, and before I forget it, I desire to read into the record the following from the Ashtabula Gazette—I was mistaken. It is the Jefferson Gazette, but it is still a good paper.

Mr. LAMPSON: Yes; Jefferson is the county seat.

Mr. DOTY: And the member from Ashtabula [Mr. LAMPSON] lives there, and he used to own this paper, and it made him rich, and almost sent him to congress, and may send him there yet.

Mr. PECK: How did it come to have the name of "Jefferson"?

Mr. DOTY: I desire to have the member from Ashtabula remember this editorial when he votes upon the minority report. This is the paper that made him rich, and his son is the editor now, and he is contributing editor, and I think he has control:

The position of the Gazette in opposing the Smith tax law has again been vindicated.

We have asserted that this nefarious law was robbing the school systems of the state and putting a serious setback to rural progress along the line of good roads.

There you are, and he is right:

The Gazette does not object to the limiting of the tax rate to 15 mills, but did object to the methods of assessing land at full value before anything of real worth has been attempted to get corporate and personal property on the duplicate at full value.

We have already shown how railways save over \$35,000 in Ashtabula county, banks over \$12,000 and how farms and village homes pay over \$48,000 more than before.

Now what is the result of this law all over Ohio?

Farmers as a whole in this county and in all of Ohio pay more taxes than ever, and yet their children have less money to be used for their education. Corporations and men with money in taxable investments pay less—making their savings out of robbing the youth of the state of proper school funds.

Farm lands were increased for tax assessment 167 per cent as against city increases of 151 per cent and against increases on corporate and personal property of 133 per cent. Thus the breach between real estate and personal property has been widened and the burdens on homes increased instead of decreased.

E. C. LAMPSON.

I call the attention of the member from Ashtabula [Mr. LAMPSON] to the fact that this is a nefarious law, and I have it upon the authority of the Jefferson Gazette. I do think the member from Ashtabula [Mr. LAMPSON] ought to hesitate, as I hope and feel that he really will, before he votes to incorporate a nefarious statute into the fundamental law of the state of Ohio.

Now, let us take up this matter of putting any limit of the tax levy. As I stated a little bit ago, we have allowed ourselves to be educated to think of a tax matter as one of rates entirely, as if when we fix a rate we have solved the problem. That is all a mistake. The rate is about the last thing that ought to be attended to in the matter of taxation. The matter that ought to be attended to first is the method of assessment, and when I come to that I want to show you why the so-called uniform rule will not work. Most of you think it will not work because some official is dishonest, or some county official is incompetent, or because people haven't consciences or are dishonest. Various reasons for the non-workability of the so-called uniform rule have been assigned. The reasons usually given are not the reasons at all. The reason is because of the method of assessment. Now, leaving aside for the moment all reference to land and land values, and all reference to money—that is, actual cash—and to all other kinds of property, there is no standard in existence upon which you can base an opinion of value, not one, and I defy any mem-

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ber of this Convention to produce a method for producing a standard for comparison. Now, if you have not a standard for comparison, how can you get an opinion that is worth while? The matter of valuation is but a matter of opinion except for money. Money, being that which we use to express our opinions, therefore is a standard for all expression of price. Money, of course, is of itself expressive of its own value. But when you come to anything else, eliminating now all reference to land value and money, you have no way of standardizing your valuation or standardizing your opinion. There are not two pieces of personal property in the state of Ohio that are valued on the same basis by comparison. There is not a standard by which you can make a comparison. To illustrate: Take one of these desks and the chair that goes with it. Where is the standard that gives you a chance for comparison, an expression of your opinion of the value of that as compared with the Harrison building across the street, or as compared with your piano in your house, or as compared with your watch in Toledo? There are 4,500 assessors in the state of Ohio trying to assess personal property. They are working without any standard and without any possibility of any standard, and there are 4,500 classifications of property for taxation purposes right now, today, under your so-called uniform rule, and there cannot be any other way, because each assessor must furnish his own standard. He must carry his standard with him in his own mind, and he must be a valuation law unto himself. He has no method of comparing his opinion of value with the opinion of the assessor in the next county or in any other part of the state. The result is, in a crude way, he attempts to carry a standard in his mind. That is the best he can do. And yet he himself, working on two different days, necessarily uses a different standard of value. A man will have a different standard of value before dinner than he has after dinner. That is just as true as that the sun rises in the morning, and yet you send this man out and furnish him no standard for the purpose of expressing value, and you expect all of these assessors to assess property so that there will be equality when they get through. Now, as long as you are attempting to do that impossible thing so long you will fail, and you do not fail because of anybody's dishonesty or incompetency. There are not two men in this room, I don't care what two you pick, who will go out and do the same piece of work in the same way and produce the same result, and do you not think that is just as true in assessing property? Yet we had 4,500 of those men at work in Ohio last month and we expected them to assess property equitably. The truth is they don't do any assessing. They take a piece of paper and go around to assess our property. Each one of us has a standard of value, and we express our opinion with reference to our own standard of value. We have all that kind of classification of property, and that kind of classification of property is inevitable, and it is unfair and untrue to charge a person involved in it with being dishonest.

Mr. EVANS: Will you permit a friendly question?

Mr. DOTY: All of the questions put to me are friendly.

Mr. EVANS: If Mr. Doty's appraisal company had out 4,500 appraisers, and fixed a standard and had them

appraise the personal property, would that not come nearer to a true appraisal than what we have now?

Mr. DOTY: Absolutely not. There is no one who can devise any standard for the appraisal of personal property. It is impossible.

Mr. EVANS: Would not you come nearer to it than now?

Mr. DOTY: What is the difference between five or six per cent when you want 100 per cent? I might do a little better, but still it would be inequitable, inevitably so, because I could not procure a standard. There is no scientist or economist, politician or chairman of a tax commission, that can get a standard by which you can value the piano in your home and I value a piano in my home and do it on the same basis. That is impossible, and that is what we have been failing to do for sixty years.

Mr. HOSKINS: I would like to have you answer a question before you get through, and that is how these inequalities in valuation that you have been discussing can be remedied under classification? I ask for information.

Mr. DOTY: I don't think they could be remedied to the last degree. I do think that the tendency by lowering the rate on a certain class of property would be to bring more of that property out. I am not a classifier of property for taxation purposes with any fool notion that it is fundamentally sound. That is not fundamentally sound. It is a step in the right direction to my mind, and why? As long as we have this so-called uniform rule, which amounts to a stone wall right around the state of Ohio—until we break into that wall some way and somewhere, we can never get any improvement in our tax methods, and whether we make much improvement in what we do is not of so much value in my mind as it is to get some change so that we can make some kind of an additional experiment in the matter of taxation.

Mr. HARBARGER: Will that be a perfectly exact and just way of assessing property, and if it is one step, what is the goal of classification?

Mr. DOTY: It is not necessarily a goal, but it is simply to allow the people of the state of Ohio to try as many plans of taxation as they care to. It amounts to this: If all the chemists in the world had been compelled to do their experimenting in only one way for sixty years how many experiments would they have carried to a successful termination, and how many things would they have taught us, and how many things in chemistry would we have learned? Not any, except what that one experiment produced. Now, all the difference between the majority report and the minority report is that the majority report is allowing one additional experiment, namely, the classification of property. I am not one of those who think that the classification of property is the beginning and end of all things in taxation. I do not think it is, but it is worth while trying, because it cannot be any worse than what we have had, and it does give the people a chance for an option of one or two things, and perhaps, if they continue to try one and then another, they may finally find that they want to try something else, and having gotten in the habit of trying things we may finally solve the tax problem, but we can never solve it when we stick to the iron-clad,

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iron-bound, hard-and-fast rule that we have had for sixty years. Mind you, there are many people in Ohio who want to try something else. There were 330,000 of them twenty years ago, and that number increased to 350,000 five years ago, and several votes between those times showed that some people wanted some kind of relief. A proposal that you yourself introduced, Mr. Harbarger, shows that you think there is something the matter with the tax laws, and that you may be right or wrong is neither here nor there. You represent a very large number of people, and you think you are right, and they ought to have a chance to say whether you are right or wrong, and if you can get this plan that you propose at work, people like you, those who feel as you do, will have a chance sooner or later to put in operation their ideas on taxation.

Mr. ANDERSON: Is it your idea that the minds of the taxpayers are always at work against tax laws, trying to get the best of them, and that the only way we can arrive at perfection is by evolution from time to time, as the times seem to demand a change?

Mr. DOTY: I think that is a fairly good expression. That is the way in any other line of human endeavor. We don't make progress sticking to one thing.

Mr. ANDERSON: Evolution means growth?

Mr. DOTY: And it means change, too. The only objection I have to this proposal is that it doesn't allow any change.

The whole question of whether a tax scheme is right or wrong is not based on the rate, but on the method of taxation itself. The tax rate is the last thing to fix. The amount of money you spend is the same, fixed by necessity. The amount we spend is fixed by necessity, and the amount of property that we have to levy upon is fixed by the growth from time to time, either up or down. That is, some property appreciates in value and some property depreciates in value, but there is usually a net increase in the value of property in any given district. That is so in all growing cities, and so in most of our districts, though there are some places where there has been a depreciation. Those two things are fixed, one by necessity and the other by the growth in value. Now, naturally, the thing that is the result of those two, one being divided by the other, produces the rate. That rate ought not to be fixed by law, but by those two things that we start with, that we have no control over. The rate won't fix the amount you spend nor the amount you own. Property is not produced by tax rates. We do not pay taxes in tax rates, we pay taxes in dollars. The tax rate is the last thing you ought to fix. This is all hubbub about fixing a tax rate in the tax law. This Smith law is the biggest fraud that ever happened in a tax matter, and the men who originated it knew it. There seems to be a contest between the auditor and the governor as to who originated it. I hope the best man wins. It would be a bad choice for me to make.

The tax rate is not where the trouble is. As long as you have no system of assessing property, and as long as you do not have a standard, you will have inequalities and inequities, and as long as you have inequalities and inequities you are going to have people who are going to escape taxation. Why? Because they know the other fellow is doing it. You can talk all you want to about conscience and about this law and that law, and when

you get through and try to tax the owners of things that can move, they will move.

There are two reasons why owners of land and buildings are more easily taxed. The first and most apparent reason is that they cannot move. That is not quite true of buildings. They will not come into existence so numerous if you overtax them. Buildings and land can be seen and cannot move, and therefore we say we will tax them. That is not the reason we ought to tax them, but that is the reason why it is easier to tax them. Now it is possible to get up a standard of comparison for the expression of opinions of value on buildings of various kinds. Buildings may be classified according to their use, and they can be sub-classified according to construction, and it is possible for experts to get at the cost per square foot, and it is possible to get at the reproductive cost, and it is possible to get up a table showing depreciation by reason of age and condition or obsolescence. It is also possible to get up a plan for a standardization of land values in cities. In the country districts we have already a unit of quantity, the acre, but in the cities we are coming to a standardization by agreeing upon the unit foot as the quantity upon which to express values. I will not go into that except to say it is possible to get a unit of quantity upon which to express judgment of value for land in cities. All that is possible for any state board to work out is a general classification plan by which assessors in the various parts of the state will use substantially the same methods of expressing their judgment. In fact, it will not vary more than three to five per cent. When you have done that, you have gone as far as any tax commission or any living man can go in getting at a unit of quantity except in the matter of money. Even notes have no standard of value. Why? If you were to take a note for \$1,000 from each member of this Convention, each one would not be worth the same. I know one that wouldn't be worth much, and I know that there would be a difference of value in the whole one hundred and nineteen. Money is the only thing about which there is no different standard. You have not any way of getting at the comparative value of credit or of stocks or bonds. They vary in value. A United States bond is worth more than a municipal bond, and a municipal bond is worth more than a county bond, and some county bonds are worth more than some township bonds.

Look at your railroad bonds and stocks. There is no standard for any of them. You say par value. That is just where you start. That is a matter of starting to compute. You compute up and down, and because the par value is \$100 that doesn't mean that every bond is worth \$100.

You have a scheme to get at the value of personal credit or stocks or bonds or anything except money. Look at the different ways of valuing watches that we find in any city. There are not two watches in any city valued upon the same basis. Every watch is in a class by itself. Why, you have had all sorts of classification, and you didn't know it. It results in this kind of a proposal. It results in 330,000 people knowing that something is wrong, and who voted for something else, although they may not have known what they wanted.

Of course, something is wrong. The whole scheme of assessment is wrong, and you will never get anything

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better as long as you try to do the impossible. You and your neighbor don't value a horse the same way, and your tax duplicate shows that your horses are not valued on the same basis. Cows are not valued on the same basis. Pianos are not valued on the same basis. You have not a single item of property in the state that is on the tax duplicate upon the same basis with similar articles in some other part of the state.

Mr. HALFHILL: Yes, there is.

Mr. DOTY: What?

Mr. HALFHILL: Dogs.

Mr. DOTY: I said articles of value.

Mr. ROEHM: Dogs are articles of value. I have some that are worth a good deal and I pay taxes on them.

Mr. DOTY: What I am attempting to show is that this tax rate is the last thing that ought to be put into any constitution. My own notion of a tax rate is that a tax rate ought to be fixed by the people who have to pay the taxes and have to raise the taxes to pay their expenses. I don't believe that any farmer knows all about it. And speaking of farmers, you are always speaking about the farmer as knowing not only all about how to run his farm, but to run our cities. I don't think there is any farmer member of the legislature who knows enough about the necessities of a city government to fix a tax rate for us to raise money to pay our bills with. That man does not live on a farm in Ohio, outside of Cuyahoga county at least, and I don't undertake to say that I know how much should be raised in Cincinnati or in any farming community. The whole idea of fixing a tax rate is pure political buncombe. It was put up for political purposes, simply to fool some people. The member from Crawford [Mr. MILLER] this afternoon informed the Convention that in a vote taken—I guess you only gave the number of those whose taxes under the Smith law were raised?

Mr. MILLER, of Crawford: I gave 400.

Mr. DOTY: I think there were 500 raised and 1,000 lowered. Now just see how misleading that statement is. I don't mean that the member from Crawford [Mr. MILLER] made any misleading statement, but the paper is gotten out as a part of the political buncombe of the state. It is gotten out by the agricultural department, is it not?

Mr. MILLER, of Crawford: Yes.

Mr. DOTY: And that was gotten out to bolster up the so-called Smith law, and they tried to show, and the member read it as if it did show, that the Smith tax rate had raised or lowered taxes. Perfectly preposterous.

Mr. MILLER, of Crawford: That was only one of forty questions.

Mr. DOTY: I didn't know that, but I have stated the number right?

Mr. MILLER, of Crawford: Yes.

Mr. DOTY: That is the only one of the forty in which I am interested at this time. Of course this Smith one per cent tax rate didn't raise or lower anybody's taxes. That is not the way taxes are raised and lowered. Taxes are raised and lowered either because you spend less or spend more money, or provide to spend some more money next year, because taxes are raised a year ahead. The tax rate has nothing whatever to do with it. The tax rate of that thousand people would have been lowered

whatever the tax rate would have been, and the taxes of the five hundred would have been raised whatever the tax rate was. The tax rate didn't have anything to do with it, and it is pure unadulterated buncombe to put the tax rate in a state law or a constitution and get out statistics that would mislead a gentleman like the gentleman from Crawford, and make him get up and make a statement and read statistics as he did, because I know he knows the tax rate did not raise or lower those taxes. Yet to carry this political buncombe further, we are asked to embalm it in the constitution of Ohio, and I hope my friend from Ashtabula won't forget this when he votes on that question.

Mr. DWYER: Was not the rate fixed by the legislature with a view of getting more personal property on the tax duplicate?

Mr. DOTY: I am glad you said that. That is true. I heard the chief executive make that statement in Memorial Hall. He said if you put real estate up to 100 per cent it will bring out personal property in the state of Ohio. But what has it done? Of course, every one has to speak of his own county. All they are doing in our county is to multiply the old personal property assessments by three, and bring the amount of the assessment up so that the amount of the Smith law will raise the revenue needed. That is the way the property is assessed. Outside of land and buildings there is not any property in Ohio assessed on any kind of a basis.

Mr. EARNHART: Is your argument in favor of the majority report or the minority report, or is it an argument in favor of single tax?

Mr. DOTY: Of course, that is a matter of opinion. I have never concealed the fact that I am in favor of the single tax, as far as I know. But outside of a slight reference to it before supper I have not made any reference to the single tax. It seems to me, however, that this idea of charging the state authority and the general assembly with having no scheme of assessing personal property has nothing to do with the single tax. It is simply a question of common honesty. I say it is time to stop attempting to do the impossible, and if you classify property we will tend to get away from that impossible task, because the personal property is not assessed on any uniform basis at all. You don't produce any wealth on your personal household property, and why should you be assessed or taxed upon the basis of ownership of such property?

Mr. EARNHART: How are you going to tax personal property at all under classification? How are you going to arrive at a conclusion as to the value?

Mr. DOTY: I have tried to show you that you cannot arrive at it.

Mr. EARNHART: Then that is single tax.

Mr. DOTY: No, sir; not within forty miles. Don't be afraid of single tax. It is not here, and will not be for quite a while.

Mr. DWYER: You remember when this rate was fixed by the legislature some action had been taken in the city of Baltimore, and it was claimed in the city of Baltimore that by reason of the system they had adopted they increased many million dollars on the tax duplicate?

Mr. DOTY: You are mistaken about one part. If I remember rightly, all there was to that Baltimore busi-

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ness was that they reduced the tax from the property tax standard to a filing tax on bonds—

Mr. HARRIS, of Hamilton: A stamp tax on mortgages.

Mr. DOTY: The member from Hamilton [Mr. HARRIS] can state the facts on that.

Mr. HARRIS, of Hamilton: The facts were set forth before the committee on taxation in a printed report from the state board of taxation in Kentucky, urging the legislature and the governor to change from the uniform rule of taxation to the classification tax, and in this printed report they quoted the following statistics in round numbers from Baltimore, where the law had been recently changed from uniformity to classification:

In 1896 under the uniform rule of taxation the city of Baltimore reported \$50,000,000 and odd of personal property, on which the state collected \$150,000. The law was then changed to classification, and under classification the city of Baltimore, inside of ten years, reported in round numbers \$160,000,000, which under a reduced rate under classification brought to the city of Baltimore \$450,000 in taxes.

Mr. DOTY: I am reminded by the member from Butler that the tax commission has attempted to value certain public utilities at a unit for expression of value. The commission has arrived at a unit for the valuation of certain utilities. But coming to the matter my friend from Warren speaks of, no man has ever devised a scheme of standardizing the opinion of the value of what we call personal property—credits, stocks and bonds or notes.

Mr. FLUKE: You said the assessor left a blank with you and you made your own assessment?

Mr. DOTY: I make a return, a pure guess.

Mr. FLUKE: Is that the rule in the state of Ohio?

Mr. DOTY: I don't know. I only know that is the rule in my neighborhood. I don't care whether it is a rule or not, if an assessor comes into your house with a paper in his hand and attempts to assess property belonging to you, he still has no standard for the expression of his opinion that compares with a standard that is used by the man next to him or in the next county. I do not care how carefully the work is done, or how much thought or care the man attempts to put upon it, I only say that he must do that. I leave it to the gentlemen here as to whether that practice that I have referred to is not prevalent?

Mr. KNIGHT: I want to say that the custom Mr. Doty has referred to exists in Franklin county.

Mr. DOTY: And in all the large counties. The Smith law was the result of a joke. There was a bill before the taxation committee of the house. It provided for a limit of one and one-half per cent. The members were talking it over in a desultory way, and one of the members thought it was such a preposterous thing to provide such a levy that he would make a joke of it, and he moved to strike out the one and one-half and make it one. That is where the thing started. It started as a joke on the floor, and then both sides took hold of it and the first thing you know the law was passed and we were all hurt by it.

Mr. MARSHALL: Who was hurt?

Mr. DOTY: The city of Cleveland, the city of Cincinnati, the city of Columbus, and every growing city.

Mr. MARSHALL: How are they hurt?

Mr. DOTY: They cannot get enough money to run themselves, because that is not the way to raise taxes. It is immoral. By what authority do you people in Coshocton want to tell us what to do in Cuyahoga county? You haven't any business to do it.

Mr. MARSHALL: Can you fix that right?

Mr. DOTY: We are trying to fix it. We are trying to fix it here. If you want to help us do right, vote for the majority report. I am afraid you won't do it. You say you are in favor of the initiative and referendum and home rule, but your votes don't show it. I hope you will finally vote with us yet.

Mr. MARSHALL: You said a minute ago that there was no man in Cleveland who was able to fix a uniform rate of taxes?

Mr. DOTY: No; I didn't say that. I said there was no man living on earth who knew how to fix a standard for the correct valuing of personal property.

Mr. MARSHALL: Then, if there is no man who is able to do that, what remedy can you have?

Mr. DOTY: Use a system that doesn't attempt to do it. Don't try the impossible. Don't do it at all.

Mr. MARSHALL: That's what I say.

Mr. DOTY: Then you agree with me all right.

Mr. EBY: I have the last printed report of the auditor of state, and I find that in Cuyahoga they have 650,000 people, and they return less than \$2,000,000, while Preble county, with 23,000 inhabitants, returns over \$2,000,000. You return less than \$3 for each inhabitant and we return \$90. Do you not think there is some truth in what the tax commission said, that the trouble was not in the one per cent tax law—

Mr. DOTY: I don't claim that the one per cent tax law produces that. It was the method of assessing. The tax rate is not to blame for many things that the people blame it with, and it does not produce the good result that anybody claims.

Mr. EBY: What cure are you going to have for the situation?

Mr. DOTY: I want practical classification, and the first thing is to do what they do in Pennsylvania, eliminate the attempt to tax people on nonproductive personal property. You do not make any money out of household goods. A few people do by keeping boarders, but the most of us do not. What is the use of taxing people on nonproductive goods? Now that could be classified so low as to amount to exemption. As the member from Lorain said, I do not propose to stand here and get up a whole new tax code. It cannot be done. I am pretty smart, but I am not that smart.

Mr. LAMPSON: Suppose the county under classification would exempt money in a savings bank entirely from taxation. What effect would that have on money in savings banks in an adjoining county where it is taxed?

Mr. DOTY: It would have this effect: In my judgment, if it turned out to be a good thing and a wise and beneficial thing to do, that particular county next to the county that exempted such deposits would have to do the same thing to retain its deposits.

Mr. LAMPSON: They would be compelled to do it?

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Mr. DOTY: Yes, if it were a good thing.

Mr. LAMPSON: It would be a good thing for the people owning money that was exempt.

Mr. DOTY: Yes.

Mr. LAMPSON: What about the rest?

Mr. DOTY: It would be just as the gentleman from Preble said. How much money did you say there was, Mr. Eby?

Mr. EBY: Two million dollars.

Mr. DOTY: Do you know that there is more money on deposit in one bank in the city of Cleveland than in all the banks of all the cities of the rest of the state put together? Did you know that?

SEVERAL DELEGATES: That is not true.

Mr. DOTY: Yes, it is true, and it gives me a chance to boom our town a little, and out of all that money there are only \$2,000,000 on the tax duplicate.

Mr. HARRIS, of Hamilton: Our clearing house shows a great deal more than the clearings of Cleveland.

Mr. DOTY: We have got the money in bank.

Mr. PECK: We do business with ours.

Mr. DOTY: Let me tell you something about the clearing house in Cincinnati. If the clearing house in Cincinnati will only comply with the national rules when reporting their clearances they won't be so big.

Mr. PECK: They do.

Mr. DOTY: I beg your pardon—

Mr. PECK: You have to beg my pardon. You don't know.

Mr. DOTY: The last time I knew anything about it they didn't, and that was just a year ago.

Mr. PECK: I would suggest that you confine yourself to facts that you are acquainted with.

Mr. DOTY: I am confining myself to facts that I know about, and I know there is more money on deposit in Cleveland than all the rest of the cities of the state put together.

Mr. PECK: You haven't got any bank in Cleveland with as much money as the First National Bank of Cincinnati. I will leave that to Mr. Antrim or any other banker. You have a savings bank that has a very large deposit, but your active commercial banks haven't half as much as the banks of Cincinnati.

Mr. WOODS: Why, we have more money in Medina than in Cleveland apparently.

Mr. HARRIS, of Hamilton: If the city of Cleveland would pay its debts, it wouldn't have any money in bank at all.

Mr. DOTY: That may be, but the city of Cincinnati owes more than we do.

Mr. HARRIS, of Hamilton: We have got a great deal more to pay it with, too.

Mr. DOTY: Well now, to come back, there are \$300,000,000 on deposit in the city of Cleveland, and, just the same, that is very much more than they have on deposit in Cincinnati. But that is not what I am coming to. The member from Preble says that we only have \$2,000,000 on the tax duplicate.

Mr. EBY: The actual money returned for taxation is \$2,000,000.

Mr. DOTY: That is what I thought you meant. Out of \$300,000,000 we have \$2,000,000 on the tax duplicate. What a farce that is. Some people say that if the people of Cleveland were honest that would all be on. That is

not true. The people of Cleveland are just as honest as any other people, including Cincinnati, and I believe Judge Peck will agree with me on that.

Mr. PECK: I don't know much about that.

Mr. DOTY: My statement ought to be good to you for that.

Mr. PECK: All right.

Mr. DOTY: It is not the dishonesty on the part of the tax officials. It is simply that we are trying to do an impossible thing. All of you have been trying that same sort of thing, and you have been trying it and trying it, and had all kinds of drastic laws, and you have never succeeded yet.

Mr. WATSON: Will a change to one per cent or one-quarter of one per cent bring that out?

Mr. DOTY: It will bring out a good deal. If you will put your taxes at one-tenth of one per cent you will get more and more taxes on it.

Mr. WATSON: That's a question of honesty.

Mr. DOTY: Yes, and I say to you that if you put your taxes at one-tenth of one per cent, you are going to get more money returned and more taxes will be collected than if you had it at 1.37.

Mr. WATSON: Then the lowering of the tax rate to one per cent or a quarter of one per cent or one-tenth of one per cent is the premium you ask us to pay on the dishonesty of those people who fail to give in their money.

Mr. DOTY: There is not a premium on dishonesty. It is not a premium on anything. It is a matter of common ordinary horse sense, to do what we can do, and not attempt to do what we cannot do.

Mr. WATSON: What reason have we to believe that the man who will not pay his taxes when they are one per cent will pay them if they are one-quarter of one per cent?

Mr. DOTY: Lots of people will lie for one per cent who will not lie for one-tenth of one per cent.

Mr. LAMPSON: I reduces itself to lying after all.

Mr. DOTY: That is what is going on in every city in the state, and on every street, and in every house on every street. Talk about lying, of course it is. You compel us to lie. You are putting a tax on honesty. That is all the property tax is. The man who is ultra-honest will put his money in at a full rate and pay even up to four per cent, because the law says he shall. Well you and I and the rest of us, putting us all together, don't do it. You can call it lying if you want to, or you can call it anything you choose. It has been going on for years and years, and it will go on for years and years more if the member from Guernsey and the member from Portage have their way about it.

Mr. EARNHART: Would it not be wise under existing conditions for our tax commission to make an example of some of those fellows in Cleveland?

Mr. DOTY: Oh, yes; it will have a great effect. The fact is we have had some examples made, and that is all it has amounted to. A treasurer of our county, after he had been elected the second time, said that he was going to collect the personal property tax, and he got a great big moving van, and put a sign up "Tax Collector," and he gave it out that he was going to back that van up to the place where the property was, and he was going to collect that tax. He lasted about three days. I never did

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know what became of the moving van. I never heard that he collected any taxes. He gave it up, although he had given out that he was going to make a horrible example of somebody. The tax laws! We have had a whole lot of horrible examples made in different counties of the state. They have made them in other places than in Cleveland, and how much property was there on your tax duplicate after you got through making the horrible example? Not fifteen cents. The member from Lorain gave the figures from his county. They put on the duplicate two or three millions.

Mr. REDINGTON: They didn't get it on.

Mr. DOTY: But it was in their county. Take any county where they had a tax inquisitor. They had several thousands of back taxes, or several millions, that they said ought to be on the tax duplicate, and they proceeded to put it on there, so they said. But if they put it on there, the tax duplicate ought to have gone up, but the tax duplicate next year wasn't affected by it much. But just find a county in the state of Ohio where the tax duplicate was that much greater the next year. Not in one case can you do it. That is the horrible example. How does that happen? What is the explanation of it? They move to New York or Chicago or Jersey. They move out of the county. If they don't move, they resort to all sorts of subterfuges, and you can't get that property. If you attack them too closely people with movable property just move. They take their property with them. Horrible examples! We have horrible examples by the score. As the member from Preble points out, there is less money on the tax duplicate in the county of Cuyahoga than in some other counties in the state where we know they haven't anything like the money that Cleveland has.

Mr. EBY: Do you know that by the untiring efforts of the state tax commission they had less in 1911 than in 1910?

Mr. DOTY: I didn't know that. I am not complaining of the tax commission. They are doing good work. So far as I have been able to observe they are doing their duty to the best of their ability, and with courage, and it takes courage to run the job they are running. But the thing I criticise them for is that they stand for this uniform rule that they know can never be carried out.

Mr. WATSON: Do you agree with us that the tax commission has been doing noble work along this line, and that they have been making some improvements, and if that is so, why not let them try this matter out to a conclusion, and let them finish it?

Mr. DOTY: I have no objection to that. Do you agree to that?

Mr. WATSON: Under the uniform rule.

Mr. DOTY: Well, why not let us postpone the whole matter and let them work it out?

Mr. WATSON: Oh, no.

Mr. DOTY: You won't agree at all. You just want your way.

Mr. WATSON: This minority report is in harmony with their work.

Mr. DOTY: I will tell you what I am willing to do as a sort of compromise. The member from Medina [Mr. Woods] asked us why we didn't take the recommendation of the chairman of the tax commission. Will you take that?

Mr. WATSON: I have not read it.

Mr. DOTY: Do you not think they know what is in line with their program?

Mr. WATSON: Mr. Doty is in line with Allan Ripley Foote —

Mr. DOTY: It is always Allan Ripley Foote. Allan Ripley Foote is against the majority report, and so are you. Don't say you don't know he is. There is no use denying that.

Mr. WATSON. He has never made any report to me.

Mr. DOTY: Nor to me, but I report it to you, and I know what I am talking about. If you will take the direct recommendation of the state tax commission and frame that in a proposal and send it back to the people, all well and good.

Mr. WATSON: What part of the minority report is not in harmony with that recommendation?

Mr. DOTY: The tax rate.

Mr. WATSON: Do you propose to put Judge Ditty's speech in?

Mr. DOTY: I am talking about the specific recommendation. Of course I do not propose to enact that speech. It was the ablest speech ever made in furtherance of an erroneous scheme of taxation.

Mr. WATSON: You said you were in harmony with his speech before the Taxation committee?

Mr. DOTY: Let us take Judge Ditty's specific recommendations if we are in favor of the state tax commission program. Let us give them what they ask, and let them go on for four years and work it out. There is no sleeper in this. You can understand it in half an hour.

Mr. KEHOE: You said a while ago that you thought the tax commission was the best thing that ever happened. How would a subcommission, operating with the state commission in the different counties, improve its work?

Mr. DOTY: I do think that our scheme of assessing real property could be very much improved upon by having one assessor for each county, not a number of assessors, but one assessor, one man.

Mr. KEHOE: One chief in each county?

Mr. DOTY: Let him carry on the work under a plan that can be worked out. It is being done in other places where you get better uniformity in the valuation of lands and buildings. I think that would be a great improvement. I maintain this, that the assessing divisions ought to be coextensive with the larger tax divisions. Take my county, and we have twenty-six assessing divisions in Cuyahoga, and that means there are twenty-six judgments on the valuation of lands and buildings, each one separate from the other, and after those twenty-six separate judgments have operated, and have put their opinions on paper, there are necessarily inequalities of valuation in various parts of the county. That could be largely obviated by a single-head assessing division, the assessing division being co-extensive with the taxing division, and one man at the head, with a proper amount of authority to assess, could do quite a job of assessing so far as land and buildings are concerned. It could not help much on the other.

Mr. HALFHILL: Referring to the question asked you by the member from Brown county [Mr. KEHOE],

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how would you have that tax commissioner for the county elected?

Mr. DOTY: My notion is he ought to be selected by the tax commission. That is the best way to get the most efficient service. Of course, I recognize the fact that the political aspect might interfere with that program, but in my judgment that is the best way to do it.

Mr. HALFHILL: Then you would govern the whole arrangement from Columbus?

Mr. DOTY: Yes; I would standardize the method, and that can only be done from a central authority. Of course the question of exercising judgment ought not to be governed from here, and cannot be. You cannot get up a scheme to govern a man's judgment, but you can get up a plan by which various men will exercise their judgment substantially in the same way, using substantially the same standards of comparison. But the matter of valuing the thing is a mental process. It cannot be done by law. It cannot be done by any central board or any other kind of body. It must be exercised by the man in charge of the work. That is mental work and you can get up a system that will assist him in using his mental faculties in substantially the same way and along the same line as others. He can use the same yardstick with which to do his measuring.

Mr. HALFHILL: Would not you be getting the government a good way away from the people by putting this in charge of a commission appointed by the governor?

Mr. DOTY: It is according to what you call government. Of course, I, myself, believe in centralized authority, and centralized responsibility. Now there can be no centralization so far as mental operations are concerned. There is no way to make a man think in Cuyahoga and Montgomery and Highland the same way.

Mr. HALFHILL: Why have not the people the right to elect their own assessor?

Mr. DOTY: Suppose they have a right to elect their own assessor. If you want to produce inefficient results, let them elect their own assessor. Of course, that officer should not be selected as you would select a lock-tender or a hay-wheigher or a policeman.

Mr. HALFHILL: Is not this centralization, getting government away from the people, a little dangerous thing?

Mr. DOTY: I don't think so.

Mr. LAMPSON: Is it possible that we cannot after all trust the people?

Mr. MILLER, of Crawford: Do we understand that we now have twenty-two progressives?

Mr. DOTY: I didn't know that you had gone back on us yet.

Mr. MILLER, of Crawford: I referred to you.

Mr. DOTY: Oh, no; I apprehend I missed Brother Halfhill's question. Probably the joke is on me. I didn't understand it, but I will ask him about it when I get through.

Mr. WATSON: Is this safeguarded?

Mr. DOTY: Yes; for your benefit I will say it is. You are in the safeguarding class, the jigger class.

Mr. LAMPSON: Is there anything about this doctrine that is squarely "de novo"?

Mr. DOTY: I must make a point of order on that, because it is clearly out of order to raise the "de novo"

point when the member from Highland [Mr. BROWN] is not here.

Mr. MOORE: Going back to this matter of the chief assessor in the county, is not that function now performed by the county auditors, who call in the various assessors and instruct them in the manner referred to by the member from Brown county?

Mr. DOTY: You are referring to land and building assessors?

Mr. MOORE: Yes.

Mr. DOTY: No; that is not just exactly what is done. He does call them in, but when they get away they are a law unto themselves. He has no control over them. He ought to have, but he has not.

Mr. MOORE: He may not have the legal authority, but he controls them.

Mr. DOTY: He does if he is a political boss, but he does not legally.

Mr. ULMER: The legislature gave the governor power to appoint the tax commission?

Mr. DOTY: I think so.

Mr. ULMER: Now the tax commission is working?

Mr. DOTY: Yes.

Mr. ULMER: And would it not be wise to let the whole tax question rest, leaving it to the legislature, and let us wait until that commission has worked out a system by experience? Would not that be much better, to leave the whole thing to the legislature after they get the reports and recommendations from the commission?

Mr. DOTY: There is force in that. I thought Brother Watson had almost agreed to that, but he went back on me.

Mr. STOKES: Will the classification of property tend to make the judgment of the assessors any better than under the uniform rule?

Mr. DOTY: No, but it would tend to make the owner of the property a little more nearly honest.

Mr. DWYER: My experience with these assessors is that the most of them are broken down politicians. They are selected by their wards out of sympathy. Half of them are selected for political sympathy, and they are entirely incompetent to do the work they are selected to do. I know that has been the way with us. I know one man who was selected as the decennial assessor who had a hat store. That is the kind of man selected to value real estate and buildings, and how could we have a correct assessment?

Mr. DOTY: My observation on the competency of the assessors has been somewhat wide. I have investigated the assessments in fifty American cities in the last few years, and I find this to be the fact: That while there is some incompetence on the part of the assessors occasionally, and some slight dishonesty, but not much, the great trouble is with your system, by which they may express their judgment. Take the man you speak of, who sold hats. He might have been able to make a good assessment. The kind of men who are elected in cities need not necessarily be what you call land-value experts. It is not a question of knowing what the value is, the thing is to know how to find out what the value is. The people in your city who know more about the value of the land than anybody else are the people there who use the land. The people in this city know more about the value of the land here than any five men living elsewhere. The

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assessors you had last time—I met them two years ago—were good ordinary, average citizens. If those men had had a proper system by which they could express their judgment and get the people to express their judgment, they could have made a first-class assessment of that city, notwithstanding they were not real estate “experts.” The real estate expert is really not necessary for a good assessment, and I don’t say this as casting any reflection on real estate men; but men dealing in real estate are really not the best judges on the value of real estate usually. The best judges of the value of real estate in cities are the merchants and the men who will say how much they will pay to get this or that place to do business in. They are the best judges of land values in the cities. The trouble of expressing your idea of the value of land in cities is because at present in most cities you have not any unit of quantity upon which to express your judgment. In the country that is not true. In the country we have always had a unit of quantity upon which to express our judgment of value, namely, the acre. Every man in the country knows what is meant by an acre. If you say there are ten acres, he takes a survey in his mind of what that means, but when you come to say that land is worth so much a foot in the city you are then attempting to use a unit of quantity that does not mean anything. A foot on High street is worth more than a foot some place else. It has depth. It may be irregular. It may go to an alley; it may not. It may be far from a corner or on a corner, and all those things must be taken into consideration, and must be known before you can express your opinion of value. There is no unit of quantity. The way to do that is to assume a foot wide in the middle of the square with an agreed depth, say one hundred feet, and with no alley. Then you have a unit that is the same everywhere. That is a unit of quantity on which you can express yourselves, and then you can express your opinion of the value of the street. We really do not value land in a city, but we value streets. I only give you a little of this to show you that there is a way possible to standardize your city land values, but I defy any man in the room to show me a method of standardizing a unit of quality, or a standardization for the consideration of the value of personal property of any kind except money.

Mr. HALFHILL: Did you as chairman of the committee on Taxation, or did your committee have brought to its attention, any constitutional provision in any state which attempts to fix a limit of tax rate, or a limit beyond which no tax can be levied for counties, cities and villages, school districts, etc.?

Mr. DOTY: I do not recall any, and I think not.

Mr. HALFHILL: In section 3 of this minority report there is a provision that seems to correspond with section 11 of the majority report, as I understand it. Now, I would like to know just what those two sections mean, whether there is any difference?

Mr. DOTY: I am glad you called my attention to that. I forgot it. Of course, it is necessary under the majority report to do away with the state tax levy. That has to be done to make this proposal workable. Why they put it in the minority report, I do not know, except to have as much of the majority report in the minority report as possible. There is this difference in the two. If I am wrong Mr. Watson will correct me.

Mr. WATSON: Will the gentleman yield for a motion for recess?

DELEGATES: No.

Mr. DOTY: The only difference that I know of is in the manner of providing the common school fund and the university fund. Years ago it was insisted that the universities should come to the legislature, and there on bended knee each year beg for money for bread and butter. That is what it amounted to. That is, they had to come before the finance committee of the house and senate, and lay before them a long list of things they needed for tuition and repairs, and a whole rigmarole of things that were needed to keep up the university and we usually called those bread-and-butter bills. There was jealousy between three or four institutions that resulted in a good deal of pulling and hauling. Sometimes there would things happen here that verged almost on scandal. At any rate it was a very distressing situation, both for the schools themselves and for the members of the legislature. What we were really doing was to employ a president of the university to run the university and then compelling him to come up and beg money out of us to pay his salary. About fifteen years ago it was decided by the general assembly, and this policy has been maintained until today, that the tax levy should be placed on all the property of the state for university purposes and whatever money that produced should be divided between the four institutions upon an agreed basis, which has never been changed. That put the universities in a position of not having to come up and beg for bread and butter every year, and that has been the situation for fifteen years. Now, of course, in the wording of the proposals, when it was determined to put up a proposition that necessarily did away with the levy for state purposes, it was also necessary to do away with the state levy for university purposes, and then one of two things will be necessary. Either the universities would be compelled to go back to the old program of begging for their bread and butter, or we must provide for them in a way that they will at least have as much as they have been having for the last few years, and the latter was agreed upon by the subcommittee of the majority, and that is why this provision was put in lines 9, 10, 11 and 12.

Now \$750,000 is a little higher. I think Mr. Colton was in error last night about \$625,000, but it was distinctly stated that this was considerably higher, but if this is too high it can be easily modified in the Convention if they adopt the majority report. This was put in with the idea that we might call attention to it, and it could be fixed to satisfy the majority of the delegates. I think that is the only place where there is a difference in the two proposals upon doing away with the state levy. That is true, Mr. Colton, is it not?

Mr. COLTON: I think so.

Mr. DOTY: Mr. Colton has dwelt upon the advisability of doing away with the state levy, and as I agree with him in that particular, I do not need to go into it further.

Mr. HALFHILL: How about the school fund?

Mr. DOTY: The school fund has been paying \$2 per capita for the last few years for each enumerated youth. That is paid to the counties and by the counties paid back to the school district, and if we do away with the state levy we would do away with the levy that pro-

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vides that money out of which that \$2 is paid, and we provide for that as well as the university fund.

Mr. KNIGHT: The state school fund has for years been receiving a specific fraction of a mill upon the tax duplicate out of which this distribution is made.

Mr. DOTY: That is true. There is a direct levy for that purpose, and has been for more than fifty years. For twenty or thirty years it was \$1.50 and for twenty years more it was \$2, and we put that as low as it has been for the last twenty years. I think those two items are all.

Mr. HALFHILL: I want to ask a question, and I shall have to read from the report to get the question. Section 3 provides: "Every assessment upon the counties of the state under the preceding section, shall be apportioned among such counties ratably in proportion to the aggregate amount expended during the preceding year in each county, by the county and all political subdivisions thereof." What does that mean? That same thing practically is in section 11 of the minority report.

Mr. DOTY: The provisions of the minority report are based upon the possibility that the legislature may do away with the state levy, but in the majority report the state levy is done away with. Section 3 of the majority report provides for a method of getting enough money to run the state government after you have levied all possible under the excise and other taxes provided in section 4. The state is allowed first to get all the money it can—I don't find it just this moment—but we are levying all sorts of taxes. We will raise about half the money on corporations by way of excise taxes, and that is to be continued, and the difference between that and what the state needs will be charged ratably against the counties, and each county will be required to pay enough to the

state treasurer ratably in proportion to that which the county expended in the aggregate the preceding year.

Mr. HALFHILL: It doesn't seem plain to me.

Mr. DOTY: First, we provide that the state may raise a certain amount of the necessary money by excise taxes, and assume that is \$2,000,000. Now, assume that the state requires \$4,000,000 to run its business.

Mr. HALFHILL: Yes.

Mr. DOTY: It has raised \$2,000,000 by excise taxes, and it needs \$2,000,000 more. That is charged against the counties, and the statements go to the counties, and the \$2,000,000 is assessed against the counties ratably in proportion to what each one used for its own expenditures the year before.

Mr. HALFHILL: Of its own funds?

Mr. DOTY: No, sir.

Mr. HALFHILL: Well, that is not plain to me.

Mr. DOTY: Perhaps there may be a word or two necessary to make it clear. What it means is in the way of expenditures in the county of county funds.

Mr. HOSKINS: Would that cover an expenditure by a county to build a court house?

Mr. DOTY: I think not, but under the provisions of that proposal it would be up to the legislature to provide what should or should not be used.

Indefinite leave of absence was granted to Mr. Stalter.

Leave of absence for the remainder of the week was granted to Mr. Smith, of Hamilton.

Leave of absence for Thursday was granted to Mr. Tallman.

Mr. Harris, of Hamilton, moved to recess until 9 o'clock tomorrow morning.

The motion was carried and the Convention recessed.

SIXTY-SEVENTH DAY

MORNING SESSION.

(LEGISLATIVE DAY OF WEDNESDAY)

THURSDAY, May 2, 1912.

The Convention met pursuant to recess, was called to order by the vice president and consideration of Proposal No. 170 was resumed.

Mr. Doty, having yielded the floor for a motion to recess, was recognized.

Mr. DOTY: I had practically completed my remarks. I desire, however, to give notice at this time that whenever the question of the substitution of the minority report for the majority report is up that I shall ask for a division of the question. If you will look at the minority report you will find there are several questions involved. I desire some sort of a division. I will state that I will file with the president of the Convention my motion of what the division should be and the division will be for the president to make. There are some parts of the minority report that I desire a yea and nay vote on and in some parts there would be a great deal. There is one idea that I do want to call attention to. The member from Portage in his remarks made a statement that the savings bank deposits were not usually an investment. There is no more widely used form of investment than savings bank deposits. If savings bank deposits were what he said they are our savings bank deposits would fluctuate up and down. Some days there would be nothing and some days there would be a great deal. He tried to create the impression that savings bank deposits were used as a temporary method of taking care of money—a most preposterous notion. I do not think the member from Portage upon consideration would agree that what he said is actually the situation.

Now with reference to the Wisconsin income tax proposition. The member from Portage referred to the income tax provision of the Wisconsin law and told how well it worked, and he spoke truly, but he did not tell you—I don't say he omitted it purposely—but he didn't tell you what the provision of the Wisconsin constitution as to the tax is. If the member from Portage and the friends of the minority report will agree to submit to the people of Ohio the Wisconsin tax provision, which will include inheritance tax as well as income tax, I shall be glad to join them and then we will be submitting to the people of the state of Ohio something that has been tried out and, according to the member from Portage, has worked well. I will read it:

The rule of taxation shall be uniform and taxes shall be levied upon such property as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

There is your Wisconsin law and there is a plan that has some foundation in political economy and ordinary common sense, and if the member from Portage desires to put up to the people of Ohio a provision that will carry out his idea in a scientific manner there is a provi-

sion on which I will join him in submitting it to the people.

Mr. HALFHILL: What you have read there is the fundamental law?

Mr. DOTY: The constitutional section relating to taxation.

Mr. COLTON: I do not believe you quote correctly what I said. I didn't say that the Wisconsin tax law worked well.

Mr. DOTY: You said the inheritance part had worked well and the income tax.

Mr. COLTON: No; it is an experiment in Wisconsin yet. I did not say it had worked well.

Mr. DOTY: Then I misunderstood you.

Mr. COLTON: The income tax is an experiment.

Mr. DOTY: How long has it been in force?

Mr. COLTON: One year.

Mr. DOTY: I misunderstood you then.

Mr. COLTON: I said we ought to watch carefully the experiment that was being made by Wisconsin.

Mr. DOTY: You want to submit an income and an inheritance tax to the people of the state of Ohio this year?

Mr. COLTON: Yes.

Mr. DOTY: Would you be willing to submit the whole of the Wisconsin program, which includes what we contend for, and the uniform rule of taxation?

Mr. COLTON: I think not.

Mr. DOTY: I thought, not. Now, as to anything I have to say on the main question I am through, but I want to make this statement and I want to make it because I agree to it: At the beginning of this debate Mr. Watson and Mr. Colton and I agreed upon a short program of debate without any idea that anything we agreed to would bind this Convention. We thought it advisable to have a couple of speeches on each side of the question and bring the matter to a vote. Since that agreement I have heard several members say they desired to speak and therefore I am not disposed to make a motion which would bring a vote upon this matter at this time. I only give that as my reason for not making the motion. I do want the vice president, however, to take notice of my desire for a division when this matter comes to a vote.

Mr. LAMPSON: I would like to say a word in reply to the request for a division.

The VICE PRESIDENT: Do you want to ask a question?

Mr. LAMPSON: I want to give notice that I shall object to that division as not in order when the matter comes up. The question is, "Shall the minority report be substituted for the majority" and that does not admit a division.

Mr. DOTY: We won't have a debate on that now.

The VICE PRESIDENT: Have you yielded the floor?

Mr. DOTY: Yes.

The VICE PRESIDENT: The member from Scioto has the floor.

Mr. HALFHILL: Will the member from Scioto yield to me on a question of privilege?

Mr. EVANS: Yes.

Mr. HALFHILL: When this question came up for

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discussion it was stated here that we were discussing the entire question as if upon second reading. Am I correct in that statement?

Mr. DOTY: So far as speeches are concerned.

Mr. HALFHILL: We are confronted with a resolution adopted a week ago fixing the time of recess, and it is very evident that unless we are cautious no proper discussion of this important question can take place, because as soon as some gentleman arises and moves the previous question it will shut off all who have not up to that time spoken from discussing these two reports. Now I submit that unless we are going to act like a parcel of school boys instead of a constitutional convention, that these questions that are before us for consideration must be discussed as business men would discuss any great, important measure or undertaking, even if they consume a week or two weeks of time. In so far as I am personally concerned I feel that I am here at a sacrifice to my own private affairs and no doubt many of you gentlemen are similarly situated. Here is the report of the minority of the committee on Taxation, and that minority report is full of vicious things, inimical to the interests of the people of Ohio of this generation and their children after them, and in my judgment there are things in the majority report that are bad and should not be adopted, and we should discuss both reports thoroughly. Now if you attempt to shut off debate by taking an early vote, you practically take the sense of the Convention on that vote; and then you are confronted with the further desire that we all have to get away from the Convention, and thus you will choose this minority report without a chance even to discuss the amendments that should be offered. It is well known to everybody that the Convention has been canvassed and a large majority will vote for the minority report when the vote is taken to adopt one or the other. Permit the Convention to vote with its eyes open, and let the various amendments that should be presented to that report be discussed. This is a question that affects us all for years to come, and affects us vitally in the campaign that follows the adjournment of the Convention. Now I urge upon the Convention to sit here and do its full duty and consider and discuss this great question of taxation and every feature of it, for it is of the most vital importance, affecting us all and our children after us. I thank the gentleman from Scioto [Mr. EVANS] for yielding the floor.

Mr. EVANS: Mr. President and Gentlemen of the Convention: It is very well known in this body that I am opposed to all constitutional rules on the subject of taxation. I think that the federal convention which met in May, 1787, was a model for all constitutional conventions and that when they framed the federal constitution they were under great pressure and they had the idea and they tried to live up to it that no legislation would go into the constitution, that it would be simply a framework of government. There was not even a bill of rights attached to it, but they aimed to make a framework of the government, and yet they committed the monumental folly of putting two constitutional rules in that wonderful instrument on the subject of taxation. One was to forbid that the federal government should ever levy any export tax. It was a member from South Carolina who advocated that, and he declared if that provision was not adopted the state would not go into

the Union, and he forced the measure through. As it stands now we pay the federal taxes on what we buy, and if that measure had been left out of the federal constitution it would make the foreigner pay our taxes on what we have to sell. I do not think export taxes ought to be so large as to interfere with trade, but it is essential that that provision of the federal constitution should be amended. If we could put an export tax on the things that we have to sell, foreigners would not only pay our taxes, but we would have statistics of everything that is exported and it would be invaluable to our people to have accurate statistics of exports. But the fathers of 1787 adopted another tax rule. They provided in the constitution that we could not have any direct tax except on the capitation plan, and now we are trying to get the sixteenth amendment through to get rid of that. It is the most unfortunate thing for any community that it is inhibited from any kind of taxation. Now when such great states as New York, Massachusetts, New Jersey and Pennsylvania can get along and be rich and powerful and prosperous with constitutions not having any constitutional rule on the subject of taxation, why can not we? This agitation to have a uniform rule began in 1825 and it was kept up until 1846, and in March, 1846, the most complete and best measure that could ever be drawn in favor of this uniform rule was presented in a bill by Mr. Alfred Kelly, at one time a prominent citizen of Cleveland and afterwards a very prominent citizen of Columbus. It was an ideal measure and the democrats of the legislature opposed it. That is a matter of no consequence, although it is a matter of history. They opposed it and the whigs were in favor of it, and it went through and was adopted and was a model measure, but it was remarkable while the law professed to tax everything it had wonderful exemptions, and in a year the legislature repealed all the liberal exemptions of the law.

In 1851 came the new constitution. In the five years between 1846 and 1851 the democrats veered around and adopted this old man of the sea and put it on our shoulders and we have had it to carry ever since. It was only nine years after that that the whole system was revolutionized by a decision of the supreme court. It held in *Baker vs. Cincinnati*, 11 O. S. 534, that the taxing power was contained in section 1 of article II of the constitution and section 2 article XII was only a limitation on it. Now what situation are we in? Under the taxing power, article II, section 1, we can levy any kind of taxes, but no matter what taxes we levy, we have to retain the ad valorem taxes named in section 2 of article XII of the constitution. It is held to be a limitation on the taxing power and we have to keep it up, and now it is proposed in both of these reports to keep this so-called uniform rule. When I read the majority report, so-called, I was much shocked, but the minority report produced a greater shock. I at once thought of this part of the Litany where the petition is, "Good Lord, deliver us." If we need to call on the good Lord for deliverance from anything, it is from these two reports. The first shock resulted from our reading that old chestnut derived from the Maryland constitution of 1876, declaring that a poll tax is grievous and oppressive and forbidding it. Considering that at least eighteen states in the Union have the poll tax, it is a gratuitous insult

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on the part of the state of Ohio by its Constitutional Convention to allege that a poll tax is grievous and oppressive, for it is not. Every man twenty-one years old ought to pay some tax to the state and a poll tax is as good as any. The fathers of 1802, the members of the constitutional convention, found this expression in the constitution of Maryland, and it has been the fashion of all constitutional conventions to go to some other old-time constitution and look it over and to follow it in a general way, and that is why we have it. Why do we copy some antiquated declaration from some old charter simply because we find it there?

This declaration against the poll tax was kept in the constitution of 1851 and kept in the constitution of 1873, and if the state had adopted the taxation provisions of that constitution, it would have been farther ahead than it is today. The committee on Taxation of the Fourth Constitutional Convention of the state of Ohio proposes to repeat this monumental folly and keep it in the fourth constitution. I will venture that this matter was never discussed in the committee, and if the whole committee were compelled to stand in line before this desk and explain why a poll tax is grievous or oppressive, or be shot at once on the floor of this Convention every one of them would have to be shot. It is beneath the dignity of this Convention to even mention a poll tax, let alone to declare it oppressive and grievous. The committee did not know it to be grievous and oppressive and it can not prove it. I am opposed to throwing an insult in the faces of our sister states. We have a poll tax in Ohio and have had ever since the state was organized. The three-dollar road tax and the dog tax are poll taxes, and, like the poor, we have had them with us always.

A constitutional rule on taxation is a curse wherever and whenever found. There is no such rule in Great Britain or in Canada, and there is no such rule in any European country. Why do we need it or require it in these United States?

The Taxation committee can not answer this question and will not. The majority report tries to hold the state down to certain kinds of taxation by naming them and thereby excluding others. The state must confine itself to succession taxes, franchise corporation taxes and assessments in counties. All other forms are excluded. No matter how desirable it may be found to give the state the uses of any other taxes, we can not do it. If counties are to be taxed ad valorem, then the assessment on them by this rule is not objectionable, but it ought not to be in the constitution. The state ought to be free to follow any plan and not be compelled to use any particular method.

It was all right to exempt state and municipal bonds, but the bonds of other states should have been exempted as well. The poison in the proposition is in section 4, that all property, including moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also real and personal property, shall be taxed at its true value in money.

That is the most abominable heresy and against political science and Ohio adopted it in 1851. I could enumerate, if I could take a moment to think, a number of states which have foolishly adopted article II of section 12 of our constitution.

I want to tell you about my mission to Oklahoma. It

seems I do not have much influence in this Convention on the subject of taxation, but I succeeded in getting the present liberal tax provisions in the constitution of Oklahoma. I presented them and they went through. That state can do what it chooses on taxation. When it came to Minnesota, I prepared a pamphlet and presented it, and Minnesota rid itself of the uniform rule in its constitution copied from ours. There was a gentleman, a Mr. Harris, a hardware dealer in Minneapolis, a public-spirited citizen who had five thousand copies of my pamphlet printed and distributed in that state and it rid itself by public vote of this old man of the sea. Let us get rid of him here, and if it should turn out that I do not have any influence in this Convention, I am thankful that I had some in Minnesota.

Now this section 2 of article XII is the greatest curse in the constitution of 1851, and of which the people tried to relieve themselves in 1857, 1875, 1883, 1889, 1891, 1893, 1903, 1905, and 1908. Nine different years the people of Ohio voted on a constitutional proposition in regard to taxation to get rid of this curse, and on account of that peculiar rule which required a majority of all the votes cast they failed. There have been \$463,000 spent for the adoption of constitutional amendments in this state, and of that amount at least \$200,000 have been spent to get rid of this proposition of the general property tax. Do we propose to stifle this question now? Do we propose, in our anxiety to get away, to let nobody be heard and to force a vote on it now? I say we ought not to do it. I say we should give it a full hearing. The people of this state have been trying for sixty-one years to find a uniform rule on taxation, and they have never found it, and yet both of these reports declare there is such a rule. I am just like Betsy Prig in her quarrel with Sairey Gamp. I don't believe there is any Mr. Harris or any such uniform rule, I don't believe there ever was one, and I can't understand why, when the state has been trying to find that uniform rule since 1825 and has never found it, that both reports try to keep up the fruitless quest.

It never did exist and never will exist. Then again, the true or real value of property can never be found, because value is a mere matter of opinion and varies as the opinion of different individuals varies. I want to say "aye" to what Mr. Doty said about the childish plans of having the ward assessors trying to value the property. I approve of all he said in that respect, though I do not approve of the single tax or any of his socialistic tendencies. Did it ever occur to you that there are a great many classes of property that have no element of value, that they, in fact, have no actual value? Just think of that. In Massachusetts and Tennessee they exempt household property to the extent of \$1,000. We exempt \$100, but every tax bearer takes the value of \$1,000 in property and calls it \$100, so we get along as well as Tennessee and Massachusetts. I want to tell you something that happened in Columbus day before yesterday. One of the ward assessors went around in a ward and found a poor negro and made him give a statement of all his household goods to be taxed on the same. He said, "I want to see your insurance policies on your goods and I am going to put you down for the amount of your insurance." If that is the policy of the tax assessors of this state, the people will repudiate it as soon as they get a chance.

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That is abominable, and yet it happened in this city of Columbus not more than forty-eight hours ago.

I fully agree with the gentleman who preceded me, that farming implements should not be taxed. I doubt if any tools should be taxed, and I do not think household goods or furniture should be taxed. They ought not to be valued for taxation purposes at all, but that is a matter of detail.

We have the most puerile system of assessing property that could be devised. We elect assessors biennially. We used to elect them annually and the least qualified men of the county and the least qualified men in the townships were usually elected, and the cities in the class where I live paid them \$3.00 a day.

Mr. WINN: I rise to a point of order.

The VICE PRESIDENT: State your point.

Mr. WINN: I understand the question before the Convention is the submission of the minority for the majority report.

The VICE PRESIDENT: That is true.

Mr. WINN: Is it in order for a speaker to speak against two reports?

Mr. PECK: Why not?

The VICE PRESIDENT: The delegate has that privilege and he is in order.

Mr. WINN: It certainly does not seem to me that is good practice.

Mr. EVANS: These assessors do not do anything but distribute blanks and gather them up, and for that they are paid three dollars a day. In some cities they are paid more and that is all they have to do. Now I say it would pay the state of Ohio to employ Mr. Doty's appraisal company to value all the property in the state. Let him put forty-five hundred men to work in the state, give them standards and let them appraise all the property and they would get nearer the true value than in any other way. But in ten years such annual appraisal would benefit the state of Ohio. Mr. Doty with his appraisal company would do the work for ten years and would own us all. We can not afford to do that. This appraisal is all haphazard. You say the tax shall only be one per cent, or one and two-tenths, or one and five-tenths and you say because these values are assessed at that rate we have a uniform rule. You have not anything of the kind. You have the most unjust system of taxation which could be devised. You take a saloon that will produce one hundred per cent profit every year. Say it is valued for taxation at \$5,000 and you assess it at one per cent. Take a farm that is valued for taxes at \$5,000 and it produces ten per cent per year revenue. Now what happens? The farmer pays ten times more taxes than the saloon keeper. I will tell you what we are doing. We are doing just as they did in the time of the judges in the Scripture. You remember how it is said that every man did what ever was right in his own eyes, and that is just exactly what we are doing on the subject of taxation. Every man is doing just what he thinks is right and the state of Ohio can not afford to keep up a system that is sure to give an unjust appraisement. The system proposed makes every man his own tax assessor.

What does that bring us to but that we must have classification? I do not see why that is such a bugbear. We have it in Ohio now. Take up any tax blank

and read it and you will find eighteen different subjects. That is classification. Classification is an economic question, and if you adopt either one of these reports you will still have to have classification, although it will be lame, halt and blind. It won't be the true thing.

Now you must tax every object with reference to itself. You must take every kind of property as you find it. I am in favor of all classes of property being taxed in some manner. I don't agree to single tax at all, but even if you have single tax and practically we have it now, for nearly all our taxes are raised on real estate—but don't you know it distributes itself throughout the whole community? It is the tendency of taxes to do that, and we have it now, and yet a great many men raise their hands in holy horror about single tax when we are suffering from it today. I do not want any more of it. I want to preserve the principle that we can place taxes on other property than land, if we see fit to do so. This so-called uniform rule produces injustice and nothing else. I would like to know how many of these forty-five hundred personal property assessors in the state appraising property consider the elements of its productive quality? I do not suppose one, and yet when you look at it as an economic question, that is one of the principal things which figure in the valuation of any property.

I will give you an illustration. This case happened in my town. A gentleman had property valued at \$60,000 and he had to have \$30,000 right quick. His property was clear and a friend of his had \$30,000 in United States bonds. He said to him, "You sell your bonds and give me the money and take a mortgage on my \$60,000 of property for \$30,000." This was the day preceding the second Monday in April. There was just one subject of taxation, and that was land, before that transaction was had. The landowner paid the tax on \$60,000 of property and kept paying it year after year. The bonds were sold and were turned into money and were deposited in bank, and what occurred? The man who owned the property had to pay his tax on it just as though it were clear. The man who sold the bonds and gave the money had to pay taxes on the mortgage and then the borrower had to pay taxes on the money in bank. All at once there were three subjects of taxation just because of that transaction, which never increased values in any way. The state had three subjects of taxation where it had but one before. It had the land, it had the money, it had the mortgage. I say that is dishonest on the part of the state of Ohio, to be guilty of a practice of that kind. I am opposed to fining men of enterprise and energy, who are willing to go into debt for the purpose of making some money. I am opposed to driving out of this state such enterprising citizens of the state as Mr. Beatty, of Wood, and Mr. Weybrecht, of Stark. They are the kind of men who make the country and the state.

We can not live up to our own rule. You remember St. Paul said that circumcision was a yoke that the fathers could not bear. And what have we done? I admit that there are \$600,000,000 of credits in Ohio. In 1889 the legislature passed an innocent looking little law which said that the building and loan associations should not pay taxes on their mortgages, that they should be exempt and the people should pay on their stocks in the associations. At one stroke of the pen, we exempted \$154,000,000 in mortgages from taxation. Go put your

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money in building and loan association mortgages. You do not have to pay taxes on them. Is that right to the remainder of the citizens of the state of Ohio owning the balance of the \$600,000,000 in credits? And yet there is no man who ever questioned that law. I think it would be declared unconstitutional if it were questioned, but no man has ever done it, and when they had the tax inquisitor law in force any tax inquisitor could have made about \$20,000,000 by putting those building association mortgages back on the duplicate. If that had been done every building and loan association in the state of Ohio would have had to shut up its doors, and we are of the opinion, all of us, that they are very valuable institutions. Now both the minority report and the majority report recommend the continuance of this practice. Let us quit being hypocrites. Let us be honest and sincere. Out West, if you were in the company of a dozen or so men who came from Eastern states and you would raise this question, "What made you leave the East and come out here?" they would all go to shooting. That is a subject tabooed out there. Let us have an honest proposition. A system of taxation is like a great locomotive. It has to be under control every minute. The engineer and firemen have to be in charge right along and it has to go to the shops every two or three days and be looked over. That is the same way with taxation. You should leave it to the legislature, where it can be attended to and looked after every minute. A single person with \$50,000 in credits in this state does not have to pay any taxes. If you do not believe that I can convince you, but I will not do it from this stand. If any gentleman thinks I can not prove it and will come to me privately, I will show him how it can be done, and no married person with \$100,000 in credits need pay any taxes on the same. He can get rid of taxes on his credits all right. I can explain that too, privately, but will not publicly.

Both of these proposals undertake to continue that state of affairs. I say we want to put an end to it, we want to be honest with ourselves and with the state, and we want to abolish the rule that permits double and triple taxation, and we don't want to penalize the people of the state of Ohio because they go in debt. One of the best men I ever knew in my life had \$5,000 in income-paying railroad stocks and he didn't want to pay any taxes on it. From the revenue he got he didn't think he ought to. He was a good Christian too. If he is not in Heaven nobody is there. Now what did he do? His son was not worth a penny, was not worth the powder it would take to blow him up, and he gave a note to his son for \$5,000, and deducted that from his return of the stocks and that let him escape taxes on the stocks.

This whole system we have is a farce from start to finish. I say that the attempt to continue the ad valorem system of taxation in the state of Ohio is the height of human folly, and when the other states of this Union which copied from us section 2 of article XII are seeking to get rid of it, why do we continue it? When some of them have gotten rid of it why do we propose to perpetuate it? I could talk much longer, but I do not think I should. I have prepared this substitute for the minority report, and at the conclusion of my remarks I desire to

offer it and move its adoption. I will ask the secretary whether it is now in order?

Mr. DOTY: A point of order. At this stage of the proceedings —

Mr. EVANS: I thought I had better do it now though.

Mr. DOTY: My point is that it is not in order at this time.

The VICE PRESIDENT: The presiding officer will have to decide that at this time the amendment is not in order.

Mr. EVANS: I want the privilege then of introducing it at some point in the proceedings of the Convention when it is in order.

Mr. LAMPSON: There is a considerable feeling in this Convention that we are proceeding in a way not to get anywhere. I do not think anybody wants to cut off debate, but there is considerable feeling that we ought to dispose of this minority report and then the question would be, Shall the majority report as amended—if it is amended—be agreed to? That would be open to amendment and debate. Then the very thing the gentleman from Scioto attempts to do might be done. It would then be in order. We are a stage or two in advance really of the point where we usually discuss at length proposals and amendments. We usually wait until the proposal is engrossed and placed upon the calendar for second reading. I do not like to cut anybody out and I am not going to do it, but there is a pretty general demand to proceed until we can come to a point where amendments are in order. In order to test the sense of the Convention, and not desiring at all to cut anybody out from discussion, I demand the previous question upon the pending question only, to-wit, the substitution of the minority report for the majority report, with the understanding that if it shall be substituted, then there will be ample opportunity for debate and amendments.

Mr. DOTY: I rise to renew my demand for a division of the question and the yeas and nays on a certain portion of the report.

Mr. LAMPSON: I make the point that the question is simply upon the substitution of the minority report for the majority report and that that is indivisible.

The VICE PRESIDENT: The matter before the Convention is the previous question upon the minority report only.

Mr. DOTY: I made this demand about half an hour ago, and I am simply renewing it now before the previous question is put, as I have a right to do, because I could not do it afterwards.

Mr. LAMPSON: The point of division has not been reached yet.

The VICE PRESIDENT: Let the presiding officer have a chance to decide—

Mr. DOTY: Do I understand that the decision as to the divisibility may be made after the previous question has been ordered?

The VICE PRESIDENT: Certainly.

Mr. DOTY: All right.

The VICE PRESIDENT: The question before the Convention is "Shall debate be closed on the substitution of the minority report for the majority report?" The understanding is, if it carries, that it leaves open the ques-

Taxation.

tion of the adoption of the majority report and amendments will be in order thereto.

The main question was ordered.

The VICE PRESIDENT: The motion is unanimously carried, and now the vote must go upon the substitution of the minority report for the majority report. Now, with reference to the matter brought up by the member from Cuyahoga [Mr. Doty], I call attention to Rule 24:

Any member may call for a division of the question, and the decision of the president, as to the divisibility, shall be subject to appeal, as in questions of order.

Any member may call for a division of the question, which at this time is a substitution of the minority report for the majority report; but it is perfectly apparent that the Convention can not amend the minority report by putting something into the report—that is to say, we are not supposed to put into the mouths of the minority of the committee something they did not recommend, but we can reject a part, if we choose, of the minority report or accept all, as we may desire. There may be part of the report we desire to reject or accept and the only way of doing it is by division.

Mr. RILEY: Could not that be accomplished just as easily by a motion to strike out?

Mr. DOTY: There are various ways, but this is one way.

The VICE PRESIDENT: The chair will make the ruling and give reasons for the ruling first. In ordinary parliamentary practice a division of a question is in the form of an amendment, which would not be in order after the previous question had been called and ordered; but this is different, in that it doesn't demand a vote, but any member can call for it and then it must be left to the decision of the chair. The chair will make the decision and is sorry to make it that way, but I see no other way to do it here in my own mind. This question is on the substitution of one report for another—that is, it is the adoption of the minority report for the majority report, which will not admit of division because after it is adopted or rejected you can reach the same thing by amending it. Therefore, I will decide the division is out of order.

Mr. DOTY: I demand the yeas and nays on the question.

The VICE PRESIDENT: On the substitution of the minority report?

Mr. DOTY: Yes.

Mr. THOMAS: After one or the other of these reports is adopted can we carry a motion to proceed immediately to the second reading?

The president here took the chair.

Mr. DOTY: No.

The PRESIDENT: The yeas and nays have been demanded on the substitution of the minority report for the majority report.

The yeas and nays were taken, and resulted—yeas 74, nays 36, as follows:

Those who voted in the affirmative are:

Anderson,	Brown, Pike,	DeFrees,
Antrim,	Campbell,	Donahey,
Baum,	Cassidy,	Dunlap,
Beatty, Morrow	Cody,	Earnhart,
Beatty, Wood,	Collett,	Eby,
Beyer,	Colton,	Elson,
Brattain,	Cunningham,	Farnsworth,

Fess,	Longstreth,	Riley,
Fluke,	Ludey,	Rockel,
Fox,	Marshall,	Shaw,
Harbarger,	Mauck,	Solether,
Harris, Ashtabula	McClelland,	Stalter,
Henderson,	Miller, Crawford,	Stevens,
Holtz,	Miller, Fairfield,	Stewart,
Hursh,	Miller, Ottawa,	Stokes,
Johnson, Madison,	Moore,	Tannehill,
Jones,	Norris,	Tetlow,
Kehoe,	Nye,	Thomas,
Keller,	Okey,	Wagner,
Kerr,	Partington,	Walker,
Kilpatrick,	Peters,	Watson,
Kramer,	Pettit,	Winn,
Kunkel,	Pierce,	Wise,
Lambert,	Price,	Woods.
Lampson,	Read,	

Those who voted in the negative are:

Bowdle,	Harris, Hamilton,	Read,
Cordes,	Harter, Stark,	Redington,
Crosser,	Hoffman,	Roehm,
Davio,	Hoskins,	Rorick,
Doty,	Johnson, Williams,	Shaffer,
Evans,	King,	Smith, Geauga,
Fackler,	Knight,	Stamm,
Farrell,	Leete,	Stilwell,
FitzSimons,	Leslie,	Taggart,
Hahn,	Malin,	Ulmer,
Halenkamp,	Matthews,	Weybrecht,
Halfhill,	Peck,	Mr. President.

So the minority report was substituted for the majority report.

The PRESIDENT: The question now is upon agreeing to the report of the committee as amended.

Mr. ANDERSON: I offer an amendment.

Mr. DOTY: A point of order, the same point of order that was raised when Captain Evans offered his amendment. The question here is on agreeing to the report of the committee. That has not been decided yet. We have substituted the minority report for the majority report and the report is still pending.

Mr. LAMPSON: I think this presents a different question from the one presented a few moments ago, when the question was simply upon the substitution of the minority report for the majority report. The question is upon adopting the majority report as made by the adoption of the minority report for the majority report. That majority report as now before us is open to amendment and full discussion.

Mr. DOTY: There is no question about having full discussion, but we are in the same parliamentary stage as far as ability to amend the report as before. I never heard of such a thing as putting into the mouths of the committee something they did not sign.

Mr. KNIGHT: Will the gentleman from Cuyahoga get us to a point where we can amend this report?

Mr. DOTY: Just adopt the report—agree to the report.

Mr. LAMPSON: You mean then it would be open to amendment on the question of engrossment?

Mr. DOTY: Yes, and we are not there yet.

The report was agreed to.

The PRESIDENT: The question now is on engrossment.

Mr. LAMPSON: And under our understanding there should be opportunity for debate and amendment?

The PRESIDENT: The chair so understands.

Taxation—Relative to Final Adjournment.

Mr. ANDERSON: I offer an amendment.
The amendment was read as follows:

Strike out all after the word "proposal" and in lieu thereof insert the following:

To submit an amendment to article XII, sections 1, 2, and 6 of the constitution, and to add thereto sections to be known as sections 7 and 8.—
Relative to taxation.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value. A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to income derived from investments not directly taxed in this state, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

Mr. DOTY: I offer an amendment.
The amendment was read as follows:

Strike out sections 2, 3, 6 and 7 and insert in lieu of section 2 the following:

"All real and personal property, shall be taxed by a uniform rule according to its true value in money; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding two hundred dollars for each individual, may, by general laws, be exempted from taxation."

Re-number sections in accordance therewith.

The delegate from Cuyahoga [Mr. THOMAS] here took the chair as president pro tem.

Mr. ANDERSON: I want to give a brief word of explanation. If the substitute amendment be adopted the laws of taxation will remain the same they are now with the exception that bonds will be taxed. In addition to that it will give us income and inheritance taxes. That is the only changes it will make.

Mr. KING: I would like to inquire of the gentleman, and if he can not answer it, from anybody else responsible for either report, why it is necessary to preserve section 6. I notice both reports carefully preserve section 6 and the gentleman from Mahoning in his amendment continues that section also. I can not understand why section 6 is not entirely covered by the provision in article VIII, which expressly limits the amount of indebtedness which the state may incur and the purposes for which it shall be expended except as we may amend it by the proposal submitted for good roads.

Mr. ANDERSON: The only purpose we had in mind—because whatever credit is due for the drawing of this amendment should be given to Mr. Cassidy—was to preserve the good roads propositions already adopted.

Mr. KING: It would not interfere with the good roads proposition because the good roads proposition is excepted from the provision of section 6.

Mr. ANDERSON: I am aware of that, but to make doubly sure we put it in here.

Mr. LAMPSON: I rise to a question of privilege of the Convention and ask leave to make a statement concerning adjournment.

Unanimous consent was given.

Mr. LAMPSON: Upon consultation with quite a good many delegates, especially consultation with the chairman and other members of the committee on Arrangement and Phraseology, we are of the opinion that if this Convention goes on with its work today and some time tomorrow and adjourns at two o'clock on Monday and then comes back and goes on with its work until Thursday, which I believe is the day set to go to Chillicothe, that will leave us Thursday at Chillicothe and the Convention should then adjourn at Chillicothe over and until next Tuesday. In the meantime the committee on Arrangement and Phraseology and the committee on Schedule will sit here, put in their work and be ready to report, especially the committee on Phraseology, when we reconvene on Tuesday, and then, if we get along well on Tuesday, Wednesday, Thursday and Friday, we can finally adjourn on May 17, as has already been agreed upon. Upon consultation with the committee on Arrangement and Phraseology—I would like to have Mr. Colton state what he thinks about the

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ability of that committee to be ready to report upon Tuesday as I have stated?

Mr. COLTON: The committee on Arrangement and Phraseology can do some work in the recess during this week and next week. It can spend Friday, Saturday and Monday, and at the conclusion of next week we can be ready to report on Tuesday, as the gentleman from Ashtabula has suggested.

Mr. LAMPSON: I now move to postpone the further consideration of the pending matter for five minutes. The motion was carried.

Mr. DOTY: I now ask consent to introduce a resolution.

The resolution was read as follows:
Resolution No. 114:

Resolved, That Resolution No. 108, adopted April 24, 1912, be amended as follows:

Resolved, That this Convention, when it adjourns on Thursday, May 9, 1912, shall adjourn to Tuesday, May 14, 1912, at 10 o'clock a. m. at which time the standing committee on Arrangement and Phraseology shall report upon such matters as shall have been referred to said committee.

Resolved, That the calendar of business for May 14, 1912, and thereafter, shall consist only of proposals for third reading and questions appertaining thereto, and no other business shall be considered except that which shall pertain to the concluding work of the Convention.

Resolved, That this Convention shall adjourn sine die, at 12 o'clock noon, Friday, May 27, 1912.

Resolved, That Resolution No. 108 is hereby rescinded.

Mr. DOTY: I move that the rules be suspended and the resolution be put on its passage.

The motion was carried.

Mr. DOTY: This resolution is simply a repetition of what has heretofore been passed with the amendment of the gentleman from Ashtabula [Mr. LAMPSON].

Mr. HOSKINS: What does this resolution imply with reference to the work we ought to do tomorrow?

Mr. DOTY: It implies that we are to work tomorrow and then come back Monday at two o'clock and work until we are through.

Mr. HOSKINS: Is this one of those bluffs about "tomorrow"?

Mr. DOTY: In so far as I am concerned, it is not. I do not know what it is with reference to the gentleman from Auglaize [Mr. HOSKINS].

Mr. KNIGHT: The cloak room is full of traveling bags.

Mr. HOSKINS: If we are going to work tomorrow we might as well understand it. I have some engagements tomorrow that should be taken care of, but if we are going to work I want to know it so I can be here.

Mr. DOTY: So far as I am personally concerned I think we should sit here and work even tomorrow night.

Mr. HOSKINS: That might be my opinion, but my judgment is you are not going to do that and this meeting will close this afternoon as usual.

Mr. DOTY: No.

Mr. HOSKINS: That has been the expression of a dozen members who have talked, and, as the gentleman

from Franklin [Mr. KNIGHT] says, "the cloak room is full of bags", to go away tonight. Those of us who have engagements to take care of tomorrow would like to know positively so we can make our arrangements accordingly. We would hate to postpone our engagements and then find we do not have a quorum here tomorrow. I do not see why this Convention can not decide now whether we are going to sit tomorrow or not.

Mr. ANDERSON: Will you ask unanimous consent and have all of those who will be here tomorrow say yes? Then if there is a quorum we will know.

Mr. HOSKINS: I will do that—

The PRESIDENT: The secretary will call the roll on that proposition.

Mr. ROEHM [during the roll call]: I will vote "Yes, until tomorrow noon."

Mr. RORICK [during roll call]: I vote "Yes, until two o'clock tomorrow."

Mr. ANDERSON: Under the ordinary rules Mr. Stilwell, being present, must be counted.

Mr. ROEHM: I believe a great many of those who have said yes and that they will be present tomorrow had something else in their minds. They haven't said how long they will be present tomorrow, and about eleven o'clock we will find a bunch of them going away, and at two o'clock there will be another bunch, and there will not be a large enough number here to transact business in the proper manner. I believe it would be a proper thing for us to canvass as to the hour of adjournment tomorrow and let all who say they will be here up to the end of the adjournment vote so we can know it.

The PRESIDENT: The member is out of order.

Mr. ROEHM: Then when I am in order I will take the floor and put that motion.

The roll call was then finished. Eighty-six members answered in the affirmative.

Mr. ROEHM: I want to offer an amendment that we adjourn tomorrow at twelve o'clock.

Mr. DOTY: A point of order. The amendment the gentleman offers is not reduced to writing and it is not germane to the question. As soon as we adopt this resolution and declare what we are going to do, then we can take up the matter of today or tomorrow.

Mr. ROEHM: Does not the resolution provide for an adjournment until Monday night?

Mr. DOTY: The rules provide for that.

The PRESIDENT: The president did not like to declare the member out of order, but will the member withhold that?

Mr. KNIGHT: The roll call shows that only eighty-six members promised to be here tomorrow and some of them will not be here more than a few minutes. It seems to me it is absurd to talk about doing any business tomorrow in the form of passing proposals. It seems to me it is rather an absurd method of closing the business of this Convention in that it is just like the confusion of the general assembly. We have a number of proposals on the calendar. If we give them decent consideration they will occupy more time than is allowed here. Further than that, with all due respect to the chairman of the committee on Phraseology, I expect you will find when the Convention comes back that the work will not be in

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such shape that the Convention can proceed with it. I know some of the members can not work Saturday of this week. It has always been regarded that we would have ten days of recess and that that was the minimum time that would be required to properly do this work.

Mr. ANDERSON: Is it your opinion that if we adjourn tonight and allow the committee on Arrangement and Phraseology to have all of tomorrow that it can have its work done by Tuesday?

Mr. KNIGHT: I am opposed to the whole resolution. I think the Convention should adjourn regularly and come back next week and finish up its business as it should be done, and then, at the close of next week, it ought to recess for ten days. That would cover the primaries and then we could come back the day after the primary and close up our work. I am opposed to the resolution entirely.

Mr. DOTY: Do you not understand that this resolution or some other resolution must be passed, as we have a resolution in effect to adjourn tomorrow at noon for ten days?

Mr. KNIGHT: Yes.

Mr. DOTY: You want the Convention to adjourn tomorrow?

Mr. KNIGHT: This is not the only resolution that can be offered. I think we could prepare some other resolution.

Mr. DOTY: I said this or some other.

Mr. KNIGHT: Well, let us kill this and put up some other.

Mr. NORRIS: I think the economy of time we are attempting to secure is the most dangerous kind of economy. We took the job to come down here and transact this business for which the people called us together, and we should devote sufficient time to it to do it carefully and conscientiously and properly. Now right at the end of the session we seem to devote our attention, instead of to business, to devise ways and means of neglecting business and getting away from this Convention. I think at the last of this Convention we ought to devote our time to it just as carefully as at any other time. I do not know that my opinion on that is of so much value, because I have not had much experience in the legislative line, but I think whatever we do we ought to take time to do it properly and carefully if it takes an extra week or two weeks.

Mr. LAMPSON: That is just what we are proceeding to do. We have adopted a resolution to adjourn tomorrow for ten days, and unless that is modified when the time comes we can not do otherwise. This resolution puts that off a week and allows the Convention to go on in the usual manner for another week. If it develops at the end of next week that the time we have allowed in this resolution for the committee on Arrangement and Phraseology to report is not sufficient, you can give them some more time, but the imminent thing now is to get this week before us.

Mr. FESS: I feel that the Convention is going to do something that is not helpful for the Convention or its work. We are all anxious to get away from here and the psychology of the situation is that as this grows upon us we are liable to go with a rush, and we will never suffer by taking a little time. We are certainly in danger of suffering if we rush through without giving

sufficient consideration to the closing days of our work, and, realizing the imminence of action upon this resolution, I think we shall have to act upon it in order to avoid adjourning Friday; certainly we must. But, gentlemen of the Convention, there is nobody in this Convention that ought to consider getting out of here of greater importance to himself personally than the one who is addressing you, for as president of a college, with the commencement day coming on the 5th of June and work crowding us wonderfully, I would like to get out of here. I have not certain matters on my mind that some of the rest of you have. Matters of that sort are not disturbing me. I do not care anything about the primary. That is secondary. I have been here every day that the Convention has been in session except when I was on my back sick, and I shall continue to stay here.

Mr. HARRIS, of Ashtabula: Following the line of argument we have just listened to, we took the job of making, revising, amending and altering the constitution. College professors, farmers, attorneys and everybody else undertook that job. Now is not that the first work?

Mr. FESS: I do not know whether the member from Ashtabula [Mr. HARRIS] was listening to me or not. I rather think not. That was the point I was trying to impress, that no matter what other work is pressing upon me, this is the work I am going to do. I am not going to abandon this for anything, even for the work of my college. I gave up that work to look after this, but this is what is disturbing me: We are in a situation of hurrying and the first thing we know we will adjourn without having our work completed, and we will feel sorry for it afterwards. Now we have to pass some adjourning resolution, but I hope that you, as members of this Convention, will hold open the privilege of further amending later on if it appears that we can not do our work in the time allotted. I do not want to fix the time here beyond which we can not go, and have you hold it up to me and say, "You have agreed to adjourn," and because we have a majority we will adjourn. I am in favor of this resolution, but I hope the temper of the Convention will be to extend the time to any length necessary to finish our work.

Mr. WINN: Do you know of any way by which we can pass a resolution that we can not rescind if we want to?

Mr. FESS: No; the majority can rescind anything.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

Strike out all except the last line.

Mr. DOTY: I move to lay that amendment on the table."

The motion was carried.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out "May 14" wherever it appears and insert "May 22". Strike out "May 17" and insert "May 31."

Mr. KNIGHT: That gives the committee on Arrangement and Phraseology ten days and then we can come back and have six working days.

Mr. DOTY: I think it is time for this Convention to favor the committee on Arrangement and Phraseol-

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ogy when the committee on Arrangement and Phraseology requests more time. The chairman of the committee, who is in very close touch with the work of that committee, has stated to you that he thinks he can get through in the time allotted in the original resolution. If we find that is not true, and at any time the chairman will frankly say so we can give him the time necessary. I therefore move that the amendment be tabled.

The motion was carried.

Mr. NYE: It seems to me that we ought not hurry this matter at the very close of our work. I am a member of the committee on Arrangement and Phraseology and I know that the committee has put in all of the extra time it could outside of the meetings of this Convention, and we have been unable to keep up with the proposals that have been adopted by this Convention. There are now about thirty proposals. Those proposals have to be considered carefully and have to come back and be submitted to this Convention, and after that there is to be a provision made for submitting the entire work to the people. There has to be a schedule prepared, and there has to be a provision made for submission, and we vote upon the proposals separately, so that every individual proposal can be submitted to the people as a separate proposal and so that the people can vote yes or no on them. Those matters can be considered not only by the committee but by the Convention as well. As has been said, we came here to do this work. No one is more anxious to get away than I am, but I want to stay here until we get the work done well. We ought not to hurry away and then find we have omitted some work. If we were a legislature the correction could be made at the next term. That can not be done with this Convention. When we adjourn our work is at an end, and we can not come back again. I say what we do let us do well. I think we need more time in which to do it than is provided for by this resolution.

Mr. ELSON: I am highly grateful for this executive recognition. I want to say that I regret very much that Mr. Knight's resolution was voted down. I agree with every gentleman who has expressed himself on this subject that there is serious danger that we shall do the wrong thing, that we shall adjourn too suddenly and that we will discredit ourselves and our work in the eyes of the people. For my part I am sure I could name over half a dozen important things that we have discussed that will take or ought to take a day or so to each one, and I do not think we should be in a hurry about it. I am as anxious to get out as anybody, but it seems to me impossible to do our regular work in two weeks and then after a week's adjournment reassemble and finish the work in a week. I am willing to vote for this resolution, but only on the idea that we shall rescind it if it is found necessary, and I think it will be found necessary.

Mr. HARRIS, of Hamilton: It seems to me there is a great deal of time wasted about nothing. Judge Winn stated the whole case in a nutshell. There is no resolution that the Convention has adopted that the Convention can not rescind. We are doing now what we have done twice before. We say we will try to adjourn on such a date. If the committee on Arrangement and Phraseology requires more time the Convention will give it, and it is time enough when the Convention knows

that committee will need more time to grant the extension.

Mr. LAMPSON: The imminent thing here is to give the Convention another week to go along with its work as it has been doing. So far as I am concerned, I am a member of the Arrangement and Phraseology committee and I have stayed with that committee. I have been home only twice since I came here. I have stayed over and worked Fridays, Saturdays and Mondays and I expect to work Friday, Saturday and next Monday on the committee on Arrangement and Phraseology, but what we are trying to do now is to get a week's more time, and when the time comes we will take care of the situation.

The PRESIDENT: The president has been called out by the people from Chillicothe, who are anxious to know as to our movements next week, and the passage of this resolution will enable me to answer them in the affirmative.

The question being "Shall the resolution be adopted?" The yeas and nays were taken, and resulted—yeas 96, nays 5, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Miller, Ottawa,
Antrim,	Hahn,	Moore,
Baum,	Halenkamp,	Partington,
Beatty, Morrow	Harbarger,	Peck,
Beatty, Wood,	Harris Ashtabula,	Peters,
Beyer,	Harris, Hamilton,	Pettit,
Bowdle,	Henderson,	Pierce,
Brattain,	Hoffman,	Price,
Campbell,	Holtz,	Redington,
Cassidy,	Hursh,	Riley,
Cody,	Johnson, Madison,	Rockel,
Collett,	Johnson, Williams,	Roehm,
Colton,	Jones,	Rorick,
Cordes,	Kehoe,	Shaffer,
Crites,	Keller,	Shaw,
Crosser,	Kerr,	Solether,
Cunningham,	Kilpatrick,	Smith, Geauga,
Davio,	Kramer,	Stamm,
DeFrees,	Kunkel,	Stewart,
Donahey,	Lambert,	Stiwell,
Doty,	Lampson,	Taggart,
Dunlap,	Leete,	Tannehill,
Dunn,	Leslie,	Tetlow,
Dwyer,	Longstreth,	Thomas,
Earnhart,	Ludey,	Ulmer,
Eby,	Malin,	Wagner,
Elson,	Marshall,	Watson,
Farnsworth,	Matthews,	Weybrecht,
Farrell,	Mauck,	Winn,
Fess,	McClelland,	Wise,
FitzSimons,	Miller, Crawford,	Woods,
Fluke,	Miller, Fairfield	Mr. President.

Those who voted in the negative are: Nye, Read, Stalter, Stevens, Walker.

So the resolution was adopted.

Mr. DOTY: I move that when the Convention adjourns or recesses tonight it be until nine o'clock tomorrow.

The motion was carried.

Mr. DOTY: I now call up the pending matter, Proposal No. 170.

The president recognized the member from Gallia [Mr. MAUCK].

Mr. MAUCK: The pending question is the amendment of the gentleman from Mahoning [Mr. ANDERSON], which provides that the only exemption from taxation of municipal securities shall be those outstanding at

Taxation.

present, so that subsequent issues will be the subject of taxation. The most odious part of the amendment to the constitution adopted in 1905, exempting public securities from taxation, was that part which exempted some \$300,000,000 and odd of securities issued theretofore from taxation which had been issued at a high rate of interest because they were taxable at the time they were issued. I think perhaps no more dishonest scheme was ever put through the legislature and ratified by the electors of the state through the tricks of political parties than to exempt from taxation some \$300,000,000 of securities that had been issued at a high rate of interest, some of them as high as six per cent, because they were taxable. Now, if it is proposed to put subsequent issues upon the tax duplicate, manifestly those issued prior to the adoption of the amendment of 1905 should be restored to the tax duplicate, because they had been issued at rates as high as five and six per cent. I offer an amendment.

The amendment was read as follows:

Amend the amendment offered by Mr. Anderson to Proposal No. 170 as follows: After the word "therewith" in section 2 add the following: "issued after December 31, 1905, and prior to the approval of this amendment."

Mr. ANDERSON: It was our purpose to do just what your amendment does, but in the hurry we forgot it. We ask that this be made part of our amendment.

Mr. PECK: The purport of your amendment is to put on the tax list bonds issued prior to the adoption of the constitutional amendment. How are you going to distinguish them, and what about the rights of those parties who have bought them under the constitution providing that they should not be taxed?

Mr. MAUCK: They are not in the hands of innocent persons.

Mr. PECK: How do you know that?

Mr. MAUCK: They bought them subject to the possibility of a law restoring them.

Mr. PECK: You can say that as to anything.

Mr. MAUCK: The constitution only protects those that were issued after it.

Mr. PECK: It protects all, and if anybody bought any bonds issued previously he comes under this constitutional provision.

Mr. MAUCK: The member from Hamilton [Mr. PECK] would not claim that you could put on a duplicate those issued since—

Mr. PECK: I claim you can not put on any that have been issued, and I think it would be unjust, dishonest and a disgrace for the Convention to do it. I want to tell the Convention another thing that they don't seem to appreciate, that putting these bonds on a tax duplicate would lose the Convention more votes than anything we have done. There are thousands and thousands of bondholders in Ohio and you don't know them. They live next door and every blessed one of them will vote against the constitution.

Mr. ANDERSON: If we regard it as the right thing to do, should we care what the voter thinks?

Mr. PECK: Sometimes it is a matter of expediency more than right. The bonds were taken off the tax duplicate because it was thought the municipality or the state would receive the benefit in a low rate of interest, and

they have in many instances. Perhaps the interest has not fallen as much as it was expected to, but put them on again and it will go up and when they are paying five and six per cent for borrowed money the people in the cities and towns will wish they had left them off. You should take a broader view of it. Simply because one man has bonds and another man has another kind of property, you should not say they should all be taxed alike when you have said that they should not be taxed. I venture to say you can not do it, that the constitution of the United States will protect the people.

Mr. MAUCK: What was the consideration that passed to the public for the release from taxation?

Mr. PECK: The consideration was the solemn promise of the state of Ohio made by a constitutional amendment and adopted by a vote of more than six hundred thousand people that they should not be taxed, and when the state of Ohio has pledged its solemn honor that they shall not be taxed I, representing the state of Ohio, rise to protest against a violation of that pledge.

Mr. WATSON: Was not that secured by fraud upon the voters of Ohio?

Mr. PECK: I do not think it was. What right have you to make that assumption?

Mr. WATSON: Evidently it was.

Mr. PECK: You are assuming that the voters of the state of Ohio are a set of ignoramuses?

Mr. MAUCK: The release from taxation of these bonds during the past seven years has been an absolute gratuity, has it not?

Mr. PECK: No, sir; it has been a benefit to the cities and towns that sold the bonds, in that they have a low rate of interest.

Mr. MAUCK: I refer to bonds issued prior to 1905. The holders had an absolute gratuity in the release from taxation.

Mr. PECK: I am talking about the people who have bought bonds since then.

Mr. MAUCK: Now it does not follow from the fact that we have given them seven years of gratuity that we are bound to give them a gratuity of thirty-three years.

Mr. PECK: How about the men who bought them last week?

Mr. MAUCK: They bought them with knowledge of the defect.

Mr. PECK: How do you know they bought them with knowledge of the law, for that is all you can make out of them?

Mr. MAUCK: They bought them with the knowledge that the constitution might restore them to taxation.

Mr. PECK: You may pass your law, but the constitution of the United States declares that you shall not impair the obligation of a contract.

Mr. MAUCK: We are not impairing the obligation of any contract. It is an absolute gratuity and not a contract.

Mr. PECK: It was an agreement with this state. They bought those bonds on the face of the agreement.

Mr. MAUCK: What was the consideration?

Mr. PECK: The money they paid for the bonds. They might have paid a higher price because the bonds were tax free.

Mr. MAUCK: How do you know that?

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Mr. PECK: Every bond broker in the United States has been advertising nontaxable Ohio bonds.

Mr. MOORE: Does any constitution prevent the righting of a great wrong?

Mr. PECK: Where was the wrong?

Mr. MOORE: In passing the Longworth law that made that exemption possible.

Mr. PECK: If the state of Ohio has done itself a wrong, it can not right it at the expense of other people. The state of Ohio said to the city of Cleveland, the city of Cincinnati, Dayton and your town, you may issue bonds without taxes, and you may get a lower rate of interest on those bonds and those cities and towns took advantage and issued them and sold them and now you propose to put taxes back on them and upon the people to whom you made that pledge.

Mr. WATSON: If you can get them, but it is claimed that we never can get them and why all this trouble about it then?

Mr. PECK: You can get them if you assume the people are honest, and you are trying to do a dishonest thing; you are trying to beat the constitution. There are forty thousand people whose votes will be influenced, and they are the brokers and the bankers in the state, and every one of them will be against the constitution.

Mr. THOMAS: How about a million working people?

Mr. PECK: And there are some of those working people who have thousands of these bonds. They have a good many more than you think they have. I know in Cincinnati our German mechanics are steady buyers of small quantities of municipal bonds.

Mr. WATSON: Are we here to write a constitution in the interest of the bondbrokers?

Mr. PECK: We are here to do justice to all the people and not to rob anybody. We are here to preserve the honor of the state of Ohio, which is dear to every one of us, I hope, and I do not want to do anything that can be pointed to and have it said that the state of Ohio has deceived the people. She promised that these bonds that these poor people have bought should not be taxed, and now she will levy taxes upon them.

Mr. CUNNINGHAM: I would ask the gentleman from Hamilton [Mr. PECK] whether the supreme court has not already passed upon this question and decided they could not again be restored to taxation?

Mr. PECK: I do not remember the decision.

Mr. CUNNINGHAM: Judge Worthington referred to the case when I raised the question of the taxation of these bonds, and he referred to a case and made it very clear to my mind that the supreme court had already settled this question and therefore it was not further talked of in the committee.

Mr. PECK: It has been clear law ever since the Dartmouth College case that the state can not violate its obligations by law or otherwise and they are protected by the constitution of the United States. I tell you if you pass this it will be futile, because judges of the supreme court of the United States will see that it comes to naught, but what I am protesting against is that it is dishonest in the state to say that it would not tax these bonds and then attempt to tax them.

Mr. WINN: Do you understand that the proposition

is to tax bonds that were issued under the provisions of the constitution existing at the time they were issued?

Mr. PECK: No; they were issued before, but have come under the amendment.

Mr. WINN: Would there be any injustice in your opinion to restoring to taxation those bonds that were issued before the constitution was amended exempting stocks and bonds?

Mr. PECK: If you had some that you had bought last week you would think so.

Mr. WINN: If the bonds are now held by the person who purchased them before the amendment—

Mr. PECK: That is impracticable. You couldn't make any such distinction.

Mr. WINN: Is it not true that they have always escaped taxation and there is much ado about nothing here?

Mr. PECK: I do not know about that. I am concerned with the honor of the state of Ohio and I want to keep her straight.

Mr. JONES: May I ask Judge Peck a question? Is not all that is involved in this whole matter merely a question of taxation and is the situation any different in that it is municipal bonds from what it would be if it were bonds of corporations or mortgage liens which had previously been exempted from taxation and which it was now proposed to restore to taxation?

Mr. PECK: I think there is some difference.

Mr. JONES: In what respect is it different, treating it as a question of taxation?

Mr. PECK: Municipalities are creatures of the state, endowed with power to issue these bonds, and every one of those that issued bonds did it under specific act of the general assembly, and therefore the state, when dealing with it, is dealing with its own creatures.

Mr. JONES: Are not private corporations creatures of the state?

Mr. PECK: But their property is not.

Mr. JONES: And their securities are issued under laws authorizing them?

Mr. PECK: They may be empowered to issue them, but they are not creatures in the sense that the municipality is. In the old constitution it was the state giving light to the municipality and the state making it: Blessed be the name of the state.

Mr. JONES: But so far as the purchaser of those securities is concerned, he would be purchasing the security of a private corporation which has been relieved by law of taxation?

Mr. PECK: That is one misleading analysis that doesn't work.

Mr. JONES: Would not that be the same as if he purchased the security of a public corporation, for instance, bank stock or any other private stock? Has not the state the undoubted right at all times to determine whether this class of property shall be taxed or the other, that horses may be taxed this year and next year not, and the situation is the same as if a man bought a horse released from taxation and then you would propose to tax that horse next year and make it less valuable?

Mr. PECK: You do not discriminate between the right and the power, if the state has power to do a thing, it can do it. You are driving in the street with your

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buggy and you have a right to be there as much as anybody, even the fellow with the big automobile. You have equal rights there, but the man with the big machine can run you down. He has no more right to be there than you have, but he has the power to run you down. So the state can run over you and mash you to pieces, and not be responsible, but the highest attribute of the state is to do justice and the state with the voices of honest men will never knowingly pass laws which do injustice to any class of citizens, at least, it never should and never will with my voice. There are some people who think if they can grab a penny in any county for the state that they are serving the state, but if they grab it dishonestly they are not serving the state, they are serving the devil.

Mr. HARRIS, of Hamilton: A suggestion to Judge Peck on the answer to the policy of Mr. Jones: Mr. Jones asked you what was the difference between bonds issued by a private corporation not subject to taxation and the bonds of a municipality not subject to taxation, both of which are tried to be met by this amendment. Is that correct, Mr. Jones?

Mr. JONES: So far as working injustice on the owner is concerned, exactly.

Mr. HARRIS, of Hamilton: Don't forget that. I call your attention to this: It is well known that corporations do issue bonds which at the time issued are not subject to taxation, and they have a distinct contract with the buyer of the bonds that they will assume any future taxes that may be levied against such bonds. As a banker you know that such things are written in the bonds. You have handled such bonds, and so have I, where that provision is distinctly written into the bond. Therefore, if the state puts any taxation on those bonds the holder of the bond does not suffer any injustice because the corporation itself pays that tax. Now that implied contract exists, between the municipality that has issued these bonds and the buyer, that no tax shall be put upon those bonds, and when you put the tax on the bonds you do not make the municipality pay it, but make the owner of the bonds pay it. That is a broad distinction.

Mr. MAUCK: Will the gentleman yield for a question from me?

Mr. HARRIS, of Hamilton: Yes.

Mr. DOTY: A point of order.

The PRESIDENT: What is it?

Mr. DOTY: The gentleman from Hamilton [Mr. PECK] has the floor?

Mr. HARRIS, of Hamilton: That is so.

Mr. PECK: If Mr. Mauck wants to ask a question I am perfectly willing that he should do so.

Mr. MAUCK: Mr. Harris, of Hamilton, said there was an implied contract. Where does he find that implied contract in the bonds issued previous to 1905?

Mr. PECK: I did not understand Mr. Harris to make that statement and I am not responsible for his statement.

Mr. MAUCK: This does not attempt to put any such tax on any such bonds issued since 1905, but on bonds issued prior thereto.

Mr. HARRIS, of Hamilton: Therefore, it is the breaking of faith, for in 1905 the state by a vote of over six hundred thousand said they should not be taxed.

Mr. PECK: I will ask Mr. Mauck a question. Do you not know as a lawyer that all parts of a law relating to a subject form part of the contract entered into?

Mr. MAUCK: Yes.

Mr. PECK: Now here are these bonds sold with the law providing that they should not be taxed, and that becomes a part of the obligation of the state to the parties who buy and sell those bonds; and every bond that has been sold since the passage of that amendment in 1905 has been sold and bought with the distinct understanding that the bond is nontaxable, and I maintain it is not proper and is not possible now to change those contracts which say that the bond is not taxable.

Mr. MAUCK: But is it not true that the public contract entered into at the time when these bonds were taxable was a public contract and the contract you refer to is a personal, private contract?

Mr. PECK: But you can not go back and right that which you claim is wrong. You can not go back and right it now at the expense of innocent parties who have bought bonds without knowledge of this.

Mr. WATSON: Suppose a few years ago the farm land of Ohio had become exempt from taxation and suppose those farm lands had changed hands, and suppose that under this constitution we were seeking to find property upon which to put taxes, would you be here arguing that we were doing wrong in restoring that land to taxation?

Mr. PECK: I will be here to say that would work a hardship on the people who had bought the land since, and that they should be compensated in some way.

Mr. WATSON: Is it not a fact that farm lands may be bought when the rate is one thing and that the rate may change—

Mr. PECK: The rate changes every year. That is not an analogous case at all. Every thing changes as far as that is concerned. The price of bonds go up and down every day. Everything of that sort changes and lots of things affect values, but that cuts no figures here.

Mr. HALFHILL: Is it not a fact known to all that prior to 1905 municipal bonds found no sale in Ohio and were purchased outside of Ohio owing to that constitutional provision?

Mr. PECK: That is another provision and that is an argument against the other part which proposes to put those issued since on the tax duplicate.

Mr. HALFHILL: Is it not a fact that since the constitution has been changed that they have been advertised as an inviting form of security and have been brought back and are held here largely?

Mr. PECK: You can pick up any large daily in the state and you will find an advertisement of the bonds of this city at four per cent, nontaxable, and they have been sold that way. Talk about the holders of these bonds! I know one house in Cincinnati that sells \$10,000,000 of those bonds every year over the counter and they go right down into the stockings of the good old German women in Cincinnati.

Mr. THOMAS: I am willing to say there is not a quarter of one per cent of the bonds issued—no, not one ninety-ninth of the bonds that are issued that goes into the working men's stockings.

Mr. PECK: You don't know. Where are all these

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big deposits in the savings bank that Mr. Doty talks about?

Mr. DOTY: They are the working men's.

Mr. PECK: The average deposit in the largest bank in Cleveland is less than \$500, I am informed, and there are over one hundred and five thousand depositors.

Mr. THOMAS: Well, who has it—who do you think have those bonds?

Mr. DOTY: You have. You have some. I am a plutocrat and have not any.

Mr. PECK: Their money is not in savings banks, but in municipal bonds.

Mr. ANDERSON: Is it not a fact that along about April—the latter part of March—the newspapers carry advertisements, columns of them, offering municipal bonds nontaxable for the sole purpose of permitting people who have personal property in shape to be taxed to get it in such shape as bonds so it escapes both ways?

Mr. PECK: I do not know about that.

Mr. ANDERSON: I have such an advertisement in my desk. Is it not also true that the bondholders send out letters along about that time—in fact, I have one of those in my desk, but I don't know why they ever sent it to me—asking the receivers of the letters to go in and take these nontaxable bonds and put up that which if kept by the individual would be taxed and in that way escape taxation both ways?

Mr. PECK: I do not know. The only place I have known that to occur much is with the nontaxable stock of Ohio.

Mr. HARRIS, of Hamilton: Is it not your recollection that a few years ago—this is to answer Mr. Thomas' reference to the laboring men—that a few years ago the city of Cincinnati offered nearly \$1,000,000 of water works bonds and the banks refused to buy them and the city of Cincinnati sold them over the counter in lots of \$250 and lots of \$500, to the amazement of the bondholders and brokers, and the laboring men of Cincinnati withdrew their money from the savings bank and bought that last issue of bonds over the counter?

Mr. THOMAS: Are all those working men that bought those bonds?

Mr. PECK: Nearly all of them were working men.

Mr. HARRIS, of Hamilton: Are you aware of the fact that Reid and Harrison have offered me \$175,000 of four and one-half bonds of the city of Youngstown, Ohio, stating that by reason of their nontaxability they could offer them at the magnificent rate of a little less than four per cent?

Mr. PECK: Yes; I know that.

Mr. HARRIS, of Hamilton: I want to ask the member of Mahoning if the city of Youngstown, Ohio, prior to this law ever issued or ever could sell any of its municipal bonds at less than five per cent? They have been offered to me within a week at about a three ninety-five basis because they are not subject to taxation, and the member from Mahoning is willing to tax his people in Youngstown that additional rate of interest when they can not get the equivalent in taxation.

Mr. ANDERSON: Reserve that question until I have the floor.

Mr. PECK: In reference to these bonds, a short time ago I advised a lady to buy \$3,500 worth of those bonds for the reason indicated. They are being bought all the

time in the city of Cincinnati. My friend from Cleveland boasted about the credit of his city. The city of Cincinnati is the only city in the United States that has sold municipal bonds at par at three per cent, and she has done it because of this law. If you repeal this law she could not come within one-half per cent of that, for until we had this law we never were able to sell bonds at three per cent.

Mr. ANDERSON: You saved that much then, but do you think it paid the state as a whole to provide millions and millions of dollars to permit those who want to escape paying taxes to do so? You understand it cuts both ways?

Mr. PECK: What do you mean by both ways?

Mr. ANDERSON: The banks pay so much taxes and the individuals go to the bank and deposit money and get the municipal bonds out and the holder of the municipal bonds does not have to pay taxes and the bank doesn't have to pay on the money.

Mr. PECK: Why not?

Mr. ANDERSON: The bank pays on its capital.

Mr. PECK: It pays on what it has.

Mr. ANDERSON: Do you mean to say the bank has to pay any more taxes providing the bonds are put into money?

Mr. DOTY: Certainly.

Mr. ANDERSON: Do you say they do?

Mr. DOTY: No—

Mr. ANDERSON: It provides an easy means of escaping paying taxes.

Mr. PECK: You can do that with any nontaxable security. You will have a good time getting the constitution adopted if you put this in, as sure as you are living.

Mr. PETTIT: Do you think the bondholders are going to rule the next election?

Mr. PECK: No, sir; but they are going to vote according to their interests, just as the farmers are going to vote according to their interests, and they have the right on their side this time. They have a right to insist upon the administration of law and insist upon justice.

Mr. JONES: One further question. You made a statement that these bonds sold for less since the amendment exempting them in 1905. Do you not know that here in the city of Columbus the public issues of bonds sold for less before that exemption than they have since at any time?

Mr. PECK: I have never heard of it.

Mr. JONES: That is a fact.

Mr. PECK: But I want to call attention to another fact, that about ten years ago there was a period when rates of interest in Ohio were very low.

Mr. DOTY: The same as rates of interest every where else.

Mr. PECK: Rates of interest were very low. I do not think they have ever been as low since. The city of Cincinnati refunded Cincinnati's debts at three and a half per cent and never has been able to do it since, and that is the time when the city of Columbus I suppose sold the low bonds and the market went back. In other words, the rate of interest is affected by other things than the law of taxation—the market price.

Mr. JONES: The rate of interest upon the issue of

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bonds has not materially changed by reason of tax exemption.

Mr. PECK: Tax exemption has had more to do with the change of rate of interest on that class of security than anything else. Municipal bonds are bought as a permanent investment generally. The people expect to keep them. The person who buys them buys them to secure a permanent income and at the same time security. They calculate what they will get, and if they have calculated four per cent and have to pay two per cent taxes, their income would be reduced just as much.

Mr. JONES: If that is sound, would it not logically follow that there should be a difference in the price of municipal bonds in Ohio and of all other bonds equivalent to the tax rate, whereas there is only a fraction of one per cent difference in the rates?

Mr. PECK: You compare bonds of a good municipality in Ohio—any town of any size—with the rates of railroad bonds. There is no railroad in the country that can sell bonds much less than five per cent and the rate of interest they pay you will often cause their bonds to sell at about eighty-five while the municipal bonds are always par.

Mr. JONES: Do you know the price in Ohio of Boston and Chicago bonds as compared with Ohio bonds?

Mr. PECK: Are they just the same as Ohio bonds, nontaxable?

Mr. JONES: Under the law they are taxable.

Mr. PECK: Then there are not many of them in Ohio.

Mr. JONES: A great many, selling at substantially the same price as Ohio bonds.

Mr. PECK: I never knew any of them to be sold. Now I would like to say a few words without interruption. I have yielded to all the questions I want to. What caused me to break into this discussion was the attempt to put on the tax duplicate the bonds sold before 1905. The other proposition is to tax bonds hereafter issued, and that is a matter of policy. There is there no question of justice or injustice. I submit to you that the people were wise and they knew a great deal more what they were doing when they voted for that exemption than a good many of you think they did. Do you believe that those six hundred thousand people who voted for that are all fools? If you do you are mistaken. They are not so easily fooled. Do you think the politicians could carry out any scheme when all the people in Ohio know about the scheme? The true policy is, and it is the policy adopted for all the large states in the Union, New York, Massachusetts and every large state—the plan is to exempt the bonds of state, municipalities and of the counties of the state from taxation, for they know the money comes back to the counties and municipalities and in that way to the people in the reduction of the interest rates they get. The rates of interest they have to pay are that much less. The people of Guernsey county will be taxed that much less on the bonds issued by Guernsey county and any other county in the state is in the same boat. Mahoning county has an issue of \$2,000,000 of bonds for building a court house, and if she has to do a thing like that again will find she can get a higher rate for bonds and will have that much less to pay if they are exempt from taxation. She can sell

them at three or three and a half per cent, whereas she could not sell them at less than five per cent before. That is opening an investment to our own people that you are shutting out by adopting the proposal that bonds shall not be exempt from taxation in this state, and you are forcing the bonds of the state of Ohio to be sold outside and the bond market of Cleveland and Cincinnati will not be regulated as it is now by our own cities and towns, but it will be regulated in New York and Boston, and the bonds will go there for a market and you will never reach them for any purpose of taxation. You will lose the benefit you would get in the reduced rates and you will get no taxes on the bonds. That is what your proposition will come to. This other way you get a sure benefit as against a doubtful claim that can not be enforced. In fact, you say the bonds are not taxed even at home, that there are some people who buy and hide them but they can not be traced, that the only way you can find out about the bonds is that the coupons regularly appear in the bank for collection and the bank presents them to the sinking fund. Who owns them the bankers don't know. Brother Jones would not know where he got them if he went to the sinking fund with the coupons. That is all you can find out about the bonds. Coupons come in with great regularity and you do not know where the bonds are. They disappear as quickly as water thrown on the sand. I think I have taken up too much time and said more than I intended, but I feel some interest in the discussion because it is one upon which I happen to be incidentally tolerably well informed. The line of practice which I have had for years past has thrown me in contact with this question of municipal bonds a good deal, and I have seen a great deal of it, and when I make a statement about these things I know what I am talking about. I know what the effect of this will be on Cleveland and Cincinnati when they propose to take advantage of this home rule proposal and sell their bonds to buy parks, boulevards and provide playgrounds. I know they will have to pay higher rates if you pass this measure. The amendment is perfectly vicious and I hope it will be voted down.

Mr. DWYER: Is it not a fact that when the bonds were issued subject to tax they were not purchased in the home market and the state got no tax from them?

Mr. PECK: That is true.

Mr. DWYER: I would like any gentleman here to show me where the bonds were ever returned for taxation that were sold subject to tax?

Mr. PECK: The bonds were bought by brokers who acted for other parties and they generally went right out of the state into the eastern market. The bonds of Cleveland and Cincinnati and Youngstown—the bonds of any good thriving town in the state—find a ready market anywhere in the East, because there is nothing safer than a municipal bond. The town can not break or run away.

Mr. DWYER: Is it not a fact that when the bonds were subject to taxation the city didn't get as good price for the bonds as now?

Mr. PECK: That is exactly what I was saying.

Mr. DWYER: And if they get a low price now doesn't the public get the benefit?

Mr. PECK: Yes.

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Mr. DWYER: In the other case the public got no revenue from the bonds at all?

Mr. PECK: Yes; that is right. They get benefit two ways now.

Mr. PRESIDENT: Will the gentleman yield?

Mr. PECK: No, I decline to yield. They get the benefit in two ways. The first is in the sale of the bonds. The cities and towns get a higher price. The second is that they can sell at a lower rate of interest, and that is a yearly benefit running on and is fully equal to the amount in taxes, and nine times out of ten exceeds the amount of taxes that you would ever get on those bonds.

Mr. WATSON: I do not wish to be too inquisitorial, but I realize we are all creatures of environment and I want to ask this question: Do you own any bonds?

Mr. PECK: No, sir.

Mr. WATSON: Are you attorney for any bond brokers?

Mr. PECK: I have been. I am not now. I am not the attorney of anybody when I am here. And you can just put that down in your pipe. Old Peck is here for the people of Ohio and nobody else. I have represented corporations, individuals, bondbrokers, bankers, farmers, and I have represented women, children and every other class in the community, but I do not represent anybody here but all classes. My office is open to anybody who has a legitimate claim and a fee. They can come to me right along. This is no joking matter. This matter is one of importance to the state of Ohio and to the welfare of the people of the state generally. This amendment is an outrageous piece of injustice, if adopted, and the original proposal ought to have the provision in it that is in the constitutional amendment of 1905, which is a wise provision. It is the provision that every great financial community has adopted and they have found it to be wise. This is a reactionary policy that goes the other way. In order to show my good faith about the Mauck amendment I move that it be tabled.

Mr. MAUCK: And on that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 69, nays 38, as follows:

Those who voted in the affirmative are:

Antrim,	Hahn,	Miller, Crawford,
Beyer,	Halenkamp,	Miller, Ottawa,
Bowdle,	Halfhill,	Norris,
Brattain,	Harris, Ashtabula,	Nye,
Brown, Lucas,	Harris, Hamilton,	Peck,
Campbell,	Harter, Stark,	Peters,
Cassidy,	Hoffman,	Pierce,
Colton,	Holtz,	Redington,
Cordes,	Hoskins,	Rockel,
Crosser,	Johnson, Williams,	Roehm,
DeFrees,	Kehoe,	Rorick,
Doty,	Kerr,	Shaffer,
Dunlap,	Kilpatrick,	Smith, Geauga,
Dwyer,	Knight,	Stalter,
Earnhart,	Kramer,	Stamm,
Elson,	Lampson,	Stilwell,
Evans,	Leete,	Taggart,
Fackler,	Leslie,	Ulmer,
Farnsworth,	Longstreth,	Wagner,
Ferrell,	Malin,	Weybrecht,
Fess,	Marshall,	Winn,
Fluke,	Matthews,	Wise,
Fox,	McClelland,	Woods.

Those who voted in the negative are:

Baum,	Hursh,	Price,
Beatty, Morrow,	Johnson, Madison,	Riley,
Beatty, Wood,	Jones,	Shaw,
Brown, Pike,	Keller,	Solether,
Cody,	Kunkel,	Stalter,
Collett,	Lambert,	Stevens,
Crites,	Ludey,	Stewart,
Donahay,	Mauck,	Tannehill,
Dunn,	Miller, Fairfield,	Tetlow,
Eby,	Moore,	Thomas,
FitzSimons,	Okey,	Walker,
Harbarger,	Partington,	Watson.
Henderson,	Pettit,	

So the motion to table was carried.

Mr. EVANS: I offer a substitute for the proposal itself.

The substitute was read as follows:

Strike out all after line 4 and all pending amendments and substitute the following:

SECTION 1. The general assembly shall levy and collect taxes in such manner as it may deem proper, but all taxes shall be just to the subject taxed, and in each and every class of subjects, the burdens shall be laid equally, according to the same rule.

SECTION 2. All property of the United States; the state, cities, counties, townships and the public schools, and the bonds or obligations of these bodies shall not be taxed. The general assembly may exempt from taxation, churches, universities, colleges, seminaries, schools, all institutions of public charity, and their endowments, and such property of individuals as shall be deemed best for the public good.

Mr. EVANS: I have thought that this is the best measure that can be adopted by this Convention on this subject. This is the result of forty years of study of the subject of taxation, and when I began that study I did it with an open mind. I had no preconceived notions or ideas. I did not represent any particular school of thought; but taxation is the most important power of government. It includes all other powers. Give me the power to tax and I will control a state. Consequently if we have any use for the legislature we must trust it; it must represent the people; we must leave the subject to it. The taxation of property is the most important subject to the people. When we touch the pocket-book nerve of the people of Ohio we touch the most sensitive nerve of the whole body politic, and if you make a mistake in framing this constitution on the subject of taxation it will be rejected on that ground, no matter about all the other provisions. Now you are right at the Rubicon. You are ready to cross. Are you going to stay in your province of Gaul, or are you going to cross and make war on Rome? I tell you if you adopt this minority report you will cross the Rubicon, but you will have a different fate from that of Caesar. Caesar conquered Rome, but this will be different from that. Rome will conquer Caesar. This is a proper thing to leave to the legislature and let us do as they did from 1802 to 1851. The legislature declared as to each particular class of property that it should be taxed or should not be, and when they declared it should be taxed they fixed the

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rate, and that is the only way you can have it done. If the legislature happens to make a mistake, if they happen to put too great a tax on any subject, there is a provision by which the owners of the property that belong to that class can appeal to the court and declare the tax unjust. What else can you want? I predict if my proposition could be adopted it would be the best thing that ever happened for the state of Ohio. If we attempt to tax public bonds we will not get any tax on them. It never can be collected. It would be an effort to enforce something that we could not carry out. I will tell you we have exempted public bonds in Ohio, but we made one mistake. We didn't exempt the same class of bonds of other states. If the citizen is allowed to own Ohio public bonds free of taxes he ought to be allowed to own bonds of the same class of other states free of taxes, and he ought not to be penalized because he buys municipal bonds of Indiana, Ohio or Pennsylvania. Let us consider right in this matter. It is a simple question of dollars and cents. Take a common school district and say the bonds are taxable, and that district will have to pay seven or eight per cent, and the bonds will be owned right there in the neighborhood, but they will be in hiding. The creditor will make the extra interest and you will put it in his pocket. Take the tax off and the state or municipalities can sell the bonds at four or five per cent. They usually run twenty or thirty years and just calculate what the difference in this amounts to. The public pays that if you undertake to tax the bonds, and the public will pay the extra interest but will never get anything back in the way of taxation. The bondholders will get it all and you can not prevent it. There is no use in undertaking to legislate in this fundamental law against human nature or against economic laws. Your tax boards in this state can give all the instructions they wish to the assessor, but it is folly; they can not enforce the law. If the people believe a system is unjust, they will not return their property and you can not make them. The thing to do is to exercise a little common sense and recognize human nature as it is, and the principles of economics.

I say to you that this minority proposition, as well as the majority, undertakes to legislate against economic laws and against human nature, and whenever that is done, it will be a failure every time. Try to do something you can do, and refrain from the folly of attempting to do what you cannot do. You have been trying for sixty-one years to do something you can not do, and if you should be so unfortunate as to adopt either of these reports in sixty-one years from now the measure will be as great a failure as it is today. I do hope for the credit of the state of Ohio, my native state, of which I am very proud, that we shall not disgrace it by undertaking to adopt either of these reports and place in the organic law a provision against economic law and against human nature that can never be enforced.

Mr. HARRIS, of Hamilton, was here recognized.

Mr. DOTY: Will the gentleman yield for a motion to recess?

Mr. HARRIS, of Hamilton: Not quite yet. I am very glad that the three amendments, the minority report, the Anderson substitute and the Evans substitute, are before the Convention, because those three propositions embody the entire question and will give us a

chance to debate the entire question from every point of view. Now I yield for a motion to recess.

Mr. DOTY: I move that we recess until this afternoon.

The motion was carried and the Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. DOTY: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called when the following members failed to answer to their names:

Brown, Highland,	King,	Read,
Brown, Lucas,	Kramer,	Shaw,
Cunningham,	Marriott,	Smith, Hamilton,
Eby,	Miller, Crawford,	Stamm,
Farrell,	Miller, Fairfield,	Stokes,
Fox,	Norris,	Tallman,
Harter, Huron,	Price,	Worthington.

The president announced that ninety-eight members had answered to their names.

Mr. DOTY: I move that all further proceedings under the call be dispensed with.

The motion was carried.

Mr. DOTY: I move that further consideration of Proposal No. 170 be postponed for five minutes.

The motion was carried.

By unanimous consent Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 328 — Mr. Woods, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 319 — Mr. Okey, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Hoskins submitted the following report:

The standing committee on Corporations other than Municipal, to which was referred Proposal No. 51 — Mr. Miller, of Crawford, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

At the end of proposal add:

"The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or associa-

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tion organized under the laws of this state or doing any insurance business in the state.”

S. A. HOSKINS,	H. K. SMITH,
JOHN C. RORICK,	AARON HAHN,
W. W. STOKES,	E. A. PETERS,
HUMPHREY JONES,	HENRY E. EBY,
ROSCOE J. MAUCK,	HENRY F. CORDES.

Mr. Stilwell submitted the following report:

The minority of the standing committee on Corporations other than Municipal, to which was referred Proposal No. 51 — Mr. Miller, of Crawford, having had the same under consideration, submits the following minority report, and recommends that the same be substituted for the majority report:

Strike out all after the title and insert in lieu thereof the following:

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state.

Provided, however, that the general assembly may establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident or other insurance to the citizens of the state, and provided further, that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.”

S. S. STILWELL,	JOHN C. HOFFMAN,
W. B. KILPATRICK,	HENRY E. EBY,
H. K. SMITH,	J. M. EARNHART.
DAVID PIERCE,	

Mr. Doty moved that further consideration of the proposal be postponed until tomorrow and that it be placed on the calendar for that day.

The motion was carried.

Mr. DOTY: I move that those reports be printed in the meantime.

The motion was carried.

By unanimous consent Mr. Cassidy offered the following resolution:

Resolution No. 115:

Resolved, That the following bills which have been filed with the secretary of this Convention be allowed and ordered paid:

The Beggs Co., labor.....	\$11 00
Central Union Telephone Co., toll.....	146 45
Columbus Citizens Telephone Co., toll and rental	134 20
The Crystal Ice Mfg. & Cold Storage Co., water	37 00
The F. J. Heer Printing Co., printing...	517 10
The Lowe Bros. Machine Works, labor..	1 00
Remington Typewriter Co., rental.....	25 50
A. Rosnagle & Co., supplies.....	14 00
E. H. Sell & Co., rental.....	4 50
A. H. Smythe, supplies.....	5 40
Fred H. Tibetts, printing.....	2 50
The J. L. Trauger Printing Co., printing and supplies	678 40
Underwood Typewriter Co., rental....	35 50
J. M. & W. Westwater, supplies.....	5 75
George F. Jelleff, labor and supplies....	7 90

On motion of Mr. Doty, the resolution was referred to the committee on Claims Against the Convention.

Mr. Lampson offered the following resolution:

Resolution No. 116:

Resolved, That the following bills against the Convention be allowed and ordered paid.

Andrew Earl, supplies	\$17 40
T. J. Dundon & Co., supplies and hauling	5 00

On motion of Mr. Doty, the resolution was referred to the committee on Claims Against the Convention.

The PRESIDENT: The question before the house is Proposal No. 170 and the vote will be first upon the substitute offered by the delegate from Scioto [Mr. EVANS].

Mr. Harris, of Hamilton, having yielded the floor for a motion to recess, was recognized by the president.

Mr. HARRIS, of Hamilton: Mr. President and Fellow Delegates: If there be one time in the course of our deliberations where it is proper that we should bear in mind the wise old adage “Come, let us reason together”, that time is now. We are discussing a subject which affects the weal or woe of five million people now living in the state of Ohio. Passion and prejudice and oratory should have no place in our deliberations.

I am in favor of classification and I advocate it after the most thorough consideration of the subject for the past ten years, and because I find it advocated by the greatest political economists of the world. The United States boasts the proud distinction of having wrested from England and from Germany the authority in matters of political economy. There are two men in the United States who are recognized by political economists of Great Britain, Germany, France, Austria, Russia, Italy and Spain as the greatest living authorities on political economy. Those men advocate and urge in their published writings the classification of property for the commonwealths of the United States. They are Professor Seligman, of Columbia University, and Professor Taussig, of Harvard University, and I shall stop for a moment and ask Doctor Colton as president of Hiram College —

Mr. COLTON: Not president.

Mr. HARRIS, of Hamilton: Well, as connected with Hiram College—whether he does or does not recog-

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nize the supremacy in matters of political economy of the men whom I have named?

Mr. COLTON: They are very prominent.

Mr. HARRIS, of Hamilton: I shall ask Doctor Colton another question: Do you know of any political economist in America of accepted authority who in the past thirty or forty years advocated publicly in his writings any thing but classification together with income and inheritance taxes? If so, will you please name the man for my information, so I can make a study of his writing?

Mr. COLTON: I will say in answer to the gentleman's inquiry, as far as condemning the general property tax, what the gentleman states is true. You will find nearly all of the authorities on his side. I am not ready, however, to say that they all commend classification. Some of them do. I can not name the authorities who advocate certain substitutes for personal property tax which would not fall under the head of classification.

Mr. HARRIS, of Hamilton: Now, members of the Convention, I call your attention here to a list of the states of the United States which have adopted classification. It is the only memorandum I have. It was compiled by Judge Worthington for the benefit of the committee on Taxation from Thorpe's Constitutions, 1910. I give the states and the times since which they have had classification: Vermont, 1877; Rhode Island, 1876; Virginia, 1902; Colorado, 1876; Connecticut, 1776; Delaware, 1776; Georgia, 1877; Idaho, 1899; Iowa, 1846; Maryland, 1776; Massachusetts, 1776; Michigan, 1909; Minnesota, 1906; Missouri, 1820; New Hampshire, 1776; New York, 1776; Oklahoma, 1907; Pennsylvania, 1776; Arizona, 1912.

Gentlemen, in that list you will notice particularly the three great states of New York, Massachusetts and Pennsylvania. Side by side you notice also all of the great progressive states of the Northwest that have recently held constitutional conventions. With the experience of one hundred and forty years before them, they have discarded the uniform rule of taxation and adopted the classification of property tax. I ask the laboring men in this Convention to what states they look for the most advanced legislation in labor matters. The answer will be New York, Massachusetts and Pennsylvania. I ask those who are familiar with insurance and banking, to what states they look for the most advanced legislation on those subjects, and their answer will be New York, Massachusetts and Pennsylvania. In recent years Wisconsin, Minnesota, Michigan and other states have been added to that proud list.

The opposition to classification is fear and prejudice. Prejudice and fear are the only two reasons for the opposition to classification. Classification aims to do that which those who fear and those who are prejudiced against it think will not be done. The basis of their opposition to it is the very thing which classification aims at overcoming. Classification aims primarily at the element of human nature. Classification aims to get taxation on certain forms of property which the experience of fifty years has demonstrated can not be gotten by a uniform rule of taxation. A classification tax says that the bonds of a municipality, corporation bonds if you will under the uniform rule of taxation on intangible personal property escape taxation because human nature is greater than any statute. The uniform rule applies such a high

rate on the income that the holder seeks every means to escape it. We are not dealing now with the morality of the question. Taxation is a practical concrete proposition. The present rate is fifteen mills in the city of Cincinnati. Why is that rate to a certain extent so great apparently that it induces the holders of bonds other than municipal—which latter are exempt from taxation, but high-grade railroad bonds bringing in four per cent or three and three-quarters—why is that rate of fifteen mills so great as to prevent the listing of the bonds? That is a question of mathematics. Let us determine it by mathematics.

Ten thousand dollars of four per cent bonds bring in an income of \$400. Now the uniform rule of taxation at present existing in the state of Ohio, subjects those \$10,000 of bonds to taxation in the city of Cincinnati at the rate of fifteen mills, so that the amount of the tax would be \$150; \$150 is about thirty-seven and a half per cent of the total income. Do you know why such securities evade the tax gatherer? Simply because you are taxing the thing itself and not the income. It is taking under our present law thirty-seven and a half per cent of the income. Human nature says we will not pay thirty-seven and a half per cent of the income; first, because we can not afford to do it and second because we consider it unjust and immoral; we find that merchandise that is paying \$150 on \$10,000 is earning fifteen to twenty-five per cent—at least fifteen per cent—and the comparison between the percentages of taxation on the incomes of the two classes of property and the burden is so great on the owner of the bonds that he does not list them.

You answer and say, "But the law is there." The law and the machinery with which to execute the law are both there. That is true, but have not the law and the officers of the law and the machinery of the law been there for sixty years? Have we not had tax inquisitors always with us who were given as much as twenty-five to fifty per cent of the amount of back taxes collected, as a fee? And how much of this property has come out? Do you mean to say here that this body or any body that succeeds it as a legislature will so change human nature that they will be able to make better laws and find better officers and better machinery than have been found in the past sixty years? Do you not know that this is ridiculous? That is why we favor classification. We take that same element of human nature and we say that we will put these bonds in a special class by themselves and charge five mills instead of fifteen and make the penalty for failure to list very heavy. That same element of human nature which refuses to pay thirty-seven and one-half per cent of its income will say, "I will pay ten per cent of my income on those bonds."

Mr. WATSON: Will you yield?

Mr. HARRIS, of Hamilton: No, sir; I have not any notes and I am speaking simply "on my feet," and I prefer not to be interrupted. The average man will pay ten per cent of his income from his bonds. The average man wants to pay taxes and only refuses to pay when you compel him to consider the elements of self-preservation. And so classification runs on through. It aims to put certain lines of property in certain classes at lower or higher rates, according to the ability of the tax-gatherer to collect the lower or higher rate. In every

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instance in which it has been tried, for we are not sailing on uncharted seas, it has proved remarkably successful. As I answered an inquiry the other day, I will give you again this concrete illustration, and it could be multiplied a thousand times. Some years ago the legislature of Maryland permitted its city to adopt classification, and the statements I am going to give you are from a printed pamphlet furnished to the committee on Taxation and read by me to the committee at one of its meetings. I am charging my mind with the results of those investigations. It was incorporated in a report from the Kentucky committee on taxation made to the governor and the legislature of Kentucky imploring the state of Kentucky to adopt classification. The city of Baltimore in about 1896, before the classification of property was permitted, returned in personal property about \$5,000,000. The rate was about three per cent and the revenue was about \$150,000. In 1906 the statement gave the increase in every year during ten years, including the year of the great fire, in which there was a slight falling off of \$4,000,000 or \$5,000,000. In the year 1906 people of the city of Baltimore returned \$150,000,000 of personal property for taxation and the city of Baltimore received something like \$450,000 of revenue therefrom. Last spring the legislature of New York enacted a law stating in substance that the holders of certain classes of bonds, which at that time were not exempt from taxation, could, upon delivering them to the state treasurer at Albany and paying a tax of one-half of one per cent, have the bonds stamped declaring the bonds thereafter were forever exempted from taxation. I wrote to my banker in New York and asked him to get from the state comptroller of New York concrete results of the operation of that law. I read the letter in question to the committee on Taxation and now give you the substance of it so far as my memory carries it. The comptroller wrote that the law became operative September 1, 1911, and in the four months of September, October, November and December, there had been surrendered to the comptroller at Albany \$300,000,000 of those bonds on which a tax of one-half of one per cent was paid and which theretofore had not paid anything, although subject to taxation. It is computed that within eighteen to twenty-four months from the operation of the law, taking again into consideration that element of human nature which controls all our actions (fear on the part of the holders whether the law would stand and wanting to see how it operated, to see that there was no trick in it), that there will probably be two billions of bonds returned to the comptroller for taxation. That is the theory of classification. It is not to help the rich man, as you believe. It is advocated by the greatest political economists of our times as a distinct step in advance toward a practical solution of a question that would otherwise seem to be unsolvable.

Now I want to take up with you the question of exempting municipal bonds from taxation. There is no question before you which ought to receive from you more serious consideration, and that ought to appeal to people coming from the small villages or small communities so much more strongly than from the large communities. I know from practical experience that prior to the time when municipal bonds were exempt

from taxation the small villages were fortunate when they floated their bonds at par bearing six per cent interest. Every inhabitant in that small village contributed his share toward that six per cent of interest that went on day and night. The small place was at the mercy to a certain extent of the bond buyer, because its bonds have no general market. They can not be sold in New York or Pennsylvania or Massachusetts. They can only be sold in Ohio communities and they were subject to taxation by reason of which these small places were heavily burdened. The result, as all of you know who have had any practical experience at all, was that it was extremely rare for any small community of five thousand or less to float their bonds under six per cent interest. The exception only proved the rule. The moment the ban of taxation was lifted conditions radically changed, and bear in mind always that neither the state nor the county nor the municipality got any of that tax because the bonds were not listed for taxation; it was a burden placed upon the community by the buyers of the bonds. They charged for the risk taken by them in concealing the bonds from the tax officials. Now the moment the law was passed exempting the bonds of all municipalities from taxation, those of us who had anything at all to do with municipal and county bonds noticed immediately a drop from six per cent to five per cent in the bonds of the smaller communities and at times as low as four and a half per cent. Why? Because then the small community was not at the mercy of the bond buyer. The neighboring farmer who had \$500 or \$1,000, or the laboring man who had \$500 or \$1,000, or any other person in the community with money, bought those bonds. The bonds could be sold in the immediate neighborhood where the financial strength and character of that particularly small community were well understood. The people knew they were safe, they knew they were taking no risk, whether it was a city of five thousand or of three thousand or of one thousand. It made no difference. Those bonds are almost universally held by the farmers and small investors in the small community.

Now what practical advantage will you gain by making municipal bonds subject to taxation? Assuming for the sake of argument, and I only do it for the sake of argument, that you will get some of that interest back in the form of taxes, the amount received will be very small as compared to the additional amount by reason of the increased rate of taxation you will pay annually. As a practical proposition it amazes me that this question should receive any serious consideration in this Convention. I can not figure out the mental reasoning that goes on. We know what has been the experience in the past and it is safe to predicate the future on the known conditions of the past. We know what will happen as to the larger municipalities, Cincinnati, Cleveland, Dayton, Youngstown, etc. The bonds of half a dozen of the large municipalities have a market outside of the state. Cincinnati will sell its bonds as it has done for the past thirty-five years. We have a magnificent market in New York city. Millions and millions of our bonds issued for the construction of the Southern Railway Company were held by the savings banks of New York city and other cities in the state of New York. I remember that one large bank held one registered bond

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for about \$800,000. Another bank in New York held one of our registered bonds for \$1,200,000. Registering a bond simply means the surrender of the bond with coupons attached and delivery of a non-coupon bearing registered bond in lieu thereof. It means generally that the owner is going to hold these bonds from time of purchase until maturity. Such registered bonds are generally part of the fixed investments of the savings bank.

The moment municipal bonds are made subject to taxation the bond buyers of New York are the great gainers. They say that they can not sell any of those bonds in Ohio because they are subject to tax, and having lost one of their best markets, those bonds, instead of selling at four per cent and at a fine premium, will have to be sold for four and one-half to five per cent, and the municipality will be lucky if it can float its bonds at par at four and one-half per cent. Now where is the good business judgment shown by such methods? Does it take any great financier to show you the absurdity of making municipal bonds the subject of taxation? Is it not a plain, every-day, common-sense transaction?

Remove your prejudice and look at it calmly. Any banker or broker you may speak to will tell you exactly what I am telling you, and I am speaking from ten years of official life in Cincinnati in that particular department concerned in maintaining the city's credit. The general proposition that the community should tax itself is so ridiculous that to state it is simply to cause its defeat. Have you considered, gentlemen, that this Convention has just authorized the state of Ohio to issue \$50,000,000 of bonds for the construction of good roads? Now you will pay the interest on those bonds, and yet have you considered for one moment the idea of increasing your own taxes for the purpose of giving an advantage to New York bankers who will buy the bonds of the state of Ohio that are so gilt-edged, but knowing they would not have the general market of the state of Ohio the moment they are taxed, they will penalize the state of Ohio? I make the statement here, and I believe it to be absolutely correct and have no fear that time will not justify it, that if you do not commit the unpardonable crime of making municipal, county and state bonds subject to taxation, there will be no difficulty at all in selling at par the \$50,000,000 of bonds of the state of Ohio issued at three and a half per cent, and possibly at a premium, for I say to you that the great bankers of France and England, some of the great continental financiers, will take part of those bonds. That is where part of them will eventually be held. That is how high the credit of the state of Ohio stands. Several millions of bonds issued by the city of Cincinnati for the construction of its Southern Railway were sold in the city of London and were held there for forty years, until their maturity, and one of the conditions named in that particular issue of bonds was that they should be payable in pounds sterling as well as dollars, and the bonds came back to us from the city of London; they had never left the bank to which they were originally sold forty years ago.

Now, gentlemen, there is another subject on which I wish to speak that it pains me to speak about, and in order that my words may not be misunderstood I here and now publicly state that I do not hold any member

of the minority committee responsible for knowledge of the conditions which I shall now disclose. I distinctly exonerate them from any known participation in the outrage that is attempted to be foisted on this Convention.

A few days ago one hundred and four members of this Convention declared for home rule. To one who has been a student of history to some extent, I noticed the historical significance that in 1912 an empire that the greatness of Rome in all its glory never equaled had finally determined to do justice, and had given home rule to Ireland. I thought it more than a coincidence that in the same year and almost the same month, our municipalities in Ohio, from the smallest village to the largest city, were being freed and delivered from the thralldom of state control and were being given home rule. So did I and so did every one of you. It never entered your minds for a moment that instead of being given home rule, home rule was being taken from you stealthily and cunningly by those whom you supposed were its friends. I saw the minority members of my sister committee on Taxation offering to this Convention its substitute proposal and I studied it, and I was shocked when I discovered that without their knowledge, without a thought of the iniquity being practiced and in their gullibility, they had permitted the corporations which owned the private utilities that are throttling our cities to cunningly get in their work. The minority report on taxation stood with its right hand extended with palm upward in a brotherly fashion to the committee on Municipal Government, but with its left hand around the neck in what we supposed was a friendly embrace, but was instead in the act of sticking a stiletto under the fourth rib. Now how did they do it? Read section 7. The minority did not know what they were doing. No, gentlemen, you thought that public utilities were going to be given you. You naturally believed that you had in your power the ability to own and operate and construct public utilities in your own villages and cities. Of course, it occurred to you that it required money to do this, but the privately owned utilities would have destroyed you. They have limited by constitutional law—think how cunning it was, how well thought out, all for the protection of the people they said and in order that the people could not get too much money—they have limited the power of bond issues and debt to four per cent of the tax duplicate in the cities. With that limitation you will never own any public utilities. Today the limit under the referendum vote is five per cent. The difference of the one per cent in the city of Cincinnati is \$5,000,000, because our tax duplicate is \$507,000,000. In the city of Cleveland it is about \$7,000,000, because its tax duplicate is about \$700,000,000. If we in the larger cities or you in the smaller cities, because the proportion relatively is just the same, want to own, construct or operate our public utilities, and we found that the five per cent limit would not enable us to do so, we would go to the legislature and ask for that which was carefully preserved by your committee on Municipal Government, namely, for a special law to enable that particular municipality to increase its debt limit to eight per cent, and, if necessary to spend \$10,000,000 or \$20,000,000 in a manner most profitable to the municipality because then they would be exclusively general bonds, not special bonds, based on franchise and the

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utility, and the legislature would enact that special law, then the particular municipality, whether a city of six hundred thousand or six hundred, could determine for itself if it wanted to avail itself of this special law. But section 7 cunningly provides by a constitutional enactment that you can not do that. Remember a legislative enactment is quite a different proposition. You could change that at any session of the legislature whenever the demand was strong enough, but a constitutional provision is not so easily changed. And so in the house of its friends, in the midst of our rejoicing, when all through the state everybody was of the opinion that municipalities had finally obtained home rule, the minority report of the committee on Taxation, with the sneer of Mephistopheles takes it away from us. Of course, I am aware that no single member of that committee knew anything about it. Of course not, or it would not appear there, but I know a little better than some of those gentlemen do, the underground conduits through which corporations work. A chance conversation with Mr. Smith or Mr. James, who may or may not be a member of this Convention, or one of the Convention who may be innocent of any complicity, admits a suggestion from an outside source and it seems good. My very blood boils with indignation when I think that after all these years of servitude, when the Ohio municipalities thought they had stricken off their shackles, we find in the taxation proposal a carefully worded phrase which would rivet the shackles stronger than they were before—and our humiliation and destruction had come to us from within the house of its friends.

Mr. KNIGHT: I want to offer an amendment.

Mr. DOTY: At the present time an amendment would not be in order, but I would like to withdraw the amendment I have pending so the gentleman can offer his amendment.

The PRESIDENT: Without objection the amendment of the gentleman from Cuyahoga [Mr. Doty] is withdrawn.

Mr. KNIGHT: I now offer the following amendment—

Mr. WOODS: I object to the withdrawal of that amendment of the member from Cuyahoga. I do not think one member has the right to withdraw an amendment.

The amendment offered by Mr. Knight was read as follows:

Amend the amendment of Mr. Evans to Proposal No. 170 as follows: After the word "taxed" and before the period insert "unless such taxation shall be authorized by general laws."

Mr. WOODS: I want to know whether a member of this Convention has not a right to object to the withdrawal of an amendment that is before the Convention?

The PRESIDENT: Will the member quote the rule on the subject?

Mr. WOODS: I move that the pending amendment and the amendment to the amendment be laid on the table, and on that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 64, nays 42, as follows:

Those who voted in the affirmative are:

Anderson,	Holtz,	Partington,
Baum,	Hursh,	Peters,
Beatty, Morrow,	Johnson, Madison,	Pettit,
Beatty, Wood,	Jones,	Pierce,
Beyer,	Kehoe,	Price,
Brattain,	Keller,	Riley,
Brown, Pike,	Kramer,	Rockel,
Cassidy,	Kunkel,	Shaw,
Cody,	Lambert,	Solether,
Collett,	Lampson,	Stalter,
Colton,	Longstreth,	Stevens,
Crites,	Ludey,	Stewart,
DeFrees,	Mauck,	Stokes,
Donahay,	McClelland,	Tannehill,
Dunn,	Miller, Crawford,	Tetlow,
Dwyer,	Miller, Fairfield,	Wagner,
Earnhart,	Miller, Ottawa,	Walker,
Eby,	Moore,	Watson,
Fluke,	Norris,	Winn,
Harbarger,	Nye,	Wise,
Harris, Ashtabula,	Okey,	Woods.
Henderson,		

Those who voted in the negative are:

Bowdle,	Halfhill,	Peck,
Cordes,	Harris, Hamilton,	Read,
Crosser,	Harter, Stark,	Readington,
Cunningham,	Hoffman,	Roehm,
Davio,	Hoskins,	Rorick,
Doty,	Johnson, Williams,	Shaffer,
Dunlap,	Kerr,	Smith, Geauga,
Evans,	Kilpatrick,	Stamm,
Fackler,	Knight,	Stilwell,
Farrell,	Leete,	Taggart,
FitzSimons,	Leslie,	Thomas,
Fox,	Malin,	Ulmer,
Hahn,	Marshall,	Weybrecht,
Halenkamp,	Matthews,	Mr. President.

So the motion to table was carried.

Mr. DOTY: I move that Proposal No. 170 and pending amendment be laid on the table.

The PRESIDENT: This is a motion to lay the whole subject of taxation on the table.

The yeas and nays being regularly demanded, were taken, and resulted—yeas 32, nays 75, as follows:

Those who voted in the affirmative are:

Beatty, Wood,	FitzSimons,	Leslie,
Bowdle,	Fox,	Malin,
Brown, Lucas,	Hahn,	Matthews,
Cordes,	Halenkamp,	Readington,
Crosser,	Harris, Hamilton,	Roehm,
Davio,	Harter, Stark,	Shaffer,
Donahay,	Hoffman,	Solether,
Doty,	Hoskins,	Taggart,
Evans,	Kilpatrick,	Weybrecht,
Fackler,	Knight,	Mr. President.
Farrell,	Leete,	

Those who voted in the negative are:

Anderson,	Dwyer,	Keller,
Baum,	Earnhart,	Kerr,
Beatty, Morrow,	Eby,	Kramer,
Beyer,	Fess,	Kunkel,
Brattain,	Fluke,	Lambert,
Brown, Pike,	Halfhill,	Lampson,
Cassidy,	Harbarger,	Longstreth,
Cody,	Harris, Ashtabula,	Ludey,
Collett,	Henderson,	Marshall,
Colton,	Holtz,	Mauck,
Crites,	Hursh,	McClelland,
Cunningham,	Johnson, Madison,	Miller, Crawford,
DeFrees,	Johnson, Williams,	Miller, Fairfield,
Dunlap,	Jones,	Miller, Ottawa,
Dunn,	Kehoe,	Moore,

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Norris,	Riley,	Tannehill,
Nye,	Rockel,	Tetlow,
Okey,	Rorick,	Thomas,
Partington,	Shaw,	Ulmer,
Peck,	Smith, Geauga,	Wagner,
Peters,	Stalter,	Walker,
Pettit,	Stevens,	Watson,
Pierce,	Stewart,	Winn,
Price,	Stilwell,	Wise,
Read,	Stokes,	Woods.

So the motion to table was lost.

Mr. WINN: I desire to offer an amendment.

The amendment was read as follows:

At the end of the amendment offered by Mr. Anderson add the following to be known as section 9 of said article XII of the constitution:

SECTION 9. The maximum rate of taxes that may be levied for all purposes shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school district, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all purposes, on each dollar of the total value of all the property therein, as listed and assessed for taxation, in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose; but in no case shall the combined maximum rate of taxes for all purposes, levied in any year in any township, city, village, school district, or other taxing district, exceed fifteen mills on each dollar of the total value of all the property, as listed and assessed for taxation, in such district.

Mr. WINN: Gentlemen of the Convention: This amendment which I offer is taken from one of the paragraphs of the majority report. It differs from the minority report in that it contains no limitation as respects the amount of bonds that may be issued and outstanding by municipalities. In other words, the amendment attempts to do nothing more than limit the rate of taxation. The limitation of the rate of taxation is a proper subject for consideration by a constitutional convention. In nearly all of the states some limitations are made, and in my judgment the limitation of this amendment is the correct one.

Mr. ANDERSON: How do you figure that that is the correct one? What can you take as a basis for your figures? What figuring can demonstrate its correctness? Is not that very indefinite?

Mr. WINN: I want to say to the member that I prefer to discuss this in my own way, and when I am through I will have made it as plain as I am able to do why I think the limitation here is the correct one. Then I shall be glad to answer any question that is asked me.

When I was elected a member of the Convention, and when I came here, it was with an open mind as respects this question of classification of property. Twice within the last ten or fifteen years we have voted for a constitutional amendment authorizing the classification of property, and if my memory is not at fault I voted both times in favor of the proposed amendment. I believed in it because I thought there existed some good reason

for the classification. I came to this Convention hall one night to hear several experts discuss the question and I came with an open mind, expecting that before they concluded their remarks I would be convinced they were right. But much to my surprise, I found myself, as the argument progressed, taking the other side of the proposition, and when those men had concluded what they had to offer in favor of classification I was altogether opposed to it, and I will tell you why. I thought property ought to be classified because it would make it possible for us to reach a class of property that in a measure at least escaped taxation; but I found that all the argument in favor of the classification of property was that we make it easier for some property to escape taxation. I spent a few minutes this forenoon in ascertaining as near as I could how property is escaping taxation in some of the large cities. Here are a few figures that I hastily gathered from an official report. If this report is correct, in Cuyahoga county in 1909 there was returned for taxation moneys on hand and subject to check \$1,800,000. I give it in round figures. There was at the same time on deposit in the banks of Cuyahoga county subject to check \$165,000,000. In Hamilton county there was on deposit \$111,000,000, while \$1,113,000 was returned for taxation. In Franklin county there was \$32,000,000 subject to check, and 1,600,000 returned for taxation. In Montgomery county there was \$14,000,000 on deposit, and \$1,500,000 returned for taxation.

Now, last night the member from Preble spoke of his county, and I looked that up, and there was \$2,252,000 on deposit in 1910. I was not able to get the report for 1911, and so all I can give you is for 1910. In 1910 there was returned in Preble county about \$927,000 out of about \$2,000,000. Now, come to the county where I live. There was on deposit in the banks of Defiance county \$1,313,000, and there was returned for taxation \$201,000.

Now I am going to discuss this matter today just as I discussed it with a banker of Defiance county a few days ago. I said to him, "I will not agree to any proposition that will make it easier for any men to avoid taxes," and I want to confirm what was said by the member from Cuyahoga [Mr. Dory], that it is not the property that pays the taxes, but it is the owner of the property. I will not consent to any proposition which makes it easier for the owner of property to avoid the payment of taxes. I said this to the banker, "If I have an opportunity in the Constitutional Convention—indeed, if I ever find an opportunity any place where I shall be able to strengthen the law so that the taxing officers may go into your banking institution, and ascertain the name of every man who has money on deposit there, to the end that it may be required to respond in a just amount of taxes, I will do so," and I said to the building and loan association that my firm represents as attorney, "If at any time in the Constitutional Convention or elsewhere I can aid in making it possible for the taxing officers to go into your association and find who it is that owns \$780,000 of money that I know is on deposit with your association, I will aid him, to the end that every one of those owners of property may be required to pay taxes." If it were possible to get upon the tax duplicate these concealed funds nothing would be easier than for our counties and municipalities to raise all the funds necessary to carry on their

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business affairs and pay their debts; and the reason we have not been able to do it heretofore was because we have all the time attempted to make it easier for men with money to avoid paying taxes upon it. Now it appeals to me this way: I have in mind an illustration in one of the townships where I live. A man died a couple of years ago leaving an estate of about \$80,000. It was inherited by his two sons. One of them took his \$40,000 and put it in one of our banks and in our building and loan associations. So much as went on deposit in the building and loan associations earns five per cent interest, and that in the bank earns three per cent. The other son invested his money in a farm in Defiance county. Is there any justice in a proposition that will permit the one who put his money in the bank and the building and loan associations to escape all the taxes, which he will do, when the one who put his money in the farm will have to pay full taxes?

I offer this amendment so that we can meet the question face to face as early in the discussion as possible.

Mr. FACKLER: I have never been an advocate of the classification of property for the purpose of taxation, but I have believed that taxation is a matter upon which public opinion is in a formative stage, and it should be left to the legislature rather than fixed in the constitution, and I have been interested as a resident in a large city, or district in which there is a large city in which I am interested, in that part of the minority report which undertook to limit the powers of the city, and I am pleased to note in the amendment of the gentleman from Defiance [Mr. WINN] that the arbitrary limit of the bonded debt was abandoned. The bonded debt there was not only decreased, but if section 7 of the minority report were adopted, water works bonds, which have heretofore been eliminated in figuring the debt limit, would be included; but the amendment of the delegate from Defiance [Mr. WINN] provides the maximum tax rate shall never exceed ten mills. That is more stringent than the Smith bill. The Smith bill allows levies for sinking funds. The Cleveland sinking fund levy is 1.38. We can not get along with this amendment, and I offer an amendment raising that limit to enable the cities to get on temporarily.

The amendment was read as follows:

Amend the amendment of Mr. Winn to Proposal No. 170, as follows:

In the second line of section 9, change "ten" to "fifteen". In line 11 change "fifteen" to "twenty".

Mr. CASSIDY: I move to lay the Winn amendment and the Fackler amendment on the table.

Mr. WINN: I want the yeas and nays on that.

The PRESIDENT: Does the member want the yeas and nays, or will he allow the president to count?

Mr. WINN: I want them to go on record.

Mr. PRICE: I ask for a division of the questions.

The PRESIDENT: The question then is upon laying the Winn amendment upon the table.

Mr. DOTY: No; if anybody had desired to lay the Fackler amendment on the table, a motion could have been made to that effect. A motion was made to lay the pending amendment and the Fackler amendment upon the table, and that motion is indivisible. I call your attention to the fact that we have already voted once

upon this, and we are only allowing a yeas and nays vote by sufferance.

The PRESIDENT: The president sees no reason why a division is not granted and the vote taken.

Mr. FACKLER: I will withdraw my amendment temporarily then.

Mr. WINN: An amendment cannot be withdrawn without unanimous consent.

Mr. KNIGHT: Then I object, and appeal from the decision of the chair, after we have had one vote on it.

Mr. HARRIS, of Hamilton: And I sustain the appeal.

The PRESIDENT: The question is, Shall the decision of the president stand? Those in favor of the motion will say aye, and the contrary no.

The president seems to be sustained, and the vote is on the amendment of the member from Cuyahoga [Mr. FACKLER]. The question is, Shall this amendment be tabled?

A vote being taken the president declared that the motion seemed to be lost.

A division was called for.

The PRESIDENT: Those in favor of laying the Fackler amendment on the table will please rise. [After a count]. The motion is lost.

Mr. WINN: Now I demand the yeas and nays.

Mr. DOTY: Oh what?

Mr. WINN: On the amendment I offered.

Mr. FESS: I rise for information. The motion was to table these two amendments, and I want to know what we voted on. I do not understand how we can table the Winn amendment without taking the other amendment with it.

Mr. WINN: We have voted on the other amendment, and now I demand the yeas and nays on the motion to table my amendment.

The yeas and nays were taken, and resulted—yeas 52, nays 57, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Mauck,
Antrim,	Halfhill,	Peck,
Beatty, Wood,	Harris, Hamilton,	Read,
Bowdle,	Harter, Stark,	Redington,
Brown, Lucas,	Hoffman,	Roehm,
Campbell,	Hoskins,	Shaffer,
Cassidy,	Johnson, Madison,	Smith, Geauga,
Cordes,	Johnson, Williams,	Solther,
Crosser,	Kerr,	Stewart,
Davio,	Kilpatrick,	Stilwell,
Doty,	Knight,	Taggart,
Evans,	Kramer,	Tetlow,
Fackler,	Leete,	Thomas,
Farrell,	Leslie,	Ulmer,
Fess,	Malin,	Weybrecht,
FitzSimons,	Marshall,	Wise,
Fox,	Matthews,	Mr. President.
Hahn,		

Those who voted in the negative are:

Baum,	Donahay,	Hursh,
Beatty, Morrow,	Dunlap,	Jones,
Beyer,	Dunn,	Kehoe,
Brattain,	Dwyer,	Keller,
Brown, Pike,	Earnhart,	Kunkel,
Cody,	Eby,	Lambert,
Collett,	Fluke,	Lampson,
Colton,	Harbarger,	Longstreth,
Crites,	Harris, Ashtabula,	Ludey,
Cunningham,	Henderson,	McClelland,
DeFrees,	Holtz,	Miller, Crawford,

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Miller, Fairfield,
Miller, Ottawa,
Moore,
Norris,
Nye,
Okey,
Partington,
Peters,

Pettit,
Pierce,
Price,
Riley,
Rockel,
Rorick,
Shaw,
Stalter,

Stevens,
Stokes,
Tannehill,
Wagner,
Walker,
Watson,
Winn,
Woods.

So the motion to table was lost.

Mr. COLTON: I now offer an amendment.

Mr. FACKLER: I rise to a point of order. There are three amendments pending now.

The PRESIDENT: The point is well taken. The president recognizes the gentleman from Cuyahoga [Mr. HAHN].

Mr. HAHN: Mr. President and Members of the Convention: F. B. Colbert, the great French financier during the reign of Louis XIII and Louis XIV, was asked what he considered the best principle in taxation. His answer was, "Taxation may be compared to the plucking of the feathers of the geese. Pluck out as many feathers as you possibly can, but only see to it that the goose does not squeak." That policy in taxation of ages past does not hold good in our days. We have to be guided by the principles of the science of taxation.

The great minds of England, France and Germany have given the closest attention possible to that matter; and the consequence is that taxation has become a subject discussed in clubs and societies, books and periodicals, lodges and private assemblies and with the result that the greatest experts of the present day came to the conclusion that uniform taxation has proved to be a failure.

We have two kinds of property, real and personal, and as long as these two classes of property will so radically differ from one another in form, nature and character, it will be necessary to have at least two kinds of taxation. Uniform taxation is and will remain a failure as long as it will be difficult to reach intangible property. If intangible property could not be concealed the whole taxation problem would be solved at once.

I am in favor of the classification of property for taxation purposes for the reason that uniform taxation is in conflict with and in contradiction to every principle of sane taxation. The first fundamental principle of taxation is and should be just distribution of the taxes. But a just distribution of taxes is impossible under the uniform taxation system because uniform taxation means double taxation. I heard yesterday a gentleman here say, "What about double taxation? That is a mere bugaboo. There is nothing of any amount in the state of Ohio that indicates double taxation." As long as there will be a tax on real estate mortgages and at the same time a regular tax on the same encumbered property, and as long as there is tax to be paid by the merchant on his outstanding debts, and at the same time a tax on his stock of goods on which he owes money, and as long as the investor in the stock of a corporation and also the corporation will be taxed on the same stock we have double taxation of a nefarious kind in Ohio.

What are the consequences of double taxation? In the first place, it has a bad moral influence in so far as it leads to lying and to perjuries and to all kinds of schemes by which people conceal their personal prop-

erty to escape taxation. Mortgages are put in fictitious names or in the names of banks. A great many people do everything to conceal their securities and their money deposits and in most cases it is impossible to do anything against them. It has further a very injurious influence in driving the money out of the state. People think a classified taxation makes it too easy for the rich man to invest his money. You need not worry about the rich man. The capitalist knows where the cities of refuge are to obtain the highest per cent and to secure the greatest benefit. We must rather take care of the farmer, who is threatened by foreclosure and unable to secure a loan, we must think of the merchant, when beneficial for him to put a mortgage on his stock, and of the workingman, when the time comes for him to build a little home and he cannot get a loan because the money is driven out of the state. Who after all has to pay the higher rate of interest? The capitalist finds under all circumstances a way to shift the burden of the taxes upon the shoulders of the borrower. A great injury is wrought in that respect. Moreover the double taxation drives some of the best men from the state. People may say, "Well, we can get along without them." Ah, my friends, that is a great mistake. We can get along and we must get along when it can not be helped, but there are men whose genius, energy and enterprise weigh in the scale of social conditions a great deal more than their dollars and cents. The uniform taxation is against another fundamental principle, the ability to pay taxes. The burden of taxes should not come on the man who is not able to pay. It is a great mistake to think that the man who pays the taxes really is the taxpayer. Very often the man who pays the taxes does not pay them at all. He merely advances the money and the real burden is shifted upon the man who is the least able to bear it. Let us see how that works in some cases. Take, for instance, a farmer who owns some sheep. He has to pay taxes on the sheep. Then the wool is clipped, and there comes in the jobber, and he has to pay taxes on the wool. Then the wool is taken into the factory, and there again is the tax on the machinery. The wool has to be dyed, and it is dyed with taxed dying-stuff; and then when the cloth is produced it goes to the merchant and he has to pay taxes on it, and then the tailor has to pay taxes. Now you can see how often taxes have to be paid upon almost one and the same article. Who after all has to bear the tax burden? The man who buys and wears the clothes. The man who is only too often least able to pay taxes. This is the principle of incidence so often overlooked by the people, but of its evil and wrong effects the poor man is never relieved.

A third fundamental principle of taxation is certainty. There must be a certain taxable object, but the uniform taxation system does not consider that. It imposes taxes upon property it can never reach. Of what benefit to the merchant are outstanding debts he never can collect? And of what benefit is it to the state to put on the tax duplicate personal property that cannot be reached? People say you can force the owners of such property by law. Experience has shown us that force in that respect is inefficient. It is human nature we have here to grapple with. We must take mankind as mankind is. We cannot change human nature. Experience teaches us

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that when it comes to the payment of taxes upon personal property, people try to evade it as much as possible. It is true, it should not be so. When people take into consideration that they live in a large commonwealth where they enjoy all the blessings of justice and liberty, where they live in affluence and prosperity, they should feel happy and glad to pay taxes and nothing should be farther from them than evasion of taxes. They should consider the day when they go to pay taxes a holiday and they should put on the best of their attire. But not all are so built, and we cannot change human nature. What can be done? Shall the people who have personal property not be taxed at all? That is not the idea. There is only one way by which that evil can be considerably remedied and that is by lowering taxation on personal property. People have money in bank. The money in banks amounts to millions. If you tax it one per cent you cause a great calamity because the people will withdraw it and it will be driven out of the state, but if you tax it at a low rate, let me say one-quarter of one per cent, most of the people will be satisfied, because they know the government has to be supported by tax revenues; and the same thing will be true of foreign stocks. You cannot derive any benefit from it at present, but it will bring millions into the county treasury if only a very small tax is imposed on them. And it will not be different with mortgages. In New York and Philadelphia they have a very low, almost nominal, rate in taxing of mortgages, and to my knowledge it works very satisfactorily. Millions and millions are derived from the lower taxation, while formerly people escaped with paying nothing.

The fourth fundamental and just principle of taxation is to tax the income. It is just because it does not change the prices. It is not an influence upon values, and a man who has an income can better afford to pay than one who is dependent upon agriculture or anything else.

The students of economy were very often perplexed to find a test of taxation. Some thought taxation should be fixed according to the expenses of a man. If a man has large expenses, he ought to pay more taxes. Others again thought property should be a standard of it. They overlooked that property without the right man behind it cannot always be made profitable. Others again thought production was the best test of taxation, but also this was found to be incorrect. My friends, the real test, the real standard of taxation, should be the income of a man. If you raise the taxes on real estate it will at once affect the rent upon factories and stores. If you have a license tax, it has a certain effect upon the capital itself. The license has to be paid, though the capital, however small, is thus much crippled. In business again much depends upon the stringency of money. Much depends upon hard or good times. But the man who has an income, why should not he pay taxes on the same? But even the income tax should not be uniform. A distinction should be made between permanent incomes and such as are merely temporary. The income from a source that can at any moment dry up should not be taxed as high as an income from a permanent source.

We should also have in this state an inheritance tax. There is nothing wrong in it. When people pass away and leave behind them fortunes, society should get a

share of them. When the minister stands at the grave of a rich man saying, "Dust to dust and ashes to ashes, the soul returns to God who has given it," the tax collector should have a right to join saying, "And a portion of the fortune that was left behind shall go to society whence it came." But even the inheritance tax to be fair and proper must not be uniform.

A further fundamental principle in taxation is that taxes shall not impair or diminish the source from which the taxes come. Uniform taxation often kills the goose that lays the golden eggs.

My friends, I am for classification in taxes, because I think it is beneficial and in conformity with the fundamental principles of the science of taxation mentioned here. Let us bear in mind that no matter what our principles or ideas or ideals may be, we have to accommodate ourselves to the economic conditions of the age and we have to consider the forces that are constantly transforming society. Gentlemen, I thank you for your kind attention.

Mr. HURSH: I guess there is no question that those who are familiar with my ideas upon this subject of taxation—

The PRESIDENT: The member from Fayette was to be recognized, and the member from Hardin was not recognized for the purpose of making a speech. The president thought he was going to propound a question to the gentleman from Cuyahoga [Mr. HAHN].

Mr. HURSH: It puts me in an embarrassing position to make a motion without giving the reasons for it, and I do not care to do it at this time.

Mr. JONES: It has been said that there is no question so great or so complex—and that is well illustrated in the experience of lawyers in the trial of cases—but that the whole matter may be reduced to one or two controverted propositions, the determination of which will settle the whole matter involved.

It has occurred to me in listening to the discussions upon this taxation matter that that was eminently true here. We have had a great deal of discussion upon the matter by the member from Cuyahoga [Mr. DOTY] which was largely if not wholly theoretical, and we have had a great deal of discussion from other members along the same line with reference to this matter of classification, but reduce it to its last analysis and it occurs to me that it involves simply one question. It appears to be conceded from what I have been able to hear, and I have been listening intently to those who have been advocating the classification of property, that the uniform rule of taxation is the most desirable one, provided it can be properly enforced. I say by everyone, but I notice Mr. Doty shaking his head. I will modify that and say, by everyone who is not in favor of the single tax. But all of those who hold to the theory that taxes should be raised upon property, and to the correlative theory that the taxes should be paid in proportion to the ability of the person to pay, recognize, as I say, as fundamental that the amount of taxes ought to be regulated according to the amount of property that the person has, plus the modification of his ability to pay. I mean by that that those who have but little property, it is conceded by all, ought not to pay much if anything; that the great theory, particularly of a democratic form of government, and the ideal situation in society that

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we would all like to see exist, is that every man should have a competence, and no man should have an excess; that all men should be well situated, and no man excessively rich. We should have no poor and we should have no rich. Upon that theory we all agree, that this rule of laying the taxes according to the amount of property a man has should be modified by this other principle of the ability of the person to pay the tax, that that should be taken into consideration upon the grounds of public policy to which I have referred. We should do what we can to bring about these ideal conditions, where every man will have a competency and no man more than he needs. For that reason you have not heard a note of dissent here in all this discussion, against the inheritance tax, and you have not heard a note of dissent against the graduated income tax, and the sense of this Convention upon that question, and the sense of the people at large is, that those who are best able to pay ought to pay the most, and the tendency of the time is to go further than that, and we are drifting to a consensus of public opinion that the point ought to be fixed in the levying of income taxes beyond which a man could not accumulate. There is a point where the public should be able to say that a man shall not have any more of the wealth of the country. You have also noticed an entire absence of objection to any inheritance tax proposed, and for the same reason.

Now the objection that you have heard to all that is embodied in this measure is founded upon two propositions—the first, that you ought to have classification of property, that this uniform rule of laying taxes is all wrong, and second, that you ought to have an exemption of municipal bonds from taxation, which is simply another method of stating your objection to the uniform rule, which is another method of asserting the claim that property should be classified. We have just heard from this floor a reference by the distinguished member from Cincinnati to a number of eminent men in this country who have written upon this economic question, and that they are all of one view with reference to it, and I listened carefully to see if he would do more than merely make that statement. It occurred to me that it was simply a rehash of the old stock argument that we all indulge in when we are not fortified with good reasons for the position we take, and say that some great man, in the present or the past, has taken a view that coincides with ours, without giving our hearers the benefit of any reasons for that view. And we are now here—at least I am, upon this question, because I have had to a certain degree at least an open mind upon it—we are all sitting here, and doubtless many others of the Convention are in the same attitude that I have been, seeking for light. I am seeking for some argument that will sustain this claim that the uniform rule of taxation is a failure and is unsound, and that the only proper rule is the classification of property, and I have come to the conclusion after all I have read upon the subject, and I have endeavored to read everything obtainable upon it—for with other members of the Convention it has been a subject of great interest to me for many, many years—I have read extensively, but I had hoped to hear something new in this Convention upon this subject; but after all, I appeal to you, gentlemen of the Convention, have you heard one other argument

than the old stock argument that has been adduced everywhere the question has been touched upon, merely that you cannot make people return their intangible property? Is there any other argument that has been offered when it is reduced to its last analysis?

Mr. HARRIS, of Hamilton: Will you allow a question?

Mr. JONES: I prefer not to be interrupted unless you insist.

Mr. HARRIS, of Hamilton: I will not insist, but the question is very short, and can be answered yes or no.

Mr. JONES: All right then.

Mr. HARRIS, of Hamilton: Has the member from Fayette read the two books, Seligman's Essays on Taxation and Taussig's Political Economy?

Mr. JONES: I think so.

Mr. HARRIS, of Hamilton: And you have found no reason to sustain classification?

Mr. JONES: I say, when you boil it all down to its last analysis, it amounts to the argument persistently adduced before this Convention that the reason why the uniform rule of taxation should not be adopted is solely that we cannot get the property on the tax duplicate under it. What greater elaboration would anyone desire than the honorable gentleman from Cuyahoga [Mr. DORV] gave us in the two or three hours' speech he made upon this subject?

Mr. PECK: What better reasons do you want that the system is impractical?

Mr. JONES: Then it is all brought, as Judge Peck's question suggests, to the simple question whether or not that is a good reason, and we don't have to determine that matter by the sayings of great men upon the one side of the question or the other; but we are now dealing with affairs in the state of Ohio, and we are examining and determining for ourselves now whether that argument is sound as applied to the state of Ohio.

Now it will be admitted right at the start that there has been a lamentable failure under the uniform rule to get out the intangible property in Ohio, and to put it on the tax duplicate.

Mr. PECK: Does not that settle the whole question?

Mr. JONES: Let us see if it does.

Mr. PECK: Assuming that the attempt has been made in good faith.

Mr. JONES: And assuming some other things I want to call attention to. Now, if that failure be an inevitable fact, one that cannot be avoided, then I am for classification of property. Then I concede at least that the position of the gentlemen in favor of classification is justified. Let us then inquire as to what has been the reason for this failure; and have you observed among the gentlemen who have spoken upon this question any difference as to what that reason is? Is it because men are dishonest? They all say no, because the great majority of us are reasonably honest. Is it because men do not want to bear their fair share of the burdens of government? They all say, "No; they do, that it is only one in a hundred that does not want to do so." Then what is the reason these owners of intangible property have not borne their fair share of the burdens, and have not exercised that honesty in the matter of returning their property for taxation that they exercise in the ordinary affairs of life? They all say that the

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amount that you are asking of them is unjust and inequitable. Has there been any other reason assigned?

Mr. DOTY: Quite a number.

Mr. JONES: Aside from Brother Doty's single-tax notion?

Mr. DOTY: It has nothing to do with the single tax.

Mr. JONES: Has there been any other reason suggested to us in this Convention why men do not return their property for taxation except, as said by the gentleman from Cincinnati, that you are seeking to impose an injustice and a wrong upon them in making them pay an amount in excess of what the common judgment of mankind says is reasonable? He says they will pay a reasonable amount, up to a quarter or a half of one per cent. They will pay that. Why? Because that is a reasonable amount. But he says when you put the amount up—and he says in some jurisdictions five per cent has been charged—that it is so shocking to the ideas of human justice that not only the man owning intangible property says it ought not to be paid, but there cannot be found a man in the community who would say he ought to pay it.

Mr. PECK: Suppose you put it upon the ordinary desire in everybody's breast not to pay any more than he can help.

Mr. JONES: That is not true.

Mr. PECK: It is true. That is an assumption of human nature, and it is correct.

Mr. JONES: The natural impulse of every man is to bear his fair share of the burdens of government.

Mr. PECK: No, sir; the natural impulse is to get away as easy as he can.

Mr. JONES: The natural impulse of every man is to be honest, and if you put the question to a hundred men, "Are you willing to pay your share?" how many of them will say no?

Mr. PECK: Not one of them. They would all say they were.

Mr. JONES: And would they be telling you the truth?

Mr. PECK: No, sir; not one of them. Every one would be lying.

Mr. JONES: If that be true, it is a sad commentary on our citizenship.

Mr. PECK: Well, it is true, all right.

Mr. JONES: Are ninety-nine men out of a hundred willing to pay their obligations in business?

Mr. PECK: Yes, because if they don't they will suffer from it.

Mr. JONES: Yes, but back of that there is something that forms the foundation of society, because we could not have society but for voluntary association, and if we did not do anything except what we are compelled to do we would not have any society. What is it that produces this condition where the men who own intangible property have said "We will not return it" for the reason given by every speaker, "because it is unjust and wrong to ask us to do so."

Mr. PECK: What is the reason that a farmer wants to get his farm appraised as low as he can?

Mr. JONES: What has brought about that situation? Simply this; that under our system of administering the uniform tax rule we have proceeded upon the

theory that everybody should pay just as little taxes as possible.

Mr. PECK: That is true, that everybody pays as little as he can. That is human nature absolutely.

Mr. JONES: Judge Peck says that is true. We have been proceeding upon a false theory with reference to the administration of our tax laws, and what have we done? We have said when an election comes around for a land assessor, "How are you disposed toward farm lands, in favor of putting them high or low?" "I am in favor of putting them low." "How are you disposed to value real estate?" "I am in favor of putting it low." And we have elected men upon the promise that they will put the property down low. What was that? That was simply another way on our part of evading taxes. Now if every landowner is going to engage in evading taxes, in what position is he to object to the holder of intangible property who engages in evading taxes?

Mr. PECK: Not any. That is what I say exactly. I am glad you caught onto the matter finally.

Mr. JONES: I think that it is susceptible of demonstrating that a remedy for all this can be found without classification.

Mr. PECK: Let us see the remedy.

Mr. JONES: We all know as a matter of fact, as far back as our recollection can go on these matters, and mine goes in active business life for thirty years, that it has been practically true that none of the invisible property got upon the tax duplicate, money or credits or the other forms of invisible property. And we all know further that the real estate and visible personal property of the country has not gone on the tax duplicate at any thing like its value; that the real estate of Ohio for taxing purposes has probably during the last fifty years been assessed at not over twenty-five per cent of its value. In effect that was for every owner of real estate to evade three-fourths of his taxes. I think it is true that the values of visible personal property have been placed a little higher upon the tax duplicate, but certainly not more than half its actual value. The result of this was to constitute an evasion to the extent of fifty per cent by the holders of the visible personal property. Right there is another thing, and a queer sort of thing. Even with the prejudice that has existed for the last fifty years or more against banks in the state of Ohio, and you only need to read the debates on the subject of banks in the Convention of 1851 to see how violent it was here at that time, but with all that prejudice against banks that has existed in every community in Ohio for the past fifty years, what have you today? You have had until during the past year the county auditors in every county of the state, and you have had the state auditor, voluntarily and without any authority of law, after a bank had made its returns, cutting off one-third of it, and public sentiment approved it, notwithstanding the violent sentiment against banks; and they did it upon the theory that while the owner of real estate is evading three-fourths of his taxes, and the owner of visible property evading at least one-half, they ought to let the banks evade one-third of theirs, and up to within two years ago, for practically forty years, we were cutting off one-third of the returns of the banks.

What else has existed? A most remarkable thing that I never could understand. With this prejudice against

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banks, and still cutting off one-third of their property that should be taxed, and cutting down visible personal property to the extent of fifty per cent, and cutting down land three-fourths of its value, at the same time you have had a queer public sentiment in Ohio that said if a man owned a note, even though not secured by a mortgage, he must return that note at its full value. If he had a mortgage on land, he must return that mortgage at its full value. If he happened to have money in bank, he must pay upon the full amount of the money. There was no public sentiment in Ohio that permitted a man owning money to cut it in two as a man who owned a farm or hay or corn or merchandise. It would not be permitted for a moment. If he had notes or stocks that were taxable, he could not cut down those even as much as the returns of the banks were cut down, but he had to put them on at full value, and submit to a rate of three or four or five per cent. Evasion by the owner of intangible property was created solely by this evasion on the part of the landowner, this evasion on the part of the owner of visible personal property, and this evasion upon the part of the owner of every other form of property than these I have mentioned, money and credits. I never was able to understand how that sentiment was developed. I cannot see how or why it continued with the existing sentiment with reference to all the other subjects of taxation. That sentiment which has existed in Ohio for the last half a century with reference to money and intangible personal property, together with the practice of evasion on the part of everybody else, is the reason why you have not had this property on the tax duplicate. If that is sound reasoning, if that is the reason why it has not been on the tax duplicate, it necessarily and logically follows that, if you remove the reason and the cause of it not being on the tax duplicate, you will get it on the tax duplicate.

Mr. WATSON: Can it be removed?

Mr. JONES: That is another question that I am coming to.

Mr. PECK: These things grew up because of the question of appraisement. The supreme court of the United States decided as to the banking business you have been speaking about, and let out the national banks on the sixty-six and two-thirds basis on the ground that property generally in Ohio was taxed at that rate. The statutes of the United States permitting the taxation of the federal banks provides they shall not be taxed at a greater rate than any other property in the state, and the supreme court of the United States having before them the fact that in the state of Ohio property generally, including real estate and land, was not taxed at over sixty-six and two-thirds per cent of its real value, said that is as much as you can tax national banks, and that is the basis of your claim. The trouble is the appraisement. The difference between money and anything else is that money appraises itself, but when you come to land or personal property there is room for a difference of opinion. One man thinks this, that or the other thing, and it all comes down to a question of appraisement, and there is where you get into all sorts of trouble.

Mr. JONES: I want to notice that a little further on. I will notice your suggestions a little later. It is true, as Judge Peck says, that this question first arose with the federal banks, and it arose because the federal

courts had jurisdiction in that class of cases, but that doesn't make an excuse for applying it in taxing state banks.

Mr. PECK: Yes; it does.

Mr. JONES: Or applying it to private bankers.

Mr. PECK: The private bankers came along and said, "Here is a national bank and it is only paying so much, and we ought not to pay any more."

Mr. JONES: Will it be said for one moment that notes and bonds and mortgages in the possession of private bankers, simply because they are engaged in the banking business, are less susceptible of exact ascertainment of value than if an individual owned them?

Mr. PECK: They don't go into it that way.

Mr. JONES: Ah, they don't go into it that way! I am referring to the fact of that queer situation with reference to public sentiment in Ohio with regard to these intangible forms of property.

Mr. DOTY: Do you know of any rule by which various men can appraise the value of various things in various portions of the state?

Mr. JONES: That is a matter involved in the same subject suggested by Judge Peck, and if you will let me answer it in the order in which I am approaching the subject I shall be obliged to you.

Now, if, as I have said that manifest injustice to the owner of notes and the owner of bonds and other forms of invisible property has been the cause of his not returning his property, then if you remove that injustice you will get the property upon the tax duplicate to the extent but not entirely—to the extent of the honestly disposed men who hold that kind of property, and to the extent of the men holding that property who are willing to bear, not an excessive share of the burdens of government, but who are willing to bear their fair share of the burdens of the government.

Mr. DWYER: Suppose a building association has a mortgage upon a man's home or farm. That mortgage secures the note. What do you say as to the return of that note for taxation by the building association?

Mr. JONES: My theory is that everybody who has anything that comes under the denomination of property ought to pay taxes on it. That is another thing I want to reach later, if I do not trespass too much on the time of the Convention.

Now how are you going to remove these things that have caused this failure of the intangible property getting upon the tax duplicate heretofore? The right steps are already being taken, and it is entirely too soon for any man to say that this plan, even crude as it may be in its inception, will not substantially accomplish the end. What does that involve? As a first proposition it involves this: That every owner of real estate must submit to its being put upon the tax duplicate at its fair cash value; that every owner of visible personal property must submit to its being put upon the tax duplicate at its fair cash value. You all admit that is easy of accomplishment?

Mr. DOTY: No; we don't.

Mr. JONES: It will be with the exception you have referred to, and I will discuss that when I get to it.

Mr. DOTY: You cannot prove it.

Mr. JONES: I say it is easy of accomplishment, and I will discuss that. Mr. Doty says, "No, that cannot be

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accomplished because you are going to have a great number of different men value the property. You have to depend on the judgment of different men, and you cannot standardize the appraisement of property. You cannot have any rule for measuring it as you can with reference to money. You cannot therefore have any uniformity, because you cannot have any uniformity of value." Theoretically that is true, and that being true is the trouble with the whole of Mr. Doty's argument. It is a very fine argument theoretically, but in the ordinary affairs of life we do not split hairs that closely. In the ordinary affairs of life we approximate things, and necessarily have to approximate things. His argument applied to the ordinary business transaction, to a division of estates, for instance, leads to absurdity. The rule is to make equal division between the heirs, but Mr. Doty says you cannot have absolute equality of division among heirs. Why? Because they have to have that property appraised by someone. This set of appraisers may appraise the property at one figure, and another set of appraisers may appraise the property at another figure, and that especially will be true in different sections of the state, and men are called upon to appraise it who do not know anything about its value; they may be going into a strange community, and they have to estimate it. Theoretically his argument would be just as applicable to a division of an estate as to an appraisement for the purposes of taxation.

Mr. DOTY: There is nothing similar to that. You cannot find any similarity.

Mr. JONES: Take any of the ordinary affairs of business life, where the rights of parties are to be determined according to value of property.

Mr. DWYER: Are you not depriving all parties who hold notes and mortgages from using the courts of the state to enforce their claims unless they return their notes for taxation?

Mr. JONES: That is a matter of remedy.

Mr. DWYER: What is your idea?

Mr. JONES: Anything that would get the property on the tax duplicate I would favor.

Mr. DWYER: What would you say about refusing them recourse to the courts?

Mr. JONES: That would be a mere matter of detail, but I am coming now to a proposition that Mr. Doty makes—I have not heard anybody else make it—that this thing is a dead failure because of the inability to get anything like a fair value of the property. We only have, as I say, to look around and observe a little of the actual transactions of business in our ordinary life to see the many, many instances where the rights of parties, to an extent far greater than that involved in levying taxes, are determined by valuations put upon property, valuations put by different men and by different means. It occurs to me that that whole argument is too flimsy for me to take up further time in answering it. It is possible to get fair values of real estate. Are you taking into account that you swear men to appraise property for purposes of taxation at its full market value? What reason is there that they cannot approach that market value for the purposes of taxation just as closely as if you were sending them out to appraise it for the purposes of a sale on execution, or on a foreclosure of a mortgage, or for any other purpose? It is non-

sense, gentlemen of the jury, to talk about not being able to fix a basis for the appraisement of property—

Mr. WATSON: "Gentlemen of the jury?"

Mr. JONES: That is force of habit. Now, if that can be done with reference to real estate as a practical proposition, not theoretical, as Brother Doty has said, but as a practical, every-day proposition, if you can arrive at the substantial value of real estate, what is there in the way of arriving at the value of tangible personal property? Take wheat or corn, and does anybody pretend to say that any reasonably intelligent man could not go out in a township in which he was born, reared and lived all his life and get a fair knowledge of the value of the property, and tell you the value of the corn and the wheat and the hay in that township? Could it not be done for the purposes of taxation as accurately as for any other purpose? And there are dozens of other purposes for which a man may be called upon to appraise property that are far more important than the levying of a one-half of one per cent tax. Is there any form of visible property the value of which cannot be ascertained with substantial accuracy? Take the stock of merchandise of a merchant, do you say that cannot be ascertained?

If you were going to sell it you would ascertain it pretty quick, and would ascertain it with reasonable accuracy, and there are well-known available means for doing that. If you were going to sell anything of that sort on execution you would get at its value. If you can do that with regard to a thing of that sort, why in the name of common sense, for all practical purposes, cannot you do it for the purpose of ascertaining how much he would have to pay on it at a rate of one-quarter of one per cent in the way of taxes? You can get at it with substantial accuracy and substantial justice to all concerned. Now, if you can do that with regard to visible real estate and visible personal property, they have never complained that you cannot get at the value of invisible personal property.

Mr. DOTY: You have not stated how you get at it.

Mr. JONES: I have not heard any claim that you could not value invisible property. The main argument against the taxing of invisible property is that you have not any way of determining what the value of visible property is.

Mr. PECK: The main argument on invisible property is that you cannot find it. It is utterly invisible.

Mr. JONES: Then it comes down to this proposition: As I have said, there is no trouble in ascertaining the value of money. The people for fifty years have not had any trouble on that. If a man has money it is worth one hundred cents on the dollar. They all say if he has a note which is good that it is worth one hundred cents on the dollar.

Mr. DOTY: No; it is not.

Mr. JONES: Theoretically it is not, but practically it is.

Mr. DOTY: Don't you hold notes in your bank that are not good?

Mr. JONES: Take the millions of dollars of transactions that occur every day in banks all over this country. What do they all involve? They involve the exchanging of money at one hundred cents on the dollar for this intangible personal property. In banks all over

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the country notes, checks, bills, etc., are passed through and handled and appraised every day. Every transaction that occurs involves an appraisal not for the purpose of paying one-half of one per cent taxes on it, but for the purpose of a man or bank parting with the full value of that property, and you arrive at substantial accuracy. Now, are there very many mistakes made? If there were, all the banks would be broken in a short time, and the men engaged privately in lending money would go out of business. But we all know that as a practical business proposition you can substantially arrive at the value of all this kind of property.

Mr. HOSKINS: Do you pretend that the passing through the bank would help you to place it on the tax duplicate?

Mr. JONES: No, sir; but every time they pass through the bank they must for some purpose be appraised, and it is possible to appraise them with substantial accuracy, or these transactions could not be carried on. Now, if you can appraise these invisible assets of millions of dollars every day for the purpose of business transactions between men, why in the name of common sense can you not appraise them with reasonable accuracy for the purpose of taxation?

Mr. HALFHILL: Do I understand you to say that the ordinary business transaction of passing credit through the bank involves an appraisal?

Mr. JONES: I say in a sense it involves the valuation or appraisal of the party's interest in that form of property, because when a man parts with his good hard cash for a note, he is necessarily called upon to judge of the value of the note. When a bank does that it does the same thing.

Mr. HALFHILL: Does not the fact involve a guarantee by everybody who passes on the credit?

Mr. JONES: Not necessarily. If a bank buys it without recourse the question of appraisal of value would be the only one involved. Of course it may have somebody else behind it, and if it does that is one element of value.

I say there is no way in which you can view the matter but what you must conclude that for practical purposes, leaving aside the fine-spun theories of Brother Doty, that it is practically possible to arrive at a fair valuation of the property for the purposes of taxation. But as suggested by my venerable friend to my left, that is not the material matter or the most material.

Mr. PECK: If you are referring to me as "venerable" you are going to get whipped.

Mr. JONES: Then, my "youthful" friend. Now the gentlemen from Cincinnati [Mr. HARRIS] and others who have spoken on this matter say, "Yes, you can get at it if you make the rate reasonable." That involves the question of what is going to occur if you get all of this visible property on the tax duplicate at its full value. What effect is that going to have on the rate? If the rate is going to be made reasonable, and if, as the gentleman from Cincinnati [Mr. HARRIS] argues, a reasonable rate is going to bring out the great majority of it, the effect of raising all the other property to its proper plane of value will be to make the rate reasonable. That involves a simple matter of calculation, and it does not need any elaboration or discussion to make it apparent. If it is true, and I have not heard any contradiction,

and I do not think I shall hear any contradiction of it—if it is true that real estate heretofore has not been valued at over one-fourth of its value, or not over one-fourth of what it should have been, and if visible personal property has not been valued at over one-half of what it should have been, and if the banks have not been paying over two-thirds of what they ought to have paid, and if all these other corporations throughout the state have not paid over one-third of what they ought to have paid, and all that is brought upon the tax duplicate, the inevitable effect will be to make the rate low. It would make it very low except in those cases where the municipalities have unfortunately in a lapse of good judgment gone farther in debt than they should have gone.

Mr. DWYER: Do you not think it is an extravagant statement that real estate has only paid one-fourth of its value?

Mr. JONES: I do not think so.

Mr. DWYER: It may be that way in Fayette county, but it is not so with us.

Mr. JONES: Take the tax duplicate and the way property sells and you can tell.

Mr. PECK: The understanding with us is that it is assessed at sixty-six and two-thirds per cent of its value.

Mr. JONES: We all know that was erroneous.

Mr. PECK: I thought it was about right.

Mr. DOTY: What do you put it at, Mr. Jones?

Mr. JONES: I think somewhere between twenty-five and fifty per cent.

Mr. DWYER: We always figured two-thirds.

Mr. JONES: We always flattered ourselves that we were doing all that we ought to do, but down in our hearts we knew we were not.

Mr. PECK: You have some human nature in Fayette county?

Mr. JONES: I think we have some.

Mr. PECK: I told you nobody wanted to pay any more than he had to pay, but you wouldn't believe me.

Mr. JONES: The excuse for doing it is the same old one, that the other fellow is doing it. That is human nature, but it is equally true that it is human nature that every man will do as much as his neighbor in the performance of any civic duty. "I will not permit any man to do more for the state and the public good than I will do," says the average man. That sentiment runs all through mankind.

Mr. PECK: Once in a while they have a spurt in patriotism, but it doesn't last long.

Mr. JONES: When you appeal to them properly they will respond, and it will not be a spurt, but it will last.

Mr. HOSKINS: I think all of these spurts are for public exhibition only.

Mr. JONES: I think not. All you have to do to test that is to jeopardize the state of Ohio or the United States. Let either of them be imperiled at any time, and you will see democrats and republicans, rich and poor, black and white, vying with each other in contributing their part toward defending the country and performing all the civic duties that rest upon them. When you appeal to men and have that appeal based upon right and justice they are willing to contribute their fair share to the support of the government and to the maintenance of the courts that protect their lives and liberties and secure to them all the benefits of organized society. Why, when

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you are in a situation to appeal to a man in such manner, where is the man who will not respond? It is not one in a thousand.

Mr. PECK: Is this a matter of sentiment?

Mr. JONES: The argument in favor of classification has been entirely a matter of sentiment. The whole argument has been that if you would put the thing in such shape by classification and low rates where men would say it was reasonable, they would be glad to come up and perform their part of civic duty, and that we would have a solution of the whole matter. I say it is all based on sentiment, upon that well-known element of human nature that nearly every man desires to do the right thing. Suppose there was something here that we were called upon to do, the one hundred and nineteen members of this Convention, and we were all interested in the object to be accomplished and one man would say, "I want the rest of you fellows to do more than I do." You would put your stamp of disapproval on that man so quickly there would not be a man in this Convention who would look at him any more. Apply that to your own community. Let every man who owns real estate or visible personal property come up and say, "I am paying and am willing to pay all that I ought to pay." The rate is cut down to a reasonable one and every man, or nearly all, will come up and pay on his invisible property. A few may say, "My theory of life is to have the other fellows do more than I do." Will there be any lack of prosecution against that fellow? Will there be any one who will say that that man is justified in refusing to return his property for taxation, and that he is justified in committing perjury, or that he is justified in the evasion in which he is indulging? No, sir; the public sentiment would be so strong against him that he would be absolutely ostracized.

Mr. PECK: Have you any taxdodgers in Fayette county?

Mr. JONES: Yes, sir; lots of them, and in my whole recollection of that business we have never had a single prosecution in Fayette county against a man who evaded his taxes, not one.

Mr. PECK: And you never will have.

Mr. JONES: I do not agree with that. The reason is because every man in the county was engaged in the same thing.

Mr. PECK: I thought you had a lot of human nature down there.

Mr. ANTRIM: I was wondering if, when we all came back Monday, it would not help us in the solution of this question if each one brought with him the returns that he made to the assessor last month? What do you think of that, Mr. Jones?

Mr. JONES: It would probably throw some light on the question.

Mr. DOTY: Yes; it would.

Mr. HARRIS, of Hamilton: Do you not think that most of us want to keep that dark?

Mr. JONES: No; I do not. That will not be so for the very reason that the honorable gentleman has been urging upon the Convention, that if the people of Ohio can have reasonable assurance, and they wouldn't ask for absolute assurance either—but if they can have reasonable assurance that this reasonable rate is going to be a permanent thing, then you will have it occurring right

along, that practically all men will return their property, and I predict that this year in my county the assessment now being made will more than double the amount of invisible property on the duplicate last year. I don't know how many times it was greater last year than the year before, but it was many times greater, and why was it? Because we were approaching a position where we could make the appeal to men which the honorable gentleman from Hamilton county refers to, that we are going to make and keep the rate reasonable, and can say that no injustice will be done to you, and you can now do what you have always been willing to do, bear your fair share of the burden of taxation.

Mr. KEHOE: Do you not think the public conscience is being aroused in the matter a little?

Mr. JONES: Not only a little, but a great deal, and you let this same thing go on for five years at the rate we have been going and the rates everywhere will become as low as the most extreme classificationist desires. Our rate in Fayette does not now average, outside the towns, much over one-half of one per cent. It will be less next year. Now, then, a man is going to be mighty little and mighty mean and be placed pretty low down by his neighbors who won't pay his proper share of taxes when the rate is only one-half of one per cent, and it will only be the fellow who is wrong constitutionally on that and everything else who will refuse to do it. We have enough more invisible property in Fayette county now, if it could be brought out and placed upon the tax duplicate, to further cut down our rate nearly one-half. What we want to do is right in line with this one per cent limitation of the tax rate in this proposition. Prevent the creation of a rate in excess of that, simply as a means of assuring and guaranteeing to the holders of invisible property that their property will not be confiscated in the future as has been attempted in the past. As a practicing lawyer I am probably no different from many lawyers in the Convention. Scores and scores of people have come to me in the past complaining about attempts to put their property on the tax duplicate in towns and cities where the rates were three and four per cent, where it was practically confiscation of the whole of their property, and they had been gotten after by the auditor or tax inquisitor. Such attempts have frequently been made in the past in my county, and everybody united in saying it was absolutely unjust and wrong to confiscate their property, and that they did not believe in the enforcement of that law. They would say, "We are willing to join you in helping to defeat it," but they will not be willing to join in helping to defeat the law when substantially all of this property comes out and gets on the tax duplicate, so that the rate will be very low. Now, I know of country districts where the tax rate, with all the property on the tax duplicate, will not exceed twenty-five cents on the hundred dollars. One quarter of one per cent will be the total tax rate in many of the rural districts when all the property comes upon the tax duplicate, and in the cities and towns the rate can be made not so low, because their requirements are greater, but nobody in the city objects to paying more, because they get more in the way of benefits and privileges and conveniences of life. Everybody is willing to pay more taxes in cities, but the rate can be brought down correspondingly in the cities, and I thoroughly believe, referring to the complaints now

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made regarding the city of Cleveland, that if even one-half of the invisible property in the city of Cleveland that now escapes taxation were brought onto the duplicate, there would not be a bit of complaint as to the one per cent tax limit.

Mr. HOSKINS: I would like to have you state in short, concise language just what changes in the present constitution you are willing to subscribe to, or whether you are willing to let the constitution alone and not disturb the tax situation at all?

Mr. JONES: I would like to see two or three things done.

Mr. HOSKINS: What are they?

Mr. JONES: In the first place there is no reason for exempting municipal bonds from taxation. They should be taxed. They are property in the hands of the owners just the same as any other securities and they ought to be taxed.

Mr. HARRIS, of Hamilton: Assuming that all the municipal bonds were owned outside of the state of Ohio, why tax bonds and increase the rate of interest one per cent?

Mr. JONES: That all proceeds upon a false assumption. I do not think I shall have time to get to that, but if I do, I will show it to you.

Now I would have those bonds restored to taxation. I would have a limit not to exceed one per cent put in this constitution as a guaranty and assurance in the future that could not be easily taken away, that the rate would never become confiscatory in the future, and I would have, if it is necessary, and I believe it is, a straight-out provision that all property should be subject to taxation.

Mr. DOTY: We have that.

Mr. JONES: But you have some other things in there that put a limitation on it.

Mr. HOSKINS: What are those?

Mr. JONES: Stocks and bonds, securities, investments, etc. Leave off all of those words. The word "property" covers everything. All property should be taxed at its true value.

Mr. HOSKINS: You don't think any class of property has escaped?

Mr. JONES: Yes; I do.

Mr. HOSKINS: Would you tax stocks?

Mr. JONES: Yes, sir; I would tax all property. If a man owns property, why exclude one class and say that another shall be taxed?

Mr. HOSKINS: Would you tax stocks in a local manufacturing corporation in your town?

Mr. JONES: Personally I would.

Mr. HARRIS, of Ashtabula: Do you mean that you would tax the plant and the stock that represented the plant?

Mr. HARRIS, of Hamilton: You know that a certificate of stock represents a share of ownership in that plant. Suppose you had an elevator with 10,000 bushels of corn in that elevator; you pay taxes on the 10,000 bushels of corn and you say to Mr. Harris "I have 2,500 bushels, and I will pay taxes on that," and I give you a certificate. Ought that certificate be taxed?

Mr. JONES: Substantially your inquiry amounts to this: That if a certificate of stock represents merely an interest in the property of the corporation, when the

property of the corporation is once taxed then your property is taxed, because your certificate merely represents your share of the property.

Mr. HARRIS, of Hamilton: Correct.

Mr. JONES: That question is subject to the objection which I made against Mr. Doty's argument—that it is theoretically true.

Mr. DOTY: Practically true.

Mr. JONES: No, sir; and I will show it to you. Theoretically it is true if a bond is issued by that corporation secured by a mortgage on its plant and that money has gone to pay for some of the real estate or some other equipment, theoretically the holder of that bond has furnished part of the property held by the corporation. Now, theoretically you may say your bond is merely a paper showing that you are entitled to go into that property and take out, say \$1,000, and the corporation would have only what is left. Theoretically you are a part owner in that property, and if a man borrow money on a farm theoretically the lender is a part owner of that farm because part of his money is represented by the farm.

Mr. DOTY: There is nothing theoretical about that.

Mr. JONES: Not according to you.

Mr. DOTY: As a matter of fact, according to your view.

Mr. JONES: They say, therefore, "Why, you ought not to tax a mortgage because that is really representing part of the farm?"

Mr. DOTY: That is true.

Mr. JONES: No, sir; and if you will be patient and quiet a while, I will tell you why. You ought not to tax a bond they say, because theoretically that is part of the corporate property, and the certificate of stock is also part of the corporate property.

Mr. HOSKINS: You would tax the stock the same as the bonds?

Mr. JONES: They are all on a par for practical purposes. Theoretically your argument is true, and if you are proceeding on theory you ought not tax the bond.

Mr. HARRIS, of Hamilton: There is no analogy between a bond and stock.

Mr. KNIGHT: I would like to hear the gentleman specifically answer, would he take the stock of Ohio corporations engaged in manufacturing in the state of Ohio, which corporation pays taxes upon its property, and tax that stock? Suppose a man owned ten shares of that stock. Ought he also to pay taxes on that ten shares?

Mr. DOTY: He said yes, but he couldn't tell why.

Mr. SHAFFER: He said something about bonds, but what about the stock in the institution?

Mr. JONES: I say theoretically you ought not to pay on that, and theoretically you ought not to pay on a mortgage.

Mr. DOTY: But stock?

Mr. JONES: Theoretically you ought not to pay on that. Now the question is whether practically you should. Start with this proposition, that all taxes ought to be levied upon property, or that taxes ought to rest upon property held by the individual, and it is all answered by inquiring whether this stock certificate is property.

Mr. DOTY: Are they?

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Mr. WATSON: A point of order: One at a time.
Mr. DOTY: He can take care of himself; he does not need your help.

Mr. JONES: I can take care of myself, and I think I can make it plain. I am not radical on the subject.

Mr. DOTY: Oh, no.

Mr. JONES: That all involves a simple proposition. If you start with the proposition that you are going to tax all property, then if this stock certificate is property it ought to be taxed. If the bond is property it ought to be taxed. If the mortgage is property it ought to be taxed, and if a note is property it ought to be taxed.

Mr. DOTY: Is the stock certificate property?

Mr. JONES: Is there any lawyer in this Convention who will say that a stock certificate does not come within the legal definition of property? If there is I would like to hear him.

Mr. HOSKINS: It is not property at all. It is simply an evidence of property.

Mr. JONES: If it is not property, it could not be levied on. Is there anybody who would say you could not levy an execution upon stock in corporations? Is there anyone who would say you could not seize a stock certificate upon execution and put that stock certificate up and sell it?

Mr. WINN: Or replevin it?

Mr. JONES: Or is there any lawyer here who will say you could not replevin a stock certificate and have it appraised by three men and a value put upon it?

Mr. PECK: Yes; a stock certificate doesn't appraise itself at all.

Mr. JONES: But it could be seized on execution?

Mr. PECK: A stock certificate is nothing but an evidence of property, and you would have to go to a court of equity and ask the court to give you an order compelling the corporation to transfer it before you could—

Mr. JONES: But you sell the stock?

Mr. PECK: You cannot sell the stock except you have an order of court.

Mr. JONES: You cannot sell the stock on an execution?

Mr. PECK: No, sir; and you will not find a proceeding for that purpose.

Mr. JONES: Mr. Peck is answering hastily.

Mr. PECK: You are confusing stock and stock certificates.

Mr. HOSKINS: Do you say you can put up a stock certificate and sell it?

Mr. JONES: Yes. Suppose you have a stock certificate and there is an indorsement on it?

Mr. PECK: You don't have any indorsement if you seize it on execution.

Mr. JONES: If that stock certificate is attached as a collateral it is indorsed, and in default of payment you put up the stock and offer it for sale, and it sells and you transfer the title to that stock.

Mr. HOSKINS: You get another piece of paper. But when you sell a horse and don't get another horse.

Mr. JONES: But your stock in the corporation constitutes property that has value.

Mr. SHAFFER: Evidence of property.

Mr. JONES: No further evidence of property than

a note. If I had the books I could give you the exact definitions, and I am sorry that I have not looked up the matter. The courts have settled it.

Mr. PECK: I am not denying that stock is property, but I deny your proposition about legal processes.

Mr. JONES: That admits my whole contention and I do not care to pursue the matter further. It is really not involved in this discussion, and it only came up by the inquiry of the gentleman. What we do want, and what I insist upon by way of change in the constitution, is that all property be made subject to taxation, and that a limit be put upon the rate, and that this exemption of bonds which now exists be taken away, so that there will be no property but what can be reached. One word, and I must close, with reference to the matter of the exemption of bonds. That is more important than some of the other things.

One of the great troubles that now exists, and that has existed, and that will continue to exist with reference to the enforcement of tax laws, is this very question of exemption of municipal bonds. We all know that the amount of tax-exempt bonds reported as being held by individuals is appalling in amount.

Mr. HARRIS, of Hamilton: Why do they have to report them when they are not subject to taxation?

Mr. JONES: Here is a man that you know has money. You know, he has a lot of securities and lots of liquid assets. Everybody in the community knows it, and when you look at his tax sheet he has a great amount of municipal bonds. As a matter of fact he has these liquid assets in other forms of securities drawing him more interest than bonds, and he uses the municipal bond dodge as a pretext.

Mr. PECK: Is that an argument?

Mr. JONES: That is a good excuse for the removal of municipal bonds from taxation.

Mr. PECK: Men can lie about anything.

Mr. JONES: If you had municipal bonds not exempt would there be any man in the state who would have the hardihood to say that he had liquid assets in bonds?

Mr. HARRIS, of Hamilton: Would not that man buy United States bonds?

Mr. JONES: Don't we all know he could not?

Mr. HARRIS, of Hamilton: Because all the United States bonds are practically tied up in banks, which own them, as security for their circulation, so that the ordinary man could not get them.

Mr. PECK: There are lots of Ohio nontaxable stocks, millions of them.

Mr. JONES: It would take away opportunity for evasion of taxes by claiming that the money was in municipal bonds; and it would do another thing, it would make the man who owns these bonds do what he ought to do, and what he will be glad to do when the rate is reduced by all of them coming out and being taxed, to wit, pay taxes on those bonds. Now take municipal bonds at five per cent.

Mr. HARRIS, of Hamilton: There are not any.

Mr. DOTY: Where are they?

Mr. JONES: There are lots of them.

Mr. CUNNINGHAM: I would like to have that kindergarten adjourn and allow the Convention to proceed in the ordinary way.

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Mr. WATSON: A point of order. A few days ago the chair in addressing myself ruled that I address the chair, and I insist upon that rule being observed now.

Mr. JONES: I am just handed a list of four and a half and five per cent bonds, some being five per cent at par.

Mr. HARRIS, of Hamilton: Will the member from Fayette permit a question?

Mr. JONES: Yes.

Mr. HARRIS, of Hamilton: You say there are bonds bearing five per cent interest. On what basis are they sold? A five per cent bond may be sold on a basis to pay three and a half.

Mr. JONES: And it may be sold at par. We have had some in our section within the last year sold right close to par, a mere nominal premium.

Mr. SHAFFER: What was the matter with them?

Mr. JONES: Some small educational district and township bonds. They had elements that did not make them attractive, and they would not sell at the price that state or county or large municipality bonds would. A man who has municipal bonds at four per cent or four and a half per cent, why ought not he pay taxes on those bonds?

Mr. HARRIS, of Hamilton: Do you not as a practical banker know, and is it not misleading the Convention not to tell them, that when a man buys a municipal bond yielding him only four per cent he is paying the tax of one and one-half in taking the lower rate of interest instead of taking six per cent?

Mr. JONES: He is not paying taxes in any practical form.

Mr. HARRIS, of Hamilton: I say he is taking four per cent instead of six per cent because he does not have to pay taxes on them.

Mr. JONES: Those bonds do not sell to the public generally. The highest class of those bonds are selling at from 3.85 to 3.90, but the individual purchaser cannot get them at that price, but you can get more bonds than anybody can pay for on a four or a four and a half per cent basis. The large banks hold the highest class bonds practically as a reserve. They are almost as valuable to them for the purpose of meeting obligations, if they come suddenly against them, as if they had the money in bank, and that is the reason that character of bonds bear those rates; but take the ordinary average township, county or village bond, and they don't sell at those high rates for entirely different reasons. Now, who buys those four and four and a half per cent bonds? You can get all you want at four and a half and five. I know what I am talking about. They are just as good as any Cincinnati or Cleveland bonds where a person wants to use them simply as an investment. Now, if you make the rate of taxes only one-half of one per cent, would they or should they object to paying taxes on them? Bear in mind one other thing, and then I must close. Where does all this cry for classification and where does all this cry for exemption of bonds come from? Who appears before the legislatures and the constitutional bodies granting these exemptions, for the purpose of securing them? Is it the persons who are going to be benefited, according to the argument, to wit, the other taxpayers? Are they the ones who are making the demand? No; the only persons who ever make the demand for classification are

those who are going to be directly benefited by it. The person who is going to make the demand for the exemption of bonds is not the general taxpayer, not the home owner or the farmer, or the man who is paying for a farm and live stock, but it is the person who has been claiming that you were confiscating his property by attempting to get it upon the tax duplicate. In other words, it is the owner of liquid assets who is making this demand for exemption of bonds; and the men making the demand for classification—take for instance, the parties asking for mortgages to be exempted, and who are they? Is it the farmer or the man who is borrowing money or the home owners, who are paying taxes on their visible real and personal property? No, sir; it does not come from them, but it comes from the parties who want to get a class of securities that are good, that they can put their liquid assets into and thus escape taxation.

Mr. HALFHILL: Do you not know that at the time the campaign was being prosecuted to get that constitutional amendment submitted that the mayors and the city organizations of the municipalities of the state of Ohio took an active interest, appeared before the legislature and were the real sponsors for putting that up and getting it submitted to the people?

Mr. JONES: I know this, that at least some persons in Ohio that were engaged in the banking business, and engaged in furnishing investments to other parties, were among those greatly interested, and I have been engaged in the business for the last thirty years of furnishing investments in large amounts to other parties, amounting to millions in the total, and one of the first persons that came to me to speak about getting that exemption matter through was a banker who was greatly interested in the handling of the liquid assets of the community.

Now, I am like Judge Peck in regard to this matter. Personally my interests would all lie in the other direction. I have been appealed to since being in this Convention, that I was ruining my own bank, that I would drive customers away from the bank, that we had customers who want these intangible assets, and who will not pay taxes on them, that I was injuring myself, but I am like Judge Peck in that matter. I cannot represent the people who are interested in the People's & Drovers' Bank. I cannot represent the people I have helped as my clients in making investments. I am looking out for the interests of the people of the whole of my county and the state of Ohio now, whom I promised when I came here to do what was for the benefit, not of the few, but what was for the benefit of all the people as nearly as I could ascertain it, what was for the good of the whole people, or at least the greatest number of them, and I believe, in the interest of the greatest number of the people, that bonds ought to be restored as subjects of taxation; and I believe that every form of property and every person ought to bear their fair share of the burdens of taxation; and whenever it is written in the constitution that property of the man who has invisible assets will not be confiscated by taxation, nine out of ten will voluntarily come up and do their duty, and I do not care about the other one-tenth, for they might not do their duty under any circumstances.

Mr. HURSH: I had not intended to say a word on this proposition, but in view of the fact that there are two propositions involved, I do wish at this time to

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say a little something upon the subject. I presume I, like a great many others, came here with a closed mind in regard to the proposition of taxation. As nearly all of you know, I am in favor of the uniform rule of taxation, and in saying that I believe I am saying it for ninety-five per cent of my constituents. I need not add any argument to what has been given in favor of the uniform rule of taxation. Plenty has been said upon that subject on both sides, but in talking with my friends and other members of the Convention, I find that, even among us who are known as in favor of the uniform rule of taxation, there is a diversity of opinion and considerable doubt as to whether it is expedient, whether it is just the thing to do, to incorporate into the organic law a limitation of taxation. We are all aware that the Smith one per cent law has only been in operation six months, and we have a very limited knowledge of whether it will work out practically, and it needs time to demonstrate whether that is going to be as successful as we all hope it will be. However, it does not involve the principle of uniform taxation by omitting the limitation from the constitution, and upon that point I wish to say as I did a few days ago that I came here not knowing very much about the cities' problem. I came here with the intention of giving the cities home rule, and if they knew what their problems were and could frame a proposition that was satisfactory to the cities, then it would probably be our duty to give it to them. I think the final vote upon the home rule proposal was a demonstration in itself that this Convention was willing to give the city government and city affairs over to the cities themselves.

Now I come to another point, or rather another place, in the proceedings of this Convention, in which I am somewhat in doubt. To whom must I turn? I have been told by the city members of this Convention that the proposal we are putting through here is crippling them and will cripple them in carrying out their ideas of reforms in city government. If this is the case, I guess it has already been demonstrated that we people who are in favor of home rule and have favored uniform taxation have the whole situation in our hands. We can do with this proposition just as we please. That has been demonstrated. And after all can we not afford to be generous to a vanquished enemy, and may it not be better that we concede that much to our city members in a spirit of fairness and not put this limit in the constitution? I have reason to make this statement to my friends on this side of the question, and in order that I may carry out my ideas effectively I move that the Winn amendment be now tabled.

Mr. WINN: I demand the yeas and nays on that.

The PRESIDENT: The question is, "Shall the amendment offered by the delegate from Defiance [Mr. WINN] and that of the delegate from Cuyahoga [Mr. FACKLER] be laid upon the table?"

Mr. WOODS: A point of order.

The PRESIDENT: State the point.

Mr. WOODS: Was not the last vote on that proposition?

The PRESIDENT: Yes.

Mr. WOODS: Then it is out of order.

The PRESIDENT: The motion is entirely in order.

Mr. WINN: A point of order.

The PRESIDENT: State it.

Mr. WINN: The motion made to table this amendment and the amendment to it was voted down a while ago. Nothing has been done on the matter since, and its status has not been changed at all.

The PRESIDENT: The point seems to me to be not well taken. The question is, Shall the amendment lie upon the table? and the yeas and nays have been demanded.

The yeas and nays were taken, and resulted—yeas 51, nays 46, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Matthews,
Antrim,	Halfhill,	Mauck,
Bowdle,	Harris, Hamilton,	Miller, Ottawa,
Brown, Lucas,	Harter, Stark,	Peck,
Campbell,	Hoffman,	Read,
Cassidy,	Hoskins,	Redington,
Cordes,	Hursh,	Roehm,
Crosser,	Johnson, Madison,	Shaffer,
Davio,	Johnson, Williams,	Stewart,
Doty,	Jones,	Stilwell,
Dunlap,	Kilpatrick,	Stokes,
Fackler,	Knight,	Taggart,
Farrell,	Kramer,	Tannehill,
Fess,	Lampson,	Tetlow,
FitzSimons,	Leete,	Thomas,
Fox,	Leslie,	Ulmer,
Hahn,	Longstreth,	Mr. President.

Those who voted in the negative are:

Baum,	Harris, Ashtabula,	Peters,
Beatty, Morrow,	Henderson,	Pettit,
Beyer,	Holtz,	Pierce,
Brattain,	Keller,	Price,
Brown, Pike,	Kunkel,	Riley,
Cody,	Lambert,	Rockel,
Collett,	Ludey,	Shaw,
Colton,	McClelland,	Smith, Geauga,
Crites,	Miller, Crawford,	Stalter,
Cunningham,	Miller, Fairfield,	Stevens,
DeFrees,	Moore,	Wagner,
Donahay,	Norris,	Walker,
Dunn,	Nye,	Watson,
Earnhart,	Okey,	Winn,
Fluke,	Partington,	Woods.
Harbarger,		

So the motion to table was carried.

Mr. LAMPSON: I desire to offer an amendment which the secretary has. It was written to apply to the amendment of Mr. Fackler, and I ask permission to have the secretary change it to make it apply to the pending amendment to the proposal. It will be easily understood.

The amendment was read as follows:

Amend the amendment of Mr. Anderson to Proposal No. 170 as follows:

At the end of the amendment add the following:

SECTION 9. The maximum rate of taxes that may be levied for all purposes shall not in any year exceed twelve mills on each dollar of the total value of all property, as listed and assessed for taxation, in any taxing district wholly outside of municipalities and not to exceed fifteen mills, exclusive of sinking fund and interest charges, in any taxing district wholly or partially within municipalities. Additional levies, not exceeding in any year a maximum of five mills, for all purposes, on each dollar of the total value of all the

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property therein, as listed and assessed for taxation in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose.

Mr. LAMPSON: The maximum limit is fixed at twelve mills in taxing districts wholly outside the municipalities, and not to exceed fifteen mills, exclusive of sinking fund and interest charges, in any district wholly or partially within municipalities, and an additional five mills applicable to all districts upon a vote. Now, it is plain that the necessities for municipalities for taxes are greater than for country districts, so that the excess allowed in the municipalities is three mills greater than that allowed in the country taxing districts, and the fifteen mills limitation in the municipality is exclusive of sinking fund and interest charges. The courts would undoubtedly hold that way in Ohio, for they have held that in the ten-mill limitation in the Smith law. I think the fundamental difference in the necessity of the country and the city districts should be recognized if we are to place a limitation at all upon the taxing power of the various taxing districts, and I do not think a constitutional limitation ought to be down to bare living limit. This does not interfere with the law as it stands. The law is still there until the legislature modifies it. But a constitutional limitation ought not to be right down to the bare limit of levying taxes to meet the necessities of any taxing district. There should be a little leeway for the exercise of judgment on the part of the legislature. It happens in my county right now, in a little country district, that the state is furnishing money to help support their schools because they had to close them down on account of the ten-mill limit, and at Ashtabula Harbor they borrowed \$20,000 in a special school district to pay the current expenses of a school district for this year.

Mr. Brown, of Lucas, was here recognized by the president.

Mr. BROWN, of Lucas: I desire to offer an amendment, but I think I would prefer to have this disposed of first.

Mr. DOTY: Of course the member's amendment is very much better than anything we have been considering, but the argument he puts up ought to make plain to you the utter folly of one hundred and nineteen men today fixing a tax limit for any part of this state twenty-five years from now, or any other time from now. He called your attention to the fact that even right now an important school district of his own county has been compelled to borrow money to pay current expenses on account of the limitation put upon that community by the legislature, and now we are called upon to fix a limit, not one that can be changed easily, as the Smith law can by the legislature, but for all time. Who is there in this Convention who is wise enough to say what the tax rate ought to be in Ashtabula Harbor ten years from today? The man does not live. As I tried to point out last night, and I am not going to make my speech over—I just want to call your attention to this, that nobody including the member from Fayette, has yet answered my argument, that the tax rate is not a cause, but is an effect. The tax rate is the result of dividing one thing by another. Taxes are not high or low because of the tax rate. Taxes

are high or low by reason of the necessities of the civil division expending the money, and when I say necessities I mean, of course, necessities including the mistakes which public officials sometimes make. There are not many, as the gentleman from Fayette said, but there are mistakes, and those are human and occur under any system, but here is the situation, we are attempting to fix something that ought not to be fixed, a thing that is the result of dividing the necessities by the wherewithal, or the wherewithal by the necessities, and that is a variable result. Both of those factors vary. There is not a time when one or the other or both do not vary. You cannot help that. Now you are attempting to put a factor in the constitution and fix it for all time when we know it is the result of two things, either or both of which may vary every year. It is perfectly preposterous for us to sit here and attempt to say what the tax rate of Ashtabula Harbor ought to be ten years from now.

Mr. DWYER: The idea you suggest in the past has been most vicious, as I have observed for many years. We levy a rate in cities as high as three per cent. Then comes the decennial appraisal, and possibly eight or ten millions of property are put on the duplicate the next year, and the same old rate will go right along, no matter how much the duplicate has been added to. They will always find a way to spend it. I am in favor of cutting down that arbitrary way of doing things which has been so bad in the past that we ought to have some limitation.

Mr. DOTY: I agree that there has been much abuse of this situation. The member is right. But this plan does not meet the whole situation. It simply makes our situation that much worse. We are attempting to fix a wrong thing, and if you will put a limitation upon what sum shall be expended—while I would not agree that that ought to be done—there is more reason to say that should be done than the way now suggested.

Mr. DWYER: If they cannot get it, they cannot spend it.

Mr. DOTY: They cannot get it because they cannot get it. If we didn't need something to run the government there wouldn't be any taxes. We do need a certain amount of money. That there is certain extravagance is true, but people can stop that.

Mr. DWYER: They have not stopped it.

Mr. DOTY: But we do not pay rates, but money. The tax rate is not what we pay. We pay money, and that amount of money that we pay is commensurate with what we have to pay as far as living expenses are concerned.

Mr. DWYER: I think you are too ethereal.

Mr. DOTY: I have been charged with being theoretical, and I am charged with being ethereal. Now, there is no rule about that. It is just a mathematical problem. The amount is fixed by the amount you spend. The amount is fixed by the amount of property you have. Now is it not true to get at the rate you must divide the amount spent into the amount you have on which to raise the money? And yet we have gotten into the habit of worshiping the rate instead of looking at what we spend!

Mr. DWYER: With our present rate everything is provided for, and I think we ought to have the limitation on the rate continued and fixed.

Mr. DOTY: In order to bring matters to a direct

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issue on this amendment, I move to lay it on the table, and on that I demand the yeas and nays.

Mr. DOTY [after consultation with members]: I withdraw that demand.

Mr. LAMPSON: Then I move the previous question.

Mr. DOTY: I now renew the motion to lay on the table.

Mr. PECK: I second the motion.

Mr. WATSON: That motion to lay on the table is too late.

Mr. DOTY: No; it is not. It takes precedence over the motion for the previous question.

Mr. LAMPSON: I demand the yeas and nays on that.

The yeas and nays were regularly demanded; taken and resulted—yeas 41, nays 54, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Redington,
Bowdle,	Harris, Hamilton,	Roehm,
Cassidy,	Harter, Stark	Shaffer,
Cordes,	Hoffman,	Smith, Geauga,
Crosser,	Hoskins,	Stalter,
Davio,	Hursh,	Stevens,
DeFrees	Johnson, Williams,	Stewart,
Doty,	Kilpatrick,	Stilwell,
Farrell,	Knight,	Stokes,
Fess,	Kramer,	Taggart,
FitzSimons,	Leslie,	Tetlow,
Fox,	Mauck,	Thomas,
Hahn,	Peck,	Ulmer.
Halenkamp,	Read,	

Those who voted in the negative are:

Baum,	Fluke,	Miller, Ottawa,
Beatty, Morrow,	Harbarger,	Moore,
Beyer,	Harris, Ashtabula,	Nye,
Brattain,	Henderson,	Okey,
Brown, Lucas,	Holtz,	Partington,
Brown, Pike,	Johnson, Madison,	Peters,
Campbell,	Jones,	Pettit,
Cody,	Keller,	Pierce,
Collett,	Kunkel,	Price,
Colton,	Lambert,	Riley,
Crites,	Lampson,	Rockel,
Cunningham,	Leete,	Shaw,
Donahey,	Longstreth,	Tannehill,
Dunlap,	Ludey,	Wagner,
Dunn,	Marshall,	Walker,
Dwyer,	McClelland,	Watson,
Earnhart,	Miller, Crawford,	Winn,
Fackler,	Miller, Fairfield,	Woods.

So the motion to table was lost.

Mr. LAMPSON: I had a motion for the previous question, but I will withdraw that.

Mr. PECK: I move we adjourn.

Mr. BROWN, of Lucas: I understood the chair recognized me.

The PRESIDENT: The chair did recognize the gentleman from Lucas.

Mr. BROWN, of Lucas: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 170 as follows:

In line 10 after the comma following the word "purpose" insert the following: "real estate when occupied as a bona fide homestead by the owner thereof, to an amount not exceeding in value one thousand dollars."

Mr. BROWN, of Lucas: I am now willing to yield the floor for a motion to recess, but I want to have the privilege of being heard when we reconvene.

Mr. LAMPSON: I move that we recess until 7:30 o'clock tonight.

The motion was carried, and the Convention recessed.

EVENING SESSION.

The Convention met pursuant to recess, and was called to order by the vice president.

Mr. STEWART: I move a call of the Convention.

The VICE PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the door, and the secretary will call the roll.

The roll was called; when the following members failed to answer to their names:

Anderson	Harter, Stark,	Rorick,
Beatty, Wood,	Kehoe,	Shaffer,
Brown, Highland,	Kerr,	Smith, Hamilton
Cunningham,	King,	Solether,
Dunn,	Leete,	Stalter,
Dwyer,	Malin,	Stamm,
Eby,	Marriott,	Tallman,
Elson,	Miller, Fairfield,	Weybrecht,
Evans,	Norris,	Wise,
Farnsworth,	Peck,	Worthington,
Halfhill,	Price,	Mr. President.
Harter, Huron,		

The vice president announced that eighty-five members had answered to their names.

Mr. WOODS: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. BROWN, of Lucas: I yield to Mr. Stewart.

Mr. STEWART: I am inclined to believe that there is no question of constitutional law or statute law that in its last analysis will not have some bearing somewhere upon the subject of finance or taxation. For this reason a discussion of this question will take a wide range.

It is my desire to speak upon only one phase of this question, which I think is pertinent to the question now before the Convention.

I believe that the only way to keep down the tax levy is to keep down the expense.

The over-willingness with which political subdivisions are disposed to go into debt, resulting in the piling up of great sums of bonded indebtedness, has reached a condition which, unless checked, portends nothing but financial disaster. The piling up of bonded indebtedness for the distant future to pay has, strange to say, met with ready and popular approval.

It is time that a warning should be sounded, and I sincerely hope that this Convention will lay down some rule which will absolutely govern the creation and the time of payment of all public debts. Because of this enormous growth of bonded indebtedness it has become a most important question to determine the best and safest method for its control and liquidation. To this end and purpose I beg the indulgence and attention of the Convention for a brief discussion of this question. There are two methods.

One is known as the "sinking fund;" the other as the "partial-payment plan."

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To say that there are advantages in both systems is true, but I believe the greater merit is in the partial payment plan.

The sinking fund is designed to hold the accumulations of money raised by taxation to meet debts which fall due at some future date. If this fund were always wisely and honestly handled there would be no objection to it. It is sound in theory, but it cannot be placed beyond the "pale of human weakness," and because of this there is always some speculation and doubt as to its ultimate outcome. I believe that no debt should be created unless a part of the principal is paid each year, together with the annual interest that is due. The history of sinking funds is that they have too often failed.

As to the reasons:

First. Because the officers are of varying degrees of efficiency, integrity and ability—some dishonest, some incompetent.

Second. Unwise or unfriendly legislation may deplete the sinking fund.

Third. It has been charged that the sinking fund perpetuates a "system" and gives "opportunities" in buying and selling bonds and the investment of funds for commissions and bonuses on the side.

Fourth. Sinking funds are often depleted and the proceeds diverted from the purpose for which they were intended.

To illustrate: The English government for over one hundred and fifty years tried to have a sinking fund, with more failure than success. To quote an English author (Sargent, page 28):

The very name of a sinking fund has become unpopular and is regarded even by judicious men as a word of reproach; so that to pronounce any scheme to be a sinking fund is to say that it is worse than Eutopian; that it is something like a swindle on the public.

The first sinking fund was established in 1716 under Walpole, and set apart, as a "sacred trust never to be touched" to meet the principal and interest of the national debt, and to no other use, intent or purpose whatsoever, so the law read. But notwithstanding this it was employed to meet current expenses.

Gladstone, Beaconsfield and many others of lesser note tried schemes to perfect and establish a permanent sinking fund, but all fell short of their expectations because either later legislation interposed and diverted the funds, or the demands of war and extraordinary expense depleted the fund. Whenever there was money in the sinking fund and extraordinary conditions came about, they always drew on the sinking fund rather than raise by taxation the money that was needed for present use.

The party in power would proclaim the fact that they financed a war, made some great public expenditure, some great public improvement, and never raised the taxes. Then again, a succeeding administration, for political purposes and false economy, would reduce the sinking fund levy. This is where unfair and unfriendly legislation can come in. These changing conditions made the term "sinking fund" one of reproach. The payment of the debt was not the point. The desire for party prestige looked only to keeping down the rate of taxa-

tion by providing payment for only the interest and letting the future generations take care of the principal.

In the United States the sinking fund appeared in the treasury accounts in 1868. Under the law one per cent of the debt was to be paid each year. Explicit as this has been the secretaries of the treasury have exercised their own discretionary powers and suspended the operation of this law so that today the treasury owes the sinking fund over \$500,000,000. I mention this to show historically that the sinking fund is depleted even in this country, where it was supposed to be held in trust and administered according to special laws.

In municipalities it is even worse. Many laws have been passed tending to make the sinking fund safer, but laws do not always control the frailties and weaknesses of those who have control over those funds.

I would place the debt-paying obligations outside of the pale of the incompetent or dishonest official.

I would make the payment of debt under a rule laid down as a constitutional requirement, that those who buy bonds must know that the recital on the face of the bonds must comply with the constitutional requirements.

Then and not till then will the payment of public debts be placed on a safe basis.

One of the great hardships that is imposed upon municipalities is that officials will issue bonds to fall due in a sum total at some future time. By this method they go on piling up indebtedness, making no provision to pay the principal, but only meeting the interest each year, till there comes a time when it takes all the money that can be raised by taxation to meet the interest and leaves nothing to pay the principal.

You say that they are criminally liable in not providing for the principal and interest. So they are, but what are you going to do when the sinking fund trustees who were derelict to their duty have perhaps years before passed out of office, and others, equally derelict, have in turn succeeded them and then in turn been succeeded by others? A situation that will permit conditions like these to come about is vicious and bad. To add further to the iniquity of the situation the proceeds of the bonds have often been used for purposes for which they were never issued. To illustrate: I know a community which refunded its bonded indebtedness and placed the maturity of the entire issue at a future date. The amount was for \$30,000. Today it is several years before the bonds will fall due, and that municipality has spent about \$40,000 for interest and not one cent of the principal has been paid.

I know another town where it takes over half of its public revenue to meet its interest charge. In other words, it takes more money to meet the interest charge than for all other public expenditures put together. Only the fixed interest charge and the running expenses can be met. They are at the limit of their levy and cannot make provision to pay one cent of the principal.

A system of law that allows such conditions to come about is vicious and bad. I believe no debt should be created unless some provisions are made that will make it mandatory to pay some portion of the principal each year.

MR. FACKLER: Would you make that limit of taxation right in the constitution so that the municipality could not possibly liquidate its debts?

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Mr. STEWART: Wait until I get through, and then if I have any time I shall be glad to answer your question.

I believe that it should be obligatory by constitutional provision. Then those who buy bonds will take notice that the constitutional recitals have been complied with. As it is the recitals on the face of the bonds that all the statutory requirements have been complied with, and that an examination of the transcript of the council proceedings has been made showing formal and regular proceedings, will always make a bond valid in the hands of an innocent purchaser, when they may have violated the law in the recitals on the face of the bonds (such as issuing for some certain purpose when the money was devoted to another use), and also when the transcript would not disclose the real facts and proceedings of the council. Council proceedings have been doctored in the past and will be in the future.

I am in favor of a constitutional requirement making it obligatory that some portion of the principal be paid annually. Let me mention the requirements of another state: In Colorado the various municipalities are required to report and have registered all bonds issued, and the county auditors are compelled to levy annually a tax to meet some portion of the principal and interest.

Another grave fault in not having annual payments is that it is unfair to issue bonds that will not fall due until after the original improvement may be "dead and gone." It is unfair to have a bond issue all fall due at the same time. It is bad practice to get in the habit of always refunding and never paying any of the principal. Cities and villages do this, while if an individual "always renews" and never pays, his credit will soon be at a discount.

Take a municipal water plant, a municipal electric light plant, wherein the bonds all fall at a future date, all at the same time. You may have a worn-out plant before it is time to pay the bonds. Then it is more bonds to improve the plant.

It would be wrong to allow a condition to exist that will force the people thirty or forty years from now to meet the whole burden of paying off a debt which will represent at that time, not the newly installed and well-equipped plant, but a plant thirty to forty years old, worn out and obsolete.

It is by such shortsighted methods that municipalities get into such deplorable financial conditions. You say that it is criminal if we do not guard carefully the sinking fund. That is true. Of course, they violated the law.

Each newly elected council may bring in a new sinking fund commission. Each in turn, designedly or ignorantly, does what its predecessors have done, whether it be legal or not, so in a few years you have a large portion of the citizenship of that community who are parties to this violation of law. Then what are you going to do?

I will concede the fact that in some of the larger cities their sinking funds are managed all right. This is because the cities are in the center of large financial districts; have better opportunities for investment, both in buying securities for investment and in selling same, when they have to meet maturing bonds. They also have a better opportunity to place men on the sinking fund board who are schooled in handling financial matters. But the smaller municipalities of the state have limited opportunities for investment. Their meagre experience

in handling financial matters, their narrow limit for the sale of securities that must be sold to meet maturing bonds, puts them at a disadvantage in handling the sinking fund even if they are honestly disposed to comply with the law, while if they are mercenary the sinking fund may be plundered. How can this be done?

1. By making no levy.
2. By using the sinking fund to meet general expense.
3. For political purposes, by lowering the levy to only enough to pay for the interest, leaving the future to pay the principal.

Such practices as these have prevented the one per cent Smith law from being a greater success than it has been.

The only way to "sink" a debt is to pay it.

Make your sinking fund one of partial-payment rule, then there will be no uncertainty as to what is due and when it is due. In this way you reduce the principal annually and also the interest charge.

Now, as to the methods that I would suggest as to the amount that should be paid each year. I recognize that cities are often called upon to make large bond issues to cover the cost of some public improvement, and in this they have to build for the future. A city's future is fixed. It is a center of trade, manufacturing and all kinds of commerce. It, when building, has to take into consideration the city's future growth, and must necessarily make its improvements far beyond its present needs, such as extensive water works, extensive electric light plants. This being the case I can see where their bond issues should run a longer period and why future generations should pay their share of the debt. On the other hand, the growth of the smaller municipalities of the state is uncertain; they are prosperous today and on the decline tomorrow. For this reason they should not be allowed to incur long-time indebtedness.

To adjust properly the situation between these two extremes, I would say that not less than two per cent of each bond issue should be paid off each year. This would make a bond issue run fifty years, meet the requirements of cities as to long-time issues and at the same time would place smaller communities upon a basis of paying annually some portion of their indebtedness. As it is many smaller municipalities provide only for the interest and make no provision for the payment of the principal.

Personally, I think that all smaller municipalities should pay from five to ten per cent of their debt each year, but to take care of the extraordinary conditions that often overtake growing cities I am willing to place the amount at two per cent. It is the absolute requirement that some portion of the debt be paid each year for which I contend.

No other single thing that this Convention might do will accomplish more to place all political subdivisions of this state on a solid financial basis than this one thing of forcing the payment, each year, of some certain portion of its public debt.

I hope that the Convention will see the wisdom of the partial-payment plan and write it in the constitution. There it will be beyond the whim or caprice of legislative bodies. The partial-payment plan will work automatically. There can be no mismanagement, dishonesty or

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manipulation. Neither can any unwise or unfriendly legislation interfere.

It is safe to say that the greatest evil in any debt is in having to pay the debt over and over again in the form of interest and never paying any part of the principal.

The desire on the part of tax-levying bodies to make a good showing in keeping down the levy causes them to resort to illegal drafts on the sinking fund to meet general expenses. There can be no juggling of funds for political purposes or for dishonest practices. While the sinking fund may be administered with profit, it may be plundered. It may be incompetency, it may be dishonesty, it may be in the loss of securities held, but the fact remains that there is always a possibility of loss in the sinking fund.

With the partial-payment plan there can be no loss or diversion of the funds. Which system will you have, one that shows sometimes a profit and sometimes a loss, or a system that admits of no loss whatever? The success of the sinking fund depends entirely on the honesty, the integrity and the clear business judgment of the officers in charge, regardless of the laws that are devised to protect said fund, while with partial payments, no matter whether the officers in charge are honest, dishonest or incompetent, the payment of principal and interest cannot be avoided. You should provide for the payment of some part of the principal each year, because great progress is being made in perfecting and improving machinery every day, which often makes a plant obsolete in a few years. You should force a gradual payment of the debt, so that, while you are wearing out your plant or improvement, you at the same time are wearing out your debt.

Let me illustrate the partial-payment plan by the good roads bond issue as suggested by the printed example which you all have seen. There a debt of fifty millions was to run for thirty-five years, and in the end would amount, principal and interest, to \$86,570,000, while, if you will put the good roads bond issue on the partial-payment plan, according to the plan which I have worked out, you pay off the debt in twenty-five years, instead of thirty-five years, and save \$17,320,000. Under the twenty-five-year partial-payment plan, your average rate is four hundred and sixty-one one-thousandths of a mill; under the thirty-five-year plan your average rate is four hundred and thirteen one-thousandths of a mill, a difference of only forty-eight one-thousandths of a mill as to the average levy. In other words, the partial payment plan on each \$1,000 of taxable property involves a payment of only four and eight-tenths cents more each year, but pays off the entire debt in twenty-five years and saves \$17,320,000.

I want to put a limit to the authority to spend money. Force a payment of some portion of your public debt each year and the people will take care of the levy.

At the proper time I shall offer an amendment providing for the addition of the following section:

No bonded indebtedness of the state, or of any political subdivision thereof, shall be incurred, unless at least two per centum of such indebtedness is paid each year, together with the annual interest on such bonded indebtedness.

Mr. BROWN, of Lucas: I shall be very brief in this matter. I will read the clause as it would read if the amendment I suggested is adopted. It is the exemption clause of the present constitution. The language that is important starts out as follows:

But burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, real estate when occupied as a bona fide homestead by the owner thereof, to an amount not exceeding in value one thousand dollars and personal property, to an amount not exceeding two hundred dollars, for each individual, and deductions of bona fide debts from credits, may by general laws, be exempt from taxation.

Mr. DWYER: Is the word "cemeteries" in that?

Mr. BROWN, of Lucas: "Burying grounds." The only change I made from the exemptions in the present constitution is to add the words "real estate when occupied as a bona fide homestead by the owner thereof, to an amount not exceeding in value one thousand dollars." This provides that that may by general laws be exempt. Now bear in mind under the present constitution and under the language employed in both the minority report and the Anderson substitute the exemption is permissive only. The general assembly may, if it sees fit, by general law, make these exemptions, and those laws may at any time be repealed, and the policy of the state in that particular may be reversed. What I am trying to do is to take the burden from home-owners to encourage home-owning. At the present time a thousand-dollar homestead is exempt from execution and is exempt from every debt except for taxes. You may have your home and it shall not be taken away from you unless you fail to pay taxes, and then it may be confiscated piecemeal by the state. Now the purpose of the homestead exemption is to save a man who is not able to pay his debts to the public from being a public charge. The theory is that it is better to owe some one person debts up to \$1,000 than to be supported by the public and be a pauper.

Mr. HOSKINS: I didn't catch the reading of that amendment exactly. Does that permit the exemption of a homestead regardless of value? Suppose I live in a homestead worth \$10,000?

Mr. BROWN, of Lucas: The first \$1,000 could be made exempt by the general assembly. The general assembly could exempt \$1,000, and then if I owned a \$5,000 homestead it would be exempt only to the extent of \$1,000, and \$4,000 could be levied on.

Mr. STOKES: You are proceeding under a different rule of exemptions than obtains as to executions.

Mr. BROWN, of Lucas: In what particular?

Mr. STOKES: The home is exempt from execution up to \$1,000?

Mr. BROWN, of Lucas: Yes.

Mr. STOKES: But if the home is worth \$10,000 you can take the whole home.

Mr. BROWN, of Lucas: The \$1,000 would be saved to the man who has a \$1,000 home.

Mr. HALFHILL: If I understood the purpose of your amendment correctly, the legislature could frame a

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law whereby it would only grant that exemption to the small owner and make it exclusively apply to the small home-owner.

Mr. BROWN, of Lucas: The general assembly, under this language, could exempt any amount by way of homestead, not exceeding \$1,000, and I have no idea that the general assembly could exempt the full \$1,000 at the start, and perhaps never. It might not be considered the part of wisdom to do it. The reason I said \$1,000 is because the exemption law exempts from every other claim, except the claim of the state, \$1,000 of the homestead owner.

Mr. REDINGTON: Do you not think that that language would exempt that \$1,000 without any act of the general assembly?

Mr. BROWN, of Lucas: I think not. I think the general assembly would have to frame the law. I cannot think of any principle upon which you are going to exempt a homestead from execution and yet allow it to be confiscated by the state for taxes. The principle under which the property is exempt from execution is sound enough and broad enough to justify us in keeping the man from losing his home on any obligation. As I have said the theory on which the \$1,000 is exempt on general obligations is if you do not exempt it the man may become a charge on public charity, and the same would apply if the state takes his property for taxation. What is the class of citizens you want to encourage? Is it the man who lives in a rented house or is it the man who lives in his own property? Which citizen is the best citizen for his state, the one who moves the first of every month or the one who is rooted to the soil? Which citizen is it that throws tin cans in the street and paper on the pavement and lets the property he is using go to rack and ruin; is it the man who owns it, or the one who rents it and stays in it until it becomes such a nuisance that he can stay no longer? I say to you that in my opinion we cannot do anything which will be better calculated to make our state happier and more prosperous and sound politically and sound morally and sound socially than to encourage home-owning, to place a premium upon the home-owner. At the present time \$200 is exempt to a man, if he wants it, in personal property. He does not have to pay taxes on that, but if he puts it in a home it has to pay taxes. I say to you that encourages men not to own homes, but to live in rented property and to get their money in personal property. This suggestion, if adopted and if the general assembly sees fit to carry it into effect, and the governor sees fit to approve it, and some of you do not see fit to circulate the initiative and referendum petition against it, will encourage our people to become home-owners, and the man who lives in his own home would be relieved from taxation, but the man who lives in a rented house will have to pay taxes on the rented house because the landlord puts that in the rent. In my judgment this will encourage home-owning. I believe this will be a very popular matter to put into the work of this Convention, and if the general assembly and the governor and the people in their collective wisdom under the referendum shall see fit to let it go into effect no harm will be done.

Mr. HARRIS, of Hamilton: Would it not have the further advantage of encouraging the ownership of small farms?

Mr. BROWN, of Lucas: Certainly it will, and little garden patches, and everything of that nature.

Mr. WOODS: I want to demand the previous question. This proposal has not yet been engrossed. We have been talking about amendments on it for a couple of days, and it has not yet reached that stage. Now I think it should be brought to that stage. It will not prevent future amendments being made. If the previous question is demanded you will vote on the pending amendment, and that will take it over two days for second reading. For that reason I demand the previous question.

Mr. HALFHILL: I renew my request made this morning for the privilege of the Convention for a statement.

The VICE PRESIDENT: The vice president cannot allow debate at this stage.

Mr. HALFHILL: I ask the privilege of the Convention.

The VICE PRESIDENT: As to whether it is the privilege of the Convention the Convention will have to decide. If there is no objection Mr. Halfhill may speak on what you may deem the privilege of the Convention, although the previous question has been ordered.

Mr. PECK: Not ordered, but demanded.

Mr. DOTY: I move that the member from Allen [Mr. HALFHILL] be allowed to make any statement he desires.

The VICE PRESIDENT: The vice president cannot allow that motion because the previous question has been called.

Mr. LAMPSON: I ask unanimous consent that the gentleman from Allen [Mr. HALFHILL] may make his statement.

Mr. COLTON: I second the motion heartily.

The VICE PRESIDENT: Is there any objection? If none, Mr. Halfhill has the floor.

Mr. HALFHILL: I want to recall the situation here, the same thing I called the attention of the Convention to this morning, when, immediately upon convening, after the president had recognized the member from Scioto [Mr. EVANS], the member from Guernsey [Mr. WATSON] was on his feet to demand the previous question. I inquire, what are we trying to do here in this matter? When this question came in before the Convention from the committee on Taxation, it was expressly stated by the member from Cuyahoga [Mr. DOTY], and agreed to by the Convention, that we enter into a full discussion of all of the elements of the two reports before us just the same as if upon second reading. We have started out to discuss it in that way. There has been an attempt two or three times since then to seize this question and drag it out of the Convention into the committee room in order to reform something and bring it back here, and move the previous question, and rush it through the Convention. Are we here to treat these questions as men knowing the responsibility we are under? If we are, then do not at this time shut off this debate. Here are matters that ought to be presented by way of amendment, not in a committee room, but threshed out by the Convention; and under the arrangement that was agreed to unanimously we should proceed to discuss these questions that are before us; because I know what it means, and you all know what

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it means, if you shut off this debate. You frame up a situation so as to take a vote, and you are violating the confidence that each reposed in the other when we started in to discuss fully this question before the Convention. I submit that it should be discussed right here, and under the arrangement that was made there is no occasion for the previous question, because when we have threshed it out under that arrangement made and understood and agreed to by everybody, we have done the work; and your votes that have been taken from time to time, veering from one point to another, a few coming one way on a motion to lay on the table, and the same motion going the other way at a different time shows that this question is not understood. I know it is not understood in all of its details by the members of this Convention. There are matters involved that I have received much enlightenment upon in these debates, especially today; and there are questions that have not been discussed that I can throw some light upon if I have an opportunity to do so. On a matter that affects us and our children after us, and affects every dollar's worth of property in the state of Ohio, and every industry in the state of Ohio, this greatest question before the Convention, you propose to dispose of by some short-cut parliamentary procedure. I insist that we shall observe the faith, each with the other, that we declared when we started in here, and that we thresh out every feature of this proposal before we proceed by a parliamentary maneuver to put it in such shape that further debate or attempt to add anything by way of amendment before the Convention will be a futile and useless effort.

The VICE PRESIDENT: The presiding officer must state to the Convention that unless the Convention agrees, under the heading of a privilege of the Convention, we cannot go on and debate if the previous question is demanded. Of course, if the Convention says it can be done, I am helpless.

Mr. WOODS: I am not trying to take advantage of anybody, but I cannot for the life of me see how the demanding of the previous question would do that. This previous question does not apply to the final passage on second reading. This proposal has not been engrossed. After it is engrossed it is subject to amendment and debate of all sorts. What I want to do is to get this to a point where it can be engrossed, so that it won't take a two-thirds vote to do anything with it.

Mr. HOSKINS: Did we not pass a motion of the member from Cuyahoga [Mr. Doty] that we would discuss this as if under second reading?

Mr. WOODS: There was a motion of that sort, that we would debate the minority report and the majority report as if on second reading. We disposed of the majority report, and the minority report is before the Convention. I think we made a mistake in not engrossing the report at the time, but I do not want to take any advantage of anybody. I want everybody to do all the talking he wishes to do, but I cannot understand why we cannot engross this, and get along to the usual step.

Mr. MAUCK: My understanding is that we are on the Anderson amendment. You ought not to pass on this in the absence of the delegate from Mahoning. The Anderson amendment would have to be disposed of before the bill could be engrossed.

The VICE PRESIDENT: The question is not on

the Anderson amendment, but on the engrossment of the minority report. The proposition is simply one of engrossment, and the motion is made for the previous question.

Mr. DOTY: A parliamentary inquiry. Of course, the pending amendment must be disposed of before the engrossment?

The VICE PRESIDENT: That is not binding.

Mr. DOTY: Yes; it is. How can you engross anything while amendments to it are pending?

Mr. MAUCK: May I ask what is going to be engrossed while the amendments are pending?

The VICE PRESIDENT: Whatever the Convention decides.

Mr. LAMPSON: The proposal is—the presiding officer wants to know whether you want this thing to continue when there is a way out of the parliamentary tangle?

DELEGATES: No.

The VICE PRESIDENT: The question before the Convention is on the previous question.

Mr. PECK: On what?

The VICE PRESIDENT: On engrossment.

Mr. WINN: This is my understanding, that if the previous question is ordered, then the first question will be upon the amendment of the gentleman from Lucas [Mr. BROWN]; then upon the next amendment, then on engrossment.

Mr. DOTY: That is right.

Mr. WINN: And then it is open to amendment?

The VICE PRESIDENT: That is right. The question is, Shall the debate now close?

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 45, nays 45, as follows:

Those who voted in the affirmative are:

Antrim,	Johnson, Williams,	Read,
Baum,	Jones,	Riley,
Beatty, Morrow,	Kunkel,	Rockel,
Beyer,	Lambert,	Shaw,
Brattain,	Lampson,	Smith, Geauga,
Brown, Lucas,	Longstreth,	Stalter,
Brown, Pike,	Ludey,	Stevens,
Collett,	Marshall,	Stewart,
Crites,	Miller, Fairfield,	Tannehill,
DeFrees,	Miller, Ottawa,	Tetlow,
Fluke,	Moore,	Wagner,
Fox,	Partington,	Walker,
Harbarger,	Peters,	Watson,
Harris, Ashtabula,	Pettit,	Winn,
Johnson, Madison	Pierce,	Woods.

Those who voted in the negative are:

Bowdle,	FitzSimons,	Leslie,
Cassidy,	Hahn,	Mauck,
Cody,	Halenkamp,	McClelland,
Colton,	Halfhill,	Miller, Crawford,
Cordes,	Harris, Hamilton,	Nye,
Crosser,	Harter, Stark,	Okey,
Cunningham,	Henderson,	Peck,
Davio,	Hoffman,	Redington,
Donahey,	Hoskins,	Roehm,
Doty,	Hursh,	Shaffer,
Dunlap,	Keller,	Stilwell,
Dwyer,	Kilpatrick,	Stokes,
Earnhart,	Knight,	Taggart,
Fackler,	Kramer,	Thomas,
Farrell,	Leete,	Ulmer.

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The VICE PRESIDENT: The motion is lost, and the debate will continue upon the engrossment.

Mr. CUNNINGHAM: Does this open the debate on the amendment?

The VICE PRESIDENT: Yes.

Mr. CUNNINGHAM: I think this amendment ought not to pass. There are a number of towns in my county that, if this amendment were to pass, would not pay one dollar of taxes. They have not a house in them that anybody would pay \$1,000 for, and the result would be that the whole town would not pay one dollar's taxes, and all over the state of Ohio that condition would apply, and that would reduce the value of real estate approximately one-half. I know there are towns in our county that would not pay a dollar, plenty of them. Now, why should we do it? There is no good reason, and the result will be that if you have \$1,000 for a home-stead that will mean \$2,000, and in the very town in which I live, which is supposed to be reasonably well-to-do, I venture to say that half the houses in the town would not pay \$1 of taxes. You do not know what you are doing if you pass this proposition. You are reducing the tax duplicate wonderfully. It is unavoidable, and I repeat again that one-half of the towns in Harrison county will not pay \$1 in taxes upon any house in them.

Mr. TETLOW: I would like to ask how many homes in Harrison county in the mining district are owned by the men living in them?

Mr. CUNNINGHAM: I don't know. We haven't any mining district. There are a few miners living in the southern end of the county.

Mr. BROWN, of Lucas: Do you understand that this thing simply makes it possible for the general assembly to make an exemption from one cent up to \$1,000, if the general assembly sees fit, all subject to the approval of the governor and the people of Ohio; that this does not exempt the home of \$1,000?

Mr. CUNNINGHAM: It is probably fair to consider that the legislature might have more sense than this Convention. That is possible. But what is the use of running that risk?

Mr. BROWN, of Lucas: Do you understand that that is what the language does —

Mr. CUNNINGHAM: No; the trouble about this matter is that if it would stop at \$1,000, it might not be so bad, but it will not stop here. A house worth \$2,000, and that in reality sells for that, goes on the tax duplicate for \$1,000, and that house is exempt from taxation. You build a house in any little town in the state and it will not sell the next day for half of what it cost. Take the town of Dearsville. It has three or four hundred people and is off the railroad, and there is not a house in it appraised at \$1,000 for taxation.

Mr. RILEY: Does the gentleman understand that if this is adopted a thousand dollars may be taken off of every man's house, rich or poor?

Mr. CUNNINGHAM: Yes.

Mr. RILEY: That increases the exemption and loses the tax duplicate a great deal.

Mr. CUNNINGHAM: Yes. If my property and your property are now valued at \$5,000, they can go on the duplicate at \$4,000. I am certainly opposed to this amendment. It would be disastrous to many townships

in our county, and it is the same I should judge in every locality in the state.

Mr. Antrim was here recognized.

Mr. ULMER: Mr. President —

The VICE PRESIDENT: The presiding officer will state that the president has left a list to be recognized in turn, and if anybody wants to speak, if he will send up his name it will be placed on the list. Mr. Antrim has the floor.

Mr. PETTIT: I would like to see the time when the rules that we have adopted in this Convention will be employed, and not one man's rules.

The VICE PRESIDENT: This is not one man's rule. The gentleman from Van Wert has the floor.

Mr. ANTRIM: Mr. President and Gentlemen: By way of introduction to my remarks I would like to propound a conundrum to the Convention, and my conundrum is this: How is it possible that two men engaged in the same line of business, both being presumably normal men, when it comes to certain subjects, like taxation, in which they are both very much interested, should arrive at diametrically opposite conclusions? That is a conundrum I would like to have some one answer, and come to me privately and give me the answer after I have finished speaking.

Just before the recess we had an excellent address by the gentleman from Fayette [Mr. JONES]. The gentleman from Fayette [Mr. JONES] made the statement that he had studied the subject of taxation for thirty years, had read some learned books to which reference was made by the gentleman from Cincinnati [Mr. HARRIS], and was thoroughly well informed on the subject, and yet his study of this great subject caused him to conclude that the only thing is the uniform rule. And of all the rabid uniform-rule men I have ever met in all the course of my life he certainly is the most radical. I do not claim to be the most ardent advocate of classification in the Convention, yet I believe in it, and think a sort of elastic scheme of taxation is the most logical thing that can be adopted. If we study the trend of things as far as taxation is concerned, we shall find that it is away from uniformity. All I ask you to do is to investigate the history of the various great nations of the world, and you will find this to be the case in absolutely every great nation. In Europe the tax on intangible property has almost entirely ceased, and in its place we have the income tax, just as they have in the state of Wisconsin, the only state in the United States that has the income tax in place of the tax on intangible personal property and some other forms of personal property. We find that in eleven states of the Union there is no constitutional restraint in the matter of taxation. This afternoon the gentleman from Cincinnati [Mr. HARRIS] gave the names and the constitutional provisions of other states that have provided for classification of property in their constitutions, for example, Oklahoma and Arizona. There are other states that have the uniform rule, but they have made the uniform rule somewhat elastic.

Now, as far as I have been able to learn, no state or county that has started on the way toward elasticity in matters of taxation has ever returned to the uniform rule. I am very much in favor of elasticity when it comes to our currency. I do not know whether the gen-

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tleman from Fayette [Mr. JONES] is. I know a great majority of the bankers of the country are. And just as I am in favor of elasticity of the currency of this country, which is the one thing that we need, so I am in favor of elasticity in matters of taxation, and if we adopt a uniform rule like that advocated by the gentleman from Fayette [Mr. JONES] we shall be tied down for years to come, and we shall not be able to make any taxation progress. In my investigation of this subject of taxation, and I do not claim to be as well posted as the gentleman from Fayette [Mr. JONES], although I believe if I were to study it as much as he has studied it I would not arrive at his conclusion, even after thirty years—but in my study of it I find that the people who advocate the uniform rule are chiefly the people who own land. On the other hand, I find that the people who advocate classification or elasticity are the people who also own land, but who own at the same time a good deal of personal property; and I find too that the people who advocate classification or elasticity in matters of taxation are the great scholars.

Now, the gentleman from Cincinnati wanted to know if there was one great reputable scholar, a professor of economics or expert in matters of taxation, anywhere in the world who advocated the uniform rule, the nobody in this Convention could mention the name of one such person.

A great many reasons have been given during the course of the debate why the classification of property for taxation purposes is desirable. My idea will be to consider briefly a few of the reasons that have been considered less fully.

I find upon investigating the history of the value of property that real estate and tangible property have gradually increased in value; that is, the tendency has been since the constitution was written in 1851 for real estate and tangible property to gradually increase in value, and particularly has this been the case in the last ten or fifteen years. On the other hand, we find that the tendency has been for intangible personal property to decrease in value. Now all you have to do in order to verify this statement is to turn to the census reports, and you will see by the census reports that are just out, or the census reports of the previous decades, that this is absolutely the case. Why is it that real estate and tangible property have gradually increased in price, and that intangible property that we classification people want to classify, has decreased? Here is the one great reason: Because gold, the measure of value and the medium of exchange, has greatly increased in the world. Away back in 1851, when our present constitution was written, there was very little gold. It was very scarce, and the result was that intangible property was really in a sense more valuable than real estate or tangible property; but gold was discovered in California in 1849, and the amount of gold mined gradually increased, with the result that today we mine annually half a billion dollars of gold. Twenty-five or thirty years ago we mined only about \$100,000,000 of gold annually; today there are five times as much, and you can readily see my point, that if the medium of exchange increases to any great extent, the things for which we exchange the gold naturally decrease. In short, it takes more money today to buy a farm, or to buy almost any form of tangible

property, than it did ten or twenty or thirty years ago, for the sole reason that gold is more plentiful today than it was ten or twenty or thirty years ago.

Mr. WINN: Will the gentleman allow me to ask him a question?

Mr. ANTRIM: At the end of my remarks, not now.

I want to give you a case to illustrate this fact, and I am quite sure it will be clear to everybody who listens to it.

In the year 1900 in Van Wert county I bought an eighty-acre farm for \$2,850. In six weeks I sold that farm at a profit of \$300, so that at the end of six weeks I had \$3,150. I loaned that money out and it netted me five per cent per annum. Now the interest for ten years, until 1910, was \$1,575. So the interest and principal, including the profit, amounted to \$4,725. That represents money. Now, suppose on the other hand I had kept that farm that cost me \$2,850. If I had rented it out there is absolutely no question that at that price I would have realized fully fifteen per cent per annum. Fifteen per cent per annum for ten years would mean \$4,250, making \$7,100. At the end of ten years, or in 1910, that farm sold for \$10,000. Now, let us take the difference between the \$2,850 and \$10,000 and we have \$7,150. Then if we add all this together we have \$14,250. Deducting for taxes an ample amount, \$500—that is more than the taxes would have been, but still, deducting \$500 for the taxes, and \$500 for the keeping of the farm in the condition in which it was when it was bought, we have \$1,000, which leaves \$13,250. Now deduct from the \$13,250 the amount of money I had as the result of the loan I made, and we have a difference of \$8,525. That is the amount I actually lost by not keeping that farm. That is a concrete example of what happened when tangible property was converted into intangible property. If I had kept the land, as the result of keeping the land I would have had \$8,525 more money. That proves the point I make, that tangible property and real estate have been gradually increasing in value, whereas intangibles have gradually decreased, for the reason that gold has become more plentiful in that time.

Now I am going to take the celebrated case given by Mr. Colton the other day. Professor Colton says there are two men living in his town of Hiram, and one has \$10,000 in notes, and the other has \$10,000 in a farm. The man who has a \$10,000 farm pays taxes on it, and the man who has the \$10,000 of notes is under just as much obligation to pay taxes on the full \$10,000 worth of notes. Of course he is a pretty mean man if he doesn't pay some taxes. Let us analyze this case. In the average township where there is no city the tax rate is very low. For instance, we have many townships in my county where the rate is much lower than one per cent. In the cities the rate is much higher. Now in one township I have in mind the rate is .44, so that a man having a \$10,000 farm in this township would pay a tax of only \$44. In Van Wert—I do not know what the rate is in Hiram, but possibly near the same—the rate was \$1.38 last year, so that if a man had returned full \$10,000 in notes, he would have had to pay \$138 in taxes. Here is the difference. The man who owns a farm gets more from the farm than the man who has money, and the man who has money pays three times as much taxes as the man who has the farm, and this further point should

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be taken into consideration: The man who has the farm has something that may increase in value, and as a matter of fact it has increased in value in the last few years very materially; so he not only pays a less rate, but his \$10,000 has increased to \$11,000 or \$12,000 or \$13,000. Whereas the man who has the notes, saying the notes are good notes, gets only \$10,000 and accrued interest, whatever that may be. So, is it fair that the man who has the \$10,000 of notes should be put upon the same basis as the man who has the land?

The question was asked the other day, would men be more honest if we were to introduce classification of property, and I think it was answered that they would be. It seems to me that there is no question that men would return and return fully their personal property if they felt they were being dealt fairly with. Even the gentleman from Fayette, who is such a rabid uniform-rule man, intimated that he had confidence in all men, and I think it is absolutely true that if we put a fair rate on intangible property that is gradually going down at the expense of tangible property and real estate we will find very much better returns.

Now what is true in the countries and states where they have introduced classification of intangibles? Take Minnesota. It is a fact that after the rate was reduced to three mills intangible property increased eight times; that is, eight times as much intangible personal property was returned under the three-mill rate as had been returned under the original rate before the three-mill rate became effective. Pennsylvania was also mentioned. In Pennsylvania they have \$1,000,000,000 returned at four mills. Iowa has intangible personal property on a five-mill basis.

We hear it said by many that classification of property will hurt the farmer. Like the gentleman from Lorain [Mr. REDINGTON], I own several farms, and I think it will benefit the farmer to have classification of property. I think if we classify intangible personal property more money will be received as taxes, and the farmer will be benefited by the decreased amount that he will have to pay. And before I leave the question I want to say that there are thousands of people crying for lower rates in order that they may be honest and may make proper and correct returns.

Take Massachusetts. In Massachusetts we find a rate of two and a half mills on savings deposits, and they have a billion dollars returned. All the personal property of all kinds returned in the state of Ohio only makes two billions, so you see how much larger the returns are in Massachusetts than they are in Ohio.

Maryland was referred to by the gentleman from Cincinnati [Mr. HARRIS] as having returned so much more under the lower rate, and New York now at the present time almost exempts intangible property, and we find in the city of New York alone over twice as much money as in the state of Ohio, and as a result the rates in New York are as low as two and a half per cent, and men can borrow money at a lower rate in New York than anywhere else in the United States.

Let us next take mortgages. A great deal has been said about mortgages. Suppose we had in place of a tax on mortgages a recording tax like that in the state of New York. There is no question that all local people with money to lend would put it in mortgages, and the

result would be that men in any particular county would be able to borrow all they wanted from the local money lenders. What is the case at the present time? In a great many of the counties loans are made by insurance companies, and what do the counties realize? Not one cent. So that really the counties are the losers, whereas if we had a smaller tax nearly all the money could be found in the counties themselves that the farmers and home-owners need, and the counties would get the benefit in the way of a recorders's tax.

I cannot offer any amendment now, but if I have the opportunity I shall offer an amendment that has to do to a certain extent with exempting money, and I would even be liberal enough to allow the banks to pay the amount that we would fix on money if it were not too high. I think we should show our liberality. This matter of taxation is rather a selfish matter, and I would be willing for the banking institutions that receive deposits to pay the money if the tax were a reasonable tax. Then we would get a tax on a billion dollars in the state of Ohio, and the result would be that the deposits would vastly increase, and all the people would be benefited from the fact that with more money the rate would be lower. Then Mr. Thomas, of Cleveland, would never have to pay six per cent on a mortgage on his house, but he might get the money at five per cent or even lower, from the fact that there would be more money in Cleveland to lend than there is now, and instead of the banks lending money at six, seven and eight per cent, money might be loaned at four, five and six, as is the case in France, where farmers get money at three and a half and four per cent.

Now, another obvious advantage of a partial exempting of money would be that those who would need protection would be the very ones who would get protection. As was very well said by the gentleman from Lorain [Mr. REDINGTON], it is not the rich people of the state of Ohio who have money on hand and that need protection; it is the people in moderate circumstances, the laboring man, the clerk and many others, who have money on deposit in banks, and the small sums they have aggregate large sums. Take, for example, the city of Cleveland. We have been told there is one bank that has one hundred thousand depositors. Now, if that bank has that many, how many depositors have all the banks, where there are three hundred millions on deposit? Mr. Anderson made the statement that there is a bank in his town that has over thirty thousand depositors. So if you take the state of Ohio as a whole you will find thousands upon thousands and hundred of thousands of depositors. We find that the average deposit will not run over \$1,000, and that means that the people who have the deposits are not the rich people. It is the middle class of people who have money on deposit. The rich people who keep the industries going are the people who borrow money. The many people who deposit small amounts are not the people who are running large businesses.

Again, if we were in a measure to exempt money, we would prevent the loss of a great deal of money. At the present time all money is taxed, no matter whether earning anything or not. What is the result? A great many people who know nothing of investments go into get-rich-quick schemes and drop their money. Sometime

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back the gentleman from Montgomery [Mr. STOKES] made the statement that over \$5,000,000 are lost annually as the result of going into these get-rich-quick schemes. If people could put their money into banks and know they were not going to be taxed on their money, the result would be they would leave it in the banks at three and four and five per cent, and that large sum mentioned would be saved to the people who can least afford to lose.

What would be the advantage of increased deposits? Suppose we could increase the deposits of the state of Ohio from a billion to a billion and a quarter. Do you not think that would tend to reduce rates of interest, not only to the business men, but to the farmers and everybody who borrows? Take the example of New York. Interest rates in New York are considerably lower than in Ohio. Why is that? Because they classify property in the state of New York and they partially exempt many forms of intangible property. And this would mean lower rates to the farmers, who were so eloquently spoken of by Mr. Lampson in connection with the good roads proposition, and to the home-owners and those who want to own homes. If they get lower rates it is a great saving, and a dollar saved is a dollar earned. Finally, if money were to be partially exempted it would have a tendency to decrease perjury, the concealment of intangible property and evasion of law. There is this tendency among men, that if they begin evading one law, they get so in the habit of evading law that they do not have the respect for all law that they should have. So the result of evasion and not making proper returns leads to our not having proper respect for all law that we should have. So at the proper time I shall offer an amendment along the line of partially exempting money on deposit from taxation.

Mr. COLTON: Before we pass too far from the amendment of the gentleman from Lucas [Mr. BROWN] I wish to say a word upon that amendment. It is proposed to exempt from taxation every person living in his own home to the extent of \$1,000 of the real estate. It seems to me that this is a very dangerous proposition. There are in the state of Ohio twelve hundred thousand voters. Just how many voters have homes is a little difficult to determine. I do not remember to have seen any estimate of the number of homes, but suppose that there are half of the voters who own their own homes. Then there are 600,000 homes. Now suppose that one-third of those homes are not occupied by the owners, then we have 400,000 homes occupied by the owners, and from these 400,000 homes you exempt \$1,000 each, or \$400,000,000. According to the last valuation of real estate the value of all the real estate in the state was just a little over \$4,200,000,000. If the exemptions reach \$400,000,000, we are exempting about one-tenth of the real estate in this state. That is, we are putting it in danger of being exempted. That I think a very dangerous thing to do, and the movement is not at all justified.

It has been objected, and very well, that this relieves the rich man, who does not need relief, as well as the poor man. Possibly the legislature might make an adjustment to avoid that, although I do not know that it could. It has also been said that the legislature will not exempt \$1,000, and that we might submit this to the people as a sort of referendum and let them decide. I

do not propose to vote in this Convention for any measure to go to the people that I will not vote for when it goes there, and I will not vote to put in this constitution any clause that I cannot vote for when the constitution goes before the people. When that time comes I want to be able to tell the people that I voted for every clause there because I believe in that clause. I am sure that to pass this amendment in this form would be a very dangerous thing to do.

Now another remark concerning the spirit in which this discussion has been carried on. It has been suggested by the gentleman from Allen [Mr. HALFHILL] that there has been a movement to withdraw this proposition from the Convention, and get it in a committee room, and reshape it and bring it back for the purpose of ramming it through. I disclaim any knowledge of such a movement on the part of myself, or of such other members of the minority as I have been able to get in communication with. I make the same disclaimer for them. This morning there was an understanding that discussion should go on as far as we were concerned, and we have no opposition to it, and we mean to keep that understanding in good faith and let the Convention decide on the matter. However, realizing that this proposition ought to be engrossed I voted against the motion to postpone. I feared there might be an effort to cut off discussion. Upon consultation I find there was no such intention, and this proposition can be engrossed and discussion can go on as freely as it is going on now. I am sure it is the intention of those who support the minority report to allow the discussion to go on, and with that understanding, I demand the previous question on this matter.

The main question was ordered.

Mr. COLTON: I now move that this amendment be laid on the table.

Mr. LAMPSON: After the main question has been ordered the motion is on the amendment, and the motion to table it cannot be made.

The VICE PRESIDENT: The motion to table at this time will be declared out of order and the vote will be on the amendment.

The yeas and nays were regularly demanded; taken, and resulted — yeas 32, nays 54, as follows:

Those who voted in the affirmative are:

Bowdle,	Halenkamp,	Read,
Brown, Lucas,	Halfhill,	Roehm,
Cassidy,	Harris, Hamilton,	Shaffer,
Cordes,	Hoffman,	Smith, Geauga,
Crosser,	Hoskins,	Stalter,
Davio,	Kilpatrick,	Stilwell,
Doty,	Knight,	Tetlow,
Fackler,	Leete,	Thomas,
Fess,	Leslie,	Ulmer,
FitzSimons,	Peck,	Winn.
Hahn,	Pierce,	

Those who voted in the negative are:

Antrim,	Cunningham,	Hursh,
Baum,	Donahay,	Johnson, Madison,
Beatty, Morrow,	Dunlap,	Johnson, Williams,
Beyer,	Dwyer,	Jones,
Brattain,	Earnhart,	Keller,
Brown, Pike,	Fluke,	Kramer,
Cody,	Fox,	Kunkel,
Collett,	Harbarger,	Lambert,
Colton,	Harter, Stark,	Lampson,
Crites,	Holtz,	Longstreth,

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Ludey,	Okey,	Stevens,
Mauck,	Partington,	Stewart,
McClelland,	Peters,	Taggart,
Miller, Crawford,	Pettit,	Tannehill,
Miller, Fairfield,	Redington,	Wagner,
Miller, Ottawa,	Riley,	Walker,
Moore,	Rockel,	Watson,
Nye,	Shaw,	Woods.

The amendment was disagreed to.

The VICE PRESIDENT: The vote is now on the Lampson amendment.

The yeas and nays were regularly demanded; taken, and resulted—yeas 48, nays 36, as follows:

Those who voted in the affirmative are:

Baum,	Holtz,	Okey,
Beatty, Morrow,	Hursh,	Partington,
Beyer,	Johnson, Madison,	Peters,
Brattain,	Jones,	Pettit,
Brown, Pike,	Keller,	Pierce,
Cody,	Kunkel,	Read,
Collett,	Lambert,	Riley,
Colton,	Lampson,	Rockel,
Crites,	Longstreth,	Shaw,
Cunningham,	Ludey,	Tannehill,
Dunlap,	McClelland,	Tetlow,
Dwyer,	Miller, Crawford,	Wagner,
Earnhart,	Miller, Fairfield,	Walker,
Fess,	Miller, Ottawa,	Watson,
Fluke,	Moore,	Winn,
Harris, Ashtabula,	Nye,	Woods.

Those who voted in the negative are:

Antrim,	Halfhill,	Peck,
Bowdle,	Harbarger,	Redington,
Cassidy,	Harris, Hamilton,	Roehm,
Cordes,	Harter, Stark,	Shaffer,
Crosser,	Hoffman,	Smith, Geauga,
Davio,	Johnson, Williams,	Stalter,
Donahey,	Kilpatrick,	Stevens,
Doty,	Knight,	Stewart,
FitzSimons,	Kramer,	Stilwell,
Fox,	Leete,	Taggart,
Hahn,	Leslie,	Thomas,
Halenkamp,	Mauck,	Ulmer.

So the amendment was agreed to.

The VICE PRESIDENT: Now the vote is upon the Anderson amendment.

The amendment was agreed to.

The VICE PRESIDENT: The question now is upon engrossment. If there is no objection, it will be engrossed.

Mr. WINN: I now move that the Convention order the proposal to be read the second time.

Mr. DWYER: I want some information as to what we have voted on.

The VICE PRESIDENT: We voted on the amendment of the gentleman from Mahoning that last vote.

Mr. DOTY: A point of order as to the motion made by the delegate from Defiance [Mr. WINN]. The matter lies over two days.

The VICE PRESIDENT: It is placed on the calendar for the second day unless the Convention by a majority vote otherwise orders.

Mr. HALFHILL: Does that mean a majority of the Convention, or a majority of those voting?

The VICE PRESIDENT: The matter is entirely in the hands of the Convention by a majority vote of those present, provided the total vote shows a quorum.

Mr. LAMPSON: In order that there may be perfect understanding, it may be read now, and then it is open to debate or amendment, or motion to postpone until tomorrow or any other time.

Mr. DOTY: What is it that is proposed to be done now?

The VICE PRESIDENT: To put it on its second reading.

Mr. DOTY: I demand the yeas and nays on that.

The yeas and nays were taken, and resulted—yeas 57, nays 25, as follows:

Those who voted in the affirmative are:

Baum,	Hursh,	Oke-
Beatty, Morrow,	Johnson, Madison,	Partington,
Beyer,	Johnson, Williams,	Peters,
Brattain,	Keller,	Pettit,
Brown, Pike,	Kilpatrick,	Pierce,
Cassidy,	Knigh,	Riley,
Collett,	Kramer,	Rockel,
Colton,	Kunkel,	Shaw,
Cunningham,	Lambert,	Stevens,
Donahey,	Lampson,	Stewart,
Dunlap,	Longstreth,	Tannehill,
Dwyer,	Ludey,	Tetlow,
Earnhart,	Mauck,	Thomas,
Fess,	McClelland,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Fairfield,	Walker,
Harbarger,	Miller, Ottawa,	Watson,
Harris, Ashtabula,	Moore,	Winn,
Holtz,	Nye,	Woods.

Those who voted in the negative are:

Antrim,	Halfhill,	Read,
Bowdle,	Harris, Hamilton,	Redington,
Crites,	Harter, Stark,	Roehm,
Crosser,	Hoffman,	Shaffer,
Davio,	Hoskins,	Smith, Geauga,
Doty,	Leete,	Stalter,
FitzSimons,	Leslie,	Stilwell,
Hahn,	Peck,	Taggart.
Halenkamp,		

So the motion was carried.

Mr. HOSKINS: I move that this Convention adjourn until next Monday at two o'clock.

The VICE PRESIDENT: The motion to adjourn is out of order. The proposal is up for its second reading, and has not been read yet.

The proposal was read the second time.

Mr. HOSKINS: I now move that we recess until two o'clock Monday afternoon.

Mr. LAMPSON: I move that we postpone further consideration of this proposal until Monday next, and it be placed at the head of the calendar, and that it be ordered printed.

The VICE PRESIDENT: The motion before the Convention is the one made by Mr. Lampson.

The motion was carried.

Leave of absence for the remainder of the week was granted to Messrs. King, Evans, Stamm, Norris, Kerr, Rorick, Anderson, Fox and Hoskins.

Leave of absence for Friday, Monday and Tuesday was granted to Messrs. Beatty, of Wood and Kehoe.

Mr. DOTY: I now move that we adjourn until tomorrow morning at nine o'clock.

Mr. LAMPSON: I second that motion.

The motion was carried.

SIXTY-EIGHTH DAY

MORNING SESSION.

FRIDAY, May 3, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Knox county, the Rev. Mr. McClelland.

The journal of yesterday (legislative day of Wednesday) was read and approved.

Mr. STEVENS: I demand a call of the Convention.

The PRESIDENT: A call of the Convention has been demanded, the doors will be closed, and the roll will be called.

The roll was called, when the following members failed to answer to their names:

Anderson,	Harter, Hurón,	Price,
Beatty, Wood,	Hoskins,	Riley,
Brattain,	Hursh,	Rorick,
Brown, Highland,	Johnson, Madison,	Shaw,
Brown, Lucas,	Jones,	Smith, Hamilton,
Cody,	Kehoe,	Solether,
Crites,	Kerr,	Stalter,
Cunningham,	King,	Stamm,
Dunn,	Leslie,	Tallman,
Eby,	Malin,	Tetlow,
Elson,	Marriott,	Weybrecht,
Evans,	McClelland,	Wise,
Farnsworth,	Norris,	Worthington.
Fox,	Peck,	

The PRESIDENT: There are seventy-eight members who have answered to their names.

Mr. MILLER, of Crawford: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. DOTY: I want to call attention to the fact that eighty-six members promised to be here this morning.

SECOND READING OF PROPOSALS.

The PRESIDENT: The second reading of proposals, and the first thing in order is Proposal No. 134.

Mr. HALENKAMP: If there be no objection we would like to have this informally passed, and I make that motion.

The PRESIDENT: If there be no objection the proposal will be informally passed and the next business in order is Proposal No. 227.

Mr. HARRIS, of Ashtabula: I move that that be informally passed and retain its place on the calendar.

The motion was carried.

The PRESIDENT: The next business is Proposal No. 16—Mr. Elson.

Mr. DOTY: The member from Athens, the author of the proposal, is not present, and I think this matter ought to be informally passed on the calendar.

The PRESIDENT: If there is no objection the proposal will be informally passed. The next will be Proposal No. 15—Mr. Riley.

The proposal was read the second time.

Mr. RILEY: Mr. President and Gentlemen: I am somewhat taken by surprise that this matter should come

up this morning and I have been almost persuaded by my friends not to go into the matter now, but it is something of such self-evident merit that I think it is safe to submit it to a majority of the Convention at any time.

If there is any one thing that there is universal complaint about it is the law's delays and especially the delays and failures to prosecute indictments for crime. Our governor was present some time ago and called attention to some of the features of this proposal, but the proposal had been before the committee for quite a time before he spoke.

There was a time when those charged with crime had no sort of a show for a fair trial. That time happily passed long ago and we went to the other extreme of regarding criminals with great tenderness, entirely too much so to accomplish the ends of justice.

Every presumption has always been, and we do not object to that rule continuing, in favor of one charged with crime. The presumption of innocence attaches until the person is clearly proved guilty. I would not have that otherwise. But we have in this country utterly failed in the prosecution of criminals as compared with other countries. Statistics have been furnished on this floor since the Convention met showing these facts, but I am not disposed to call attention to them. A very small per cent of those charged with crime, and who are undoubtedly guilty, are punished. This is because of the laxity of our laws and the extreme liberality shown to those accused of crime. Right here in this proposal is one thing which illustrates what I had in mind. For a long time it has been possible for a person charged with crime in any degree to take depositions, but there has been no provision in Ohio for depositions to be taken on behalf of the state under any circumstances. We do not propose to change the rule that the defendant shall be brought face to face with his accusers, but we do think where it is possible the state should be allowed to take depositions in this state, and if possible, with safety, beyond the state, though this does not refer to that matter. It will be possible to secure such testimony by arrangement with sister states and it may be possible to take the defendant across the state line, but this provision ought to be enacted whether that arrangement can be made or not, because it often happens that there are witnesses whose testimony could be taken if the defendant could be taken to the place, from the court house, and be confronted with the witnesses, where the testimony could not be secured, if they cannot be brought to court on account of the physical condition of the witness.

I remember a few years ago, when a witness who had been shot by the defendant was taken into the court room and testified when the witness could not have gone any distance and the defendant would have been acquitted if the witness could not have testified. So the first provision in this proposal is to provide for the taking of depositions on behalf of the state when the defendant's presence can be procured so as to comply with the old

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rule of bringing the defendant face to face with his accusers.

Another provision of this proposal that was not in my original proposal was taken from a proposal submitted by the gentleman from Hamilton [Mr. BOWDLE], and it is this: "No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel."

The rule has been in this state for a long while—I do not know how many years—that the defendant in a felony case could testify for himself. I know that in some of the neighboring states it is a comparatively new proposition, passed within twenty or twenty-five years. It was formerly the rule that a defendant was not permitted to testify, but since he has been permitted to testify it has been a matter of choice with the defendant whether he would testify. If he does not testify, the rule has been inflexible that no comment shall be made by the prosecution on his failure to testify. Now there is no good reason for that rule in my judgment. If he fails to testify I have never been able to see any reason why the fact might not be commented upon. It may be truly said in many cases where there was a doubt the defendant had it in his power to make clear what his counsel said was doubtful, and if the defendant will not do it on the stand it seems to me that is a fact that should be held against him in such a case and the comment on that fact would be proper.

My proposal as originally drawn modifies the last clause of this proposal, because this re-enacts a section of the bill of rights, and copies, in line 27, the words "no person shall be twice put in jeopardy for the same offense." I propose to ask the Convention to amend this clause by making an exception there in the case of a failure to convict by error of law. If a defendant is found guilty he may have a new trial. He may make a motion in arrest of judgment. He may take his case through the courts, to the supreme court of the state, once or twice, or as often as convicted, but where a verdict of "not guilty" is rendered in favor of the defendant the rule is he shall not be again put in jeopardy, no matter what the nature of the trial at which he was acquitted. My original proposal provided that, if the acquittal was procured by fraud, perjury or bribery or misinstruction of the court, he should not be considered as having been in jeopardy, but might be retried. That was the matter the governor referred to when he addressed us and suggested that there might well be a provision for a new trial, and why not? Why should there not be even-handed justice? Why should not the interest of the public be considered as well as the interest of the criminal? If the courts err—and every judge knows, and every lawyer and almost every layman knows, that judges are liable to make mistakes, and do make mistakes—and if they do make a mistake in favor of the defendant why should not the defendant be detained and the prosecutor have an opportunity to take the case to the supreme court, if need be, and have that error corrected and the man put on trial and have justice done? So in proper time I propose to offer to so amend that for error of law there may be a new trial. I read this morning from Colorado—and that is the only state that has taken that step—that in Colorado they

have made that provision, not only for taking depositions, but also that for error of law a new trial can be granted to the state, and that the defendant in such cases should not be considered as having been in jeopardy. Now I do not deem it necessary to detain you further at this time.

Mr. ROEHM: You say the amendment you propose to make to this proposal has been adopted in Colorado?

Mr. RILEY: Yes.

Mr. ROEHM: Has the United States supreme court construed that provision?

Mr. RILEY: I am not certain whether the United States supreme court has construed the provision or not, but the United States courts have construed many such provisions. The provision of the constitution of the United States that no person shall be put twice in jeopardy refers to the practice of the United States courts and the trials under United States laws, and has no reference to our state trials. This has been many times so decided.

Mr. KRAMER: I want to ask a question with reference to the matter of taking depositions. Do you think it would work any hardship on the accused, remembering that two-thirds of the criminals or those charged with crime have no means, if they were compelled to go into different parts, even, of their own state?

Mr. RILEY: They are authorized to take depositions now.

Mr. KRAMER: But if the state were to compel them to go into different parts of the state?

Mr. RILEY: The state would see to it that the defendant is taken. He would be if charged with murder.

Mr. KRAMER: But take this case, where he has no right to be furnished an attorney. Would it work any hardship?

Mr. RILEY: I have not known a murder case or a felony case tried without an attorney for the defendant.

Mr. KRAMER: But below that the state does not furnish an attorney. Now wouldn't it be likely to work a hardship on the accused in those cases in which the state can not furnish him with an attorney?

Mr. RILEY: You assume that the state can not do something that it always does.

Mr. KRAMER: Not below felonies?

Mr. RILEY: This does not apply to anything below felonies.

Mr. KRAMER: I guess that is right.

Mr. STILWELL: What was the amendment you suggested?

Mr. RILEY: In line 27, that when a defendant is acquitted on error of law there may be a retrial and he shall not be considered as being in jeopardy.

Mr. CUNNINGHAM: What has the proposal now about jeopardy?

Mr. RILEY: We simply copy the provision in the present constitution because we are amending the entire section, section 10 of article I, and we are copying all except the new matter and that is in italics in this proposal I believe.

Mr. PECK: Why not prepare and present your amendment about twice in jeopardy?

Mr. RILEY: I will do that. Mr. Pettit has one substantially in the form I desire.

Mr. NYE: I see you provide in the taking of deposi-

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tions the accused shall meet the witnesses face to face. Suppose the man charged with crime and under indictment is unable to give bail, and you want to take depositions out of the state; how would you manage to have the defendant meet the witnesses face to face?

Mr. RILEY: We could not take the depositions out of the state without taking the defendant out of the state, and that could not be done with safety unless some arrangements were made between the authorities of the different states and this state, but this proposal ought to be passed without reference to that, because it often happens within the state, in the same county perhaps, that there is an absent witness whose testimony is needed.

A DELEGATE: What is the object of putting in line 25 there, "but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel?" Is there anything in the present constitution that prevents that?

Mr. FITZSIMONS: Yes.

Mr. RILEY: If there is not it is in the statute. There is such a rule in force now.

Mr. MAUCK: Has not the clause, "no person shall be compelled, in any criminal case, to be a witness against himself" been construed so as not to permit any comment on the fact that he fails to testify?

Mr. RILEY: That is where it comes in.

Mr. WOODS: Is it not a fact that where the defendant does not take the stand, if the prosecutor refers to it in any way in his argument to the jury, it is error and the case is reversed?

Mr. RILEY: Most assuredly, and this ought to be written in here. That is the very reason.

Mr. BOWDLE: I offered a proposal here which is the last part of the Riley proposal referred to, but the Judiciary committee thought it wise to incorporate my proposal in the Riley proposal, and, of course, I assented. This is a subject in which I have been rather deeply interested for some years. I suppose no matter how we are labeled in this Convention, whether whig or tory, radical, progressive or reactionary, we are all identified in this one thing, that we desire to get ahead. I should like to aid a little in this, making the common sense of the street the common sense of the court room. Of course we know that the common sense of the street is today not the common sense of the court room, that when a man goes from the street into a court room an opaque curtain is rung down between the personality of the street and the personality of the court room and when he gets into the court room he loses his street personality and common sense. If judges and jurors, spectators and counsel really preserved in the court room the personality they have on the street, no trial could be conducted, because we should all break down with laughter.

It is not conceivable that the common sense of the street can become the common sense of the court room unless constitutional conventions of various states will aid a little in this respect, and this proposal of mine was introduced in a spirit to help us all move on and up.

In the olden times, when there were hundreds of crimes punishable with death, they had the jack and the thumb screws in order to extort all sorts of confessions, some of which were true and some false, and when we set up shop on this side of the Atlantic, in our effort to stand straight we fell over backwards, and we went

to the extreme, and said that not only should a man not be compelled to testify against himself, but the slightest reference to the fact that he had not testified should be reversible error in the court above. It is just as though I should go home and somebody should accuse my secretary of having stolen from the cash box—which usually contains very little—and I ask the secretary about it, and the secretary would say, "Now under the law of which you are an apostle, I am presumed to be innocent until I am proved guilty. Therefore I am innocent because I have not been proven guilty under the constitution. I can not be compelled to testify against myself, and therefore, being presumed to be innocent and not being required to testify against myself, and not being required to answer your question, I stand before you as a blameless person."

Of course, if we were not too high up I should fire the secretary through the window for a speech like that, and yet that is precisely what goes on in our legal affairs. A great pork-packer, with a triple chin, accused of an infraction of law, can cross his legs in the court room and say not a word, and deny to the court and the jury the right to draw any conclusion from that silence, although he may not be laboring under any mental or physical disqualification. That is what we want to get away from. We can not compel the accused to take the witness stand, but we can at least smoke him out, by a process of allowing the court and counsel to do that which the court and counsel can not now do—by allowing them to draw conclusions from his failure to testify and comment upon those conclusions.

The bar has not been so backward in this matter. All over this country from time to time lawyers and judges have spoken as to the obsolescence of the present system of things. Here is a pamphlet on "The Duty to Obey the Law," an address by Justice Rousseau A. Burch, of the Kansas supreme court. The address was delivered at a state conference of county attorneys of Kansas. He says:

Attention has been called to the fact that laws and institutions suffer in the estimation of the people because, having been established for conditions now outgrown, they resist their own improvement too long and are inadequate to meet the needs which social progress has evolved. A single illustration from the criminal law may be considered. Many a guilty man escapes punishment, to the confusion and humiliation of the law and order forces, because he can not be required to testify, and because, as a corollary, his failure to testify cannot be considered to his prejudice. The prosecution must disclose everything to him. The names of all known material witnesses for the state must be indorsed on the indictment or information at the time it is filed. The accused then sits by until the last item of evidence against him has been introduced at the trial, when he springs a defense carefully prepared to suit the exigencies of the case, or, if he chooses, remains silent while the court in solemn phrase instructs the jury that he is presumed to be innocent of every element of the offense charged against him and that no inference can be drawn from his failure to testify. The existing rules had their

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origin in humane efforts to protect unhappy prisoners who had no counsel, who could not testify at the trial and who could not appeal, from star-chamber practices and from the barbarities of a penal system which is now regarded with feelings of horror. At the present time there is no valid reason why a person charged with crime should not be required by law to testify at any stage of the proceeding precisely the same as any other witness with knowledge of the facts. Should a defendant decline to testify at the preliminary examination he should be denied the privilege of doing so at the trial, and a refusal to be examined at any time should raise the presumption that the evidence withheld would be incriminating.

Justice Burch is not alone in this view.

It is very interesting to observe how all the republics on this side of the Atlantic, when they set up shop, followed the declaration of Massachusetts and New York. Take up the constitutions of South America, and every one of them was so impressed with the language that each one, with the single exception of Brazil, copied what New York had used, but they went ahead and amplified a little. In the republics of Ecuador and Peru they provide that not only shall a witness not be required to testify against himself for any criminal offense, but this privilege extends to substantially every member of his family. They carried it really further than members of the family. The constitution of Ecuador provides:

No husband or wife shall be compelled to testify against each other in a criminal case. No person shall be forced to testify against his relations, whether in the ascending, descending or collateral line within the fourth civil degree of blood relationship or the second degree of affinity.

So nobody in the entire family can be asked to take the stand. In Peru it is precisely the same, and likewise in Bolivia. Argentina broke away from that and confines the privilege to the accused himself, but it was all done pursuant to that parrot-like element in human nature that influenced them to believe, when we of the North set up our government successfully, and had this in our constitution; that they had to do the same thing.

I have a number of pamphlets by distinguished lawyers throughout the country on this subject and all to the same purpose.

Mr. STEVENS: Is that privilege extended in South America as a privilege of the witness or a right of the accused? That is, can the accused ask that the witness be not called?

Mr. BOWDLE: I really do not know. I simply know that they can not be required to testify.

Brazil, taking her jurisprudence from Portugal, has not the provision. The republic of Mexico, getting her jurisprudence from the Code Napoleon, left out anything of that sort.

In Mexico we have this situation: Instead of making the right of silence a constitutional guaranty, they seem to assume that a man has the right to talk, and they give him the privilege of having his preparatory statement made in seventy-two hours.

Mr. ROEHM: Does not that privilege or right look as though those republics down there had intended to

encourage murder to prevent revolution?

Mr. BOWDLE: Yes, and the murder mill has been running as rapidly down there as here. It operates day and night ceaselessly.

Mr. KILPATRICK: Do you say the failure of the defendant to testify can be considered by the court? In your opinion how would you have the court to consider that? It is charged to the jury, and if he does not consider it in his charge to the jury where would he consider it?

Mr. BOWDLE: I take it it would simply mean that the court may consider it as a fact and may speak of that fact to the jury. To what extent the court might be allowed to interpret the fact beyond saying that the man has failed to take the stand and appears to be laboring under no disability, I can not say, but conclusions might be drawn from the silence and those conclusions might be stated by counsel to the jury. Of course if the witness is laboring under any disability, it would not be proper to refer to his silence, and his disability might be explained.

Mr. HALFHILL: What would we do with a case like this, where the evidence is purely circumstantial evidence? Would not the court charge that one circumstance taken with another circumstance must so co-ordinate toward the guilt of the accused that the jury could not reach any conclusion based on other than a hypothesis of guilt? Would that be proper?

Mr. BOWDLE: I think so.

Mr. HALFHILL: In other words, if those circumstances were consistent with any theory of innocence the judge would charge that the defendant would have to be acquitted?

Mr. BOWDLE: Precisely.

Mr. HALFHILL: Now, in a case like that, where it was purely circumstantial evidence, and the man was innocent, but could not explain it, would not he be in a desperate situation if the prosecuting attorney would mercilessly flay him because he kept silent?

Mr. BOWDLE: He might avoid that merciless flaying by frankly and honestly getting on the witness stand and submitting himself, as an honest man should, to the ordinary processes of examination and cross-examination, and I can not see why he would suffer thereby.

Mr. HALFHILL: But circumstantial evidence forms a piece of chain as it were, one, two or three links, and a man might be wholly unable to explain one and two, but still could explain three, but in explaining the third he would put himself beyond the rule.

Mr. BOWDLE: He could enjoy the privilege of saying he could not possibly explain those circumstances if he is in such a curious predicament as that.

Mr. HALFHILL: Have you considered the other part of the proposal about taking depositions?

Mr. BOWDLE: I have really given little attention to that, save only as one of the members of the Judiciary committee, listening to elaborate discussions that went on there.

Mr. HALFHILL: Did the constitutions of South America have anything on that point?

Mr. BOWDLE: No, sir; and for the ordinary and usual reason that in South American countries people are not given to rapid travel as in this country and can not

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easily remove from jurisdiction to jurisdiction. That is probably the way that is accounted for.

Mr. HALFHILL: Would you not think one charged with a felony, if he were transported beyond the state to meet his witnesses, ought to have his expenses paid by the state?

Mr. BOWDLE: I would think the legislature in elaborating a scheme pursuant to the powers given by this proposal might fairly and justly arrange for some sort of method by which the accused and his counsel could go to the point where the evidence is to be taken. We have today a practical and thoroughly barbarous way of evading, by the notorious third degree, the present constitutional privilege given to the accused person. The police get hold of a man accused of some first-class crime and, knowing he can take refuge in utter silence, they endeavor by all sorts of devious sweating processes to get him to say something, which amounts to a confession, which can be used against him, so that having uttered some word that looks like a confession, the police can take the stand themselves and thus challenge him to come out by producing on the witness stand what looks on the face of things like a confession. That has happened every day in the big cities, and it has become a subject of congressional investigation. All of that will be avoided if you create a condition of things in the constitution that will require the defendant to come into the light of day and take his place on the witness stand and state his version of what has occurred or what is alleged to have occurred.

Mr. OKEY: In the proposal you offered to the Judiciary committee the wording was a little different from what it is now?

Mr. BOWDLE: Yes.

Mr. OKEY: You had it, "may be regarded by the court and jury as a fact"?

Mr. BOWDLE: And the words "as a fact" in that proposal are cut out.

Mr. DWYER: Only the right of comment was allowed.

Mr. BOWDLE: I did not agree with the committee then and I do not agree with it now, but I do not know that the matter is worth talking about. Of course it is a legal fact.

Mr. DWYER: Would it not have to be considered in some way and how would it be considered?

Mr. BOWDLE: It would be considered as a fact, as a negative fact. It is not competent, of course, for court or counsel to consider anything but facts. Facts may be of two kinds, positive and negative. His failure to testify is a negative fact. I had worded my proposal to include what Judge Okey indicates, that the failure of the accused to testify may be considered as a fact in evidence, and it was thought wise to strike out "as a fact in evidence" and it was left out and made to read "considered by the court and counsel."

Mr. REDINGTON: In regard to depositions, do you not think we could provide some way by which the officers can take the accused from the state to take depositions?

Mr. BOWDLE: That is one of the things that is, so to speak, up to the legislature. The legislature must get to work if it sees fit to exercise the powers conferred on it and devise some scheme by which, if the depositions

are to be taken in a criminal case, they may be taken fairly and justly.

Mr. REDINGTON: If we put into the organic law the right to take depositions how can the legislature abridge the defendant's right in this regard?

Mr. PECK: The right of the defendant to take depositions below now exists.

Mr. BOWDLE: There is an excellent pamphlet by Edward S. Wilson, of the Ohio bar, and I want to read from it at page 5:

This protection of the criminal is furnished by the bill of rights of our Ohio constitution, the amendment, improvement, or reconstruction of which should be a part of our most serious purpose. President Taft said in a recent address: "The administration of the criminal law is a disgrace to our civilization." Shall we not do something to remove that disgrace, and make our country as free from crime as Spain, Russia or Italy, not to speak of England, France and Germany?

The sanctity of this bill of rights is built upon its antiquity—a weak and fragile basis upon which to construct human progress. All the exactions of the bill of rights, so far as the treatment of crime is concerned, is contrived to meet a condition that no longer exists. Two hundred years ago, there were one hundred and seventy capital crimes; then we needed to protect the individual against society; now, we need to protect society against the individual. We are not doing it. The statistics of crime prove that beyond doubt.

So fixed and arrogant had become these old dogmas, that men have revered them almost as divine decrees. But lately there is a tide against the ancient fetish and able men are denouncing it with eloquence and power. The old doctrine of the presumption of innocence is losing much of its force as a result of its misuse and prostitution, but upon this controversial feature of the problem I do not dwell here, preferring to speak of things about which there should be but little, if any, controversy.

Mr. HALFHILL: The difficulty I have always observed those encounter who approach the bill of rights with the idea that it guarantees too many rights, and who are of the belief that it should be abolished altogether, because it is a relic of ancient days, is the fact that there are at least three classes of criminals that come before the court. Now, if we could abolish all of the bill of rights as against one class of criminals it would be a good thing.

One of these classes of criminals embraces those who are surely enemies of society. They are criminal by nature or by instinct, or as the result of environment and training. At least they belong to the criminal class. They are the kind of human beings who in the event of a great catastrophe, like a fire, flood or earthquake, go out and plunder the dead. They ought to be shot on sight. There is a great number of that kind of people in the world, and the constant fight between the police, representing organized society, and the confirmed criminal is a thing that every good citizen tries to help by taking the side

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of organized society as against the criminal class. It is well enough at all times to keep that class in mind.

But there is another class that are criminals by accident or environment, and many of them are young. They are the class of criminals which the great philanthropists try to help and which men like Judge Lindsey spend their lives in trying to start on the right path and in trying to reform, so that they may be brought back and made good citizens.

There is yet another class that is not criminal at all, but they are charged with crime, and no man of experience at the bar or any place else who has lived to about the half century mark, has failed to observe where good citizens have been charged with crime and sometimes heinous crime. It is a condition like that that the bill of rights intends to reach to and protect, but unfortunately, in reaching to and protecting the good man who is unfortunately placed, it gives too much latitude to the bad man who belongs to the criminal class. One of the most heartrending things I have ever encountered in the world was to stand by a man that I believed to be innocent and who was proved to be innocent in the end, though it took years to do it; and yet public opinion at the time, especially if the bill of rights had unshackled and let loose all the force of the law, would have confined this man to durance vile. Those are the situations that confront anybody that observes these things. If you could amend the bill of rights so as to reach the criminal and yet protect the rights of those unfortunates charged with being criminals, but who are innocent, I would be in favor of it.

Mr. BOWDLE: Has it not been your uniform observation that innocent men charged with crime uniformly do not fail to take the stand and uniformly do not seek the protection of the bill of rights?

Mr. HALFHILL: I have observed cases and tried cases and have defended cases where it was impossible for an innocent man to take the stand by virtue of circumstantial evidence in the case, and although they are not numerous, I have cases of that kind in mind, and they have caused me to have possibly too great a regard for the bill of rights. It may be that I prize it too much, but I want to be sure of protecting the rights of innocent men that are wrongfully charged.

But now I think this idea suggested here of the right of the state to take depositions ought to be further modified so that if the state does take depositions there will be no question that it would transport the one who is charged to the place where the deposition is taken, because I have seen innocent men from other states put in prison in this state, even where counsel had to be appointed for them and where juries have eventually acquitted them, that could not possibly have been able to confront the witnesses unless the state furnished the means.

Mr. OKEY: Do you think it is possible for us to provide in our constitution anything that would enable us to take depositions out of the state?

Mr. HALFHILL: I think we could. We could pass a constitutional provision broad enough to allow depositions in criminal cases before a notary public or justice of the peace in any other state on notice, just the same as a civil case.

Mr. OKEY: What would you do with the criminal after he is out of the state?

Mr. HALFHILL: You mean, is it feasible to take the criminal out of the state?

Mr. STILWELL: In order to meet the witnesses.

Mr. HALFHILL: You mean that he might be released after taken out of our jurisdiction?

Mr. OKEY: Yes; under habeas corpus proceedings.

Mr. HALFHILL: That might be permissible under our system of government. It might be that there is insuperable objection to the provision. I do not know.

Mr. CAMPBELL: Might I ask the gentleman from Allen [Mr. HALFHILL], how are you going to compel the attendance of witnesses in a foreign state to take testimony provided you once get there?

Mr. HALFHILL: Of course that is a very pertinent inquiry. It would be impossible to compel the witness in a foreign state unless by treaty the courts of that state would issue some order directing the attendance of the witnesses before the officer.

Mr. CAMPBELL: Then our constitutional provision would be perfectly worthless unless the other forty-seven states would recognize it to the extent of compelling the attendance of witnesses when we desired them?

Mr. HALFHILL: Yes; I think so. There would perhaps have to be something like treaty relations with the other states. I think that is what it would lead to.

Mr. MAUCK: Has any treaty been necessary to take depositions in civil cases or for the defense in criminal cases heretofore?

Mr. HALFHILL: No.

Mr. MAUCK: If not, why would any treaty be necessary to take depositions in behalf of the state?

Mr. HALFHILL: I can not say it would be necessary, but in taking depositions as you take them now you are compelled to secure a commission from the court here to somebody in the other state, appointing him as commissioner to take those depositions, or you are compelled to go to the executive or to the courts of another state and get authority issued to some official in that state to subpoena the witnesses and secure their testimony. You have to do that now.

Mr. MAUCK: Do you mean to suggest that there is a state in the Union that does not provide for the taking of depositions before some proper officer?

Mr. HALFHILL: I have not heard of such a total failure as that existing in any state as to civil cases, but the methods for securing such testimony are cumbersome.

Mr. MAUCK: Why would you suggest the treaty as necessary because we extend the mere rule of evidence in Ohio?

Mr. HALFHILL: I used the word "treaty" thinking everybody would understand it related to an agreement made between sovereign powers, and it does so relate, and the fact of it is that the states of the Union are sovereign powers in relation to surrendering fugitives, and many executives refuse to honor requisitions from other states.

Mr. MAUCK: Still it might be true that it would be inexpedient to take a man from jail and send him over in custody of an officer lest he might be taken under writ of habeas corpus, but would that at all exist where you

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are taking depositions for the state and the accused is out on bond?

Mr. HALFHILL: I did not catch that question.

Mr. MAUCK: You have said that you feared if a man were taken to another state to take depositions against him that he might be taken by habeas corpus proceedings from the custody of the sheriff or whatever officer had charge of him. But suppose the accused person is out on bond. Why not take the depositions against him then? He is at liberty to go to any state if he so desires.

Mr. HALFHILL: I did not say I feared it as a practical thing, but I say it might be done and undoubtedly is done. There are habeas corpus proceedings brought to liberate witnesses in other states frequently, and the conflict has arisen between the United States and different states on numerous occasions.

Mr. MAUCK: That theory could not operate against the public in the case of an accused person out on bond, because he would be at perfect liberty?

Mr. DWYER: The ability to give bond is very rare in those cases. Those people are seldom able to give bond.

Mr. HALFHILL: There is many a man who can not give bond who is an innocent man. Now, if you can modify the bill of rights, reach the criminal class and also protect the man accidentally charged with crime, I am for it; but I am not for this proposal.

Mr. CUNNINGHAM: In lines 25 and 26 we have the language, "but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel." How far would that justify a court in charging the jury that the criminal's refusal to testify would create a presumption of his guilt? Would that justify a court in so charging?

Mr. HALFHILL: The court might not go so far as to say it was a presumption of his guilt, but the court might say to the jury, "You may consider all the circumstances in the case, including the circumstances surrounding the prisoner and his appearance and the fact that he did not testify in this case when he had the opportunity to do so." That would amount virtually to an overthrowing of the presumption of innocence.

Mr. CUNNINGHAM: Might not the legislature provide how far that should extend as a matter of law?

Mr. HALFHILL: As a matter of court procedure it is pretty hard to draft a statute which would control the charge of the court to a jury, if there were such a broad constitutional provision as this authorizing the passage of the statutes. If the provision here were not so broad and more specific of course you could pass the statute which would preserve the right of the defendant as suggested, but this gives all latitude and sweeps away all barriers, according to my way of thinking.

Mr. DWYER: The present law provides that neither court nor counsel can comment on the failure of the defendant to testify.

Mr. HALFHILL: Yes.

Mr. DWYER: All we want to put into this proposal is that the court and counsel may comment on that failure.

Mr. HALFHILL: Yes.

Mr. DWYER: And it appears to me that is going far enough. Suppose a man is charged with crime and

his counsel sees if he puts him on the witness stand the jury will not believe him anyhow because he has a bad record. That record is open to the prosecuting attorney who may go into it and convince the jury that he is guilty. I have known cases where the counsel says, "The defendant has a bad record and has been in the penitentiary; if I put him on the stand, the jury won't believe him, it will expose his record to the prosecuting attorney and it will make a bad impression." There is that dangerous result from it, if you go too far.

Mr. HALFHILL: That is very true, and it is a known fact in the history of English criminal procedure that within the last very few years they have originated the right of review of criminal proceedings. There was a long time that the harsh rule of the common law obtained in the criminal procedure in England, and there was no right of review. Even the charge to the jury could not be reviewed. That practice was done away with only a few years ago in England, and while we are talking about the great number of criminals that escape here under a lax bill of rights do not forget that in England they have changed the law and have given rights of review in criminal cases; and it is said that the first case reviewed was where a man was charged with offering a counterfeit shilling to a barmaid, and having a work-house record and fearing he was again going to be taken in custody, he fled and left the shilling on the bar. He was captured, indicted and convicted, and the reviewing court found the barmaid was not even able to identify the shilling left on the bar, and it was further found the defendant was excluded from showing where he got the shilling he had left on the bar. In other words, he was an innocent man, and under the recently created right of review in criminal cases he was acquitted, and that happened in England within the last decade.

Mr. RILEY: Something like that happens frequently in this country.

Mr. HALFHILL: I am saying the right of review of the first case under the new law in England resulted in the reviewing courts freeing an innocent man, who by the old procedure would have been convicted.

Mr. RILEY: They have adopted the idea of giving the government a chance as well as the defendant.

Mr. HALFHILL: No, sir; they have adopted our idea of giving a review in a criminal case—that is to say, permitting the prisoner to have his case reviewed, and that did not exist in England until within the last decade.

Mr. PECK: Do they not apply it both ways there, to the crown and to the criminal?

Mr. HALFHILL: I am unable to answer that, but I do know the prisoner never had any right of review until by act of parliament this procedure was humanely changed within the last decade.

Mr. RILEY: Questions have been asked relative to taking the prisoner out of the state, and what might happen if you took a prisoner out of the state to take depositions. Do you see anything in the provision about taking depositions out of the state? There is nothing whatever. I stated a while ago that there is a necessity for this sort of a provision for witnesses in the state and even in the county where the court is sitting. It often happens that you can not get the witness in court. Now why not go out in the county or any place in the state,

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and why would it not be wise to take prisoners beyond the state to take depositions?

Mr. HALFHILL: Do you intend to have this broad enough so that the state can be permitted to take depositions beyond the state line?

Mr. RILEY: That is my idea, but that is left to the legislature, if you want to "safeguard" it as we have gotten in the habit of doing every thing, it could be done. It certainly could be done anywhere within the limits of the state, and I do not think it is necessary to consider the other matter, as the legislature is not likely to pass a law by which the prisoner can be taken out of the state.

Mr. HALFHILL: I suggest that you prepare that amendment and put it in its proper place. I will be glad to withdraw my objection on that point then.

Mr. PETTIT: I have that amendment prepared and will offer it.

The amendment was read as follows:

Amend Proposal No. 15 as follows:

By changing the period to a comma, in line 27, and adding the following: "but if the judgment be reversed for error of law, or if judgment be arrested after verdict he shall not be deemed to have been in jeopardy."

Mr. PETTIT: I am heartily in accord with the idea incorporated in the proposal of my friend Mr. Bowdle to start with. It is a notorious fact that crime is becoming too rampant, in the state of Ohio especially. We have had a good deal of talk in this Convention about the fact that there were very few men charged with crime that are convicted and it is a good deal on account of conditions existing in connection with the trial. Talking about progress, if we take up isolated cases referred to by my friend from Allen [Mr. HALFHILL] we would not have any reform at all. There is a possibility, of course, at some time, of an innocent man's being convicted. I have been connected with a good many criminal cases in my county, murder cases and those of a minor degree, and when I was representing the defense we would stand up and say to the jury, "This man stands here clothed with a mantle of innocence from head to foot and until you prove every single element of crime you can not remove that presumption." Now, under the present system, it makes no difference whether an acquittal is produced by bribery or perjury; if there is a verdict and judgment for the defendant that is the end of it, so far as the state is concerned and so far as the defendant is concerned. But a defendant can take any conviction to the higher court and on the slightest technicality, and sometimes without any reason he gets a new trial. It is all one-sided as the matter stands, and it seems to me if the prisoner has the right to take depositions beyond the state or in the state the state should have the same right and have the defendant there meet the witnesses face to face. I am in accord with that, but I think we ought to go even further than that amendment, because it does not embrace the two matters I spoke of. An acquittal is brought about by bribery or fraud and the state's hands are tied. We may know absolutely when the verdict is brought in that it was produced by bribery or perjury and yet the state has no relief. I submit that is not right. As Mr. Bowdle

said, it is time to begin thinking about protecting society from the criminal class.

Mr. FACKLER: Do you not think your language is a little ill chosen? You say, "he shall not be deemed to have been in jeopardy." Don't you think it should be "he shall be deemed not to have been in jeopardy?"

Mr. PETTIT: That is grammatical and I accept it as best.

Mr. FESS: Would not the question whether the verdict was secured by perjury or bribery necessitate another trial to establish that? How would that be determined?

Mr. PETTIT: By witnesses. I have a case in my mind that occurred in my county. I am just as well satisfied as I am that I am here that the verdict was secured by bribery. It was one of the worst murder cases ever tried in my county. Judge Sloan was defending the criminal and on the first trial the jury was not out longer than fifteen minutes and came in with the verdict of murder in the first degree. On the second trial there were eleven for conviction on the first ballot, but one man hung the jury. He would stand and look out of the window and everybody knew he was bought to hang that jury and the man was not convicted of murder in the first degree. There should be some remedy.

Now, Judge Dwyer suggested that a man's character may be very bad and he may not want to have the prosecuting attorney bring it in. If the defendant does not put it in issue the state cannot attack it.

Mr. RILEY: Have you accepted the amendment offered by the delegate from Cuyahoga [Mr. FACKLER]?

Mr. PETTIT: Yes.

The PRESIDENT PRO TEM [Mr. Doty]: That correction has been made by consent of all parties.

Mr. FESS: To this amendment, it seems to me, there is a really serious objection. I believe in the purpose of this amendment fully. I give my hearty indorsement to it with this exception, that it seems to necessitate a second trial or a trial anew to determine whether the verdict was secured by bribery or perjury.

Mr. STILWELL: "De novo?"

Mr. FESS: No; I didn't say that.

Mr. RILEY: That is not in the amendment.

Mr. MAUCK: This amendment by the gentleman from Adams would be entirely wise if it were not entirely unnecessary. The supreme court has decided that when a judgment of conviction has been reversed and a new trial is granted the accused has not been in jeopardy, and where a motion has been made in arrest of the verdict and the motion is sustained, it is virtually held there has been no trial and the accused has never been in jeopardy. The amendment, therefore, is not needed.

Mr. FACKLER: That is true if the verdict below has been a verdict of conviction, but in case there is a verdict of acquittal the state has no right under the law to take it up and get a new trial. The amendment would make it so that the state could go to the higher court and have the judgment set aside and then the state could try it again.

Mr. MAUCK: I did not understand that that was the purport of the amendment. If it is I am against it for another reason, because I think one opportunity is enough for the state against the accused.

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Mr. WOODS: I hope this amendment will be adopted and that this proposal will be adopted.

As to the first proposition, that the defendant can sit in court and be represented there by the attorney and never take the witness stand nor say a word to throw any light upon the matter being tried, and then that the prosecutor can not say anything to the jury about it, is ridiculous. I think we all admit it is ridiculous. The prosecutor ought to be allowed to say anything to the jury about the fact that the defendant is sitting there and knows more about the facts than anybody else, and yet can sit there and not say a word and the prosecutor can not refer to it. I have tried many cases and I have had to dodge around and shy around that and get as close as possible.

Mr. PRICE: If a defendant took the stand, would he not open up all the conduct of his life? Suppose he has been a bad man and has been guilty of several crimes and has been sent to the penitentiary, would not that come out? And suppose he is innocent of the present charge, would he not be justified in remaining in his seat? Now to what extent are you going to allow the prosecuting attorney to comment on the fact that he remains in his seat?

Mr. WOODS: That may be taken care of by statute. A statute might be drawn and this might be abused, but I say it is ridiculous that the prosecutor should not have a right to call the attention of the jury to the fact that the man who knows more about the affair than anybody else will not take the stand to say anything.

Mr. PRICE: Why should he be compelled to take it?

Mr. WOODS: He knows more than anybody else, and why not compel him?

Mr. STILWELL: Suppose he is innocent and doesn't know anything?

Mr. WOODS: Yes, but just the same you can not imagine a case where you or I would be charged with crime, and where, if we were innocent, we would not be glad to stand and tell the jury that we were innocent. Of course, if we were guilty we might not want to take the stand.

Mr. HALFHILL: You don't have to imagine those cases. They actually occur in everybody's experience and can be cited.

Mr. BOWDLE: In your long experience, how many innocent men accused of any crime have taken refuge behind this silence?

Mr. HALFHILL: A whole lot. [Laughter]. What was that question?

Mr. BOWDLE: In your experience how many innocent men accused of crime have taken refuge behind silence?

Mr. HALFHILL: Oh, I didn't understand your question.

Mr. PETTIT: The member from Perry [Mr. PRICE] said that a man might have a bad record and for that reason he might be slow about going into the witness box. If he has a good character he can prove that.

Mr. HALFHILL: Yes.

Mr. PETTIT: There is one thing in our criminal trial that is absolutely wrong, and this proposal does not take care of it. If the man has a good reputation he is

going to refer to it. He may be the worst man in the state and the prosecutor can not show anything against him unless he opens up the door himself.

Mr. PRICE: Is it not a prejudice to open the door?

Mr. PETTIT: No, sir; it is not a prejudice that will injure an innocent man.

Mr. PECK: In this matter of a person taking the stand he is the same as any other witness?

Mr. PETTIT: Yes.

Mr. PECK: And is it not true that the court in this matter of cross-examining witnesses as to collateral matters, as to previous conduct, etc., has entire discretion in the matter and the judge can regulate that and cut it off whenever it is being abused?

Mr. PETTIT: Absolutely.

Mr. PECK: And the prosecutor has no right to ask such questions except by permission of the judge?

Mr. PETTIT: And the judge on the bench will protect the defendant every time. The defendant has the right to go into the character of all the witnesses against him.

Mr. HARRIS, of Hamilton: Do I understand the purport of the amendment offered by the member from Adams is to give the state a chance to attempt the second trial of a man once found innocent by a jury?

Mr. PETTIT: Yes; if that judgment is reversed.

Mr. HARRIS, of Hamilton: I do not know what you lawyers are going to do, but we laymen will not vote for any such proposition.

Mr. WOODS: I can cite you a case that I have here in the supreme court. I helped the prosecutor in my county try a case this winter and the judge ordered that jury to acquit the defendant. We came to the court with a prosecutor's exceptions to have that statute determined. If the supreme court holds we were right, and that that man was guilty, he has gone scot free, and we cannot try him again unless we get another case like that. If the court holds we were right, why should not the state have a right to put the man on trial again? The defendant has the right, and why should the state not have it? I believe in giving every man a fair trial, and giving him every presumption he now has, and I believe in making the state prove beyond a reasonable doubt every element of the crime, but when you have done that you have given him a fair show. If a man is found innocent by a jury and it turns out afterwards that the jury was bribed, or something like that, and the verdict of acquittal was brought about by that means, you cannot try him again, and that certainly is a miscarriage of justice. Why not correct it?

Mr. WINN: If, for a moment, I believed that this amendment offered by the member from Adams [Mr. PETTIT] would result in allowing the prosecution to go to a reviewing court by error proceedings, reverse a verdict of acquittal and then have a retrial, I could not find language sufficiently strong to express my opinion against it. To say such a proposition is monstrous is putting it too mildly.

In the trial of criminal cases there are many things. The court says to the jury that when this man was accused and presented by indictment the law put around him a presumption of innocence. The law never clothed any man with a presumption of innocence, but upon the contrary, when a grand jury of twelve men have con-

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vened behind closed doors, and after an inquisition or examination into his guilt or innocence have brought into the court an indictment, in ninety-nine cases out of a hundred a presumption of guilt is immediately established in the minds of the average man. Take the cases pending against these men recently. How many on the floor of this Convention didn't immediately think they were guilty?

Mr. WOODS: Is it not a fact that when you impanel a jury the trial judge and the attorney for the defendant have a right to ask every one of those men whether they have any presumption that the man is guilty?

Mr. WINN: Yes, and our humane statute says that no difference what may be the opinion of the juror, if in answer to the trial court he says, "Notwithstanding my opinion I will render an impartial verdict," he is a qualified juror. No one need tell me about those things. Since this Convention met the state board of pardons filed with the governor a recommendation for the pardon of a prisoner who has been confined in the penitentiary for eleven years. This recommendation by the board is based upon the ground that the prisoner in question was convicted upon perjured testimony and the board of pardons reached that conclusion after a careful and thorough consideration of the case extending over a period of eighteen months. The record and files of the case with the recommendation of the board of pardons are now in the hands of the governor awaiting his examination and action thereon.

Mr. WOODS: You are opposed in the case of an acquittal to the state having another trial?

Mr. WINN: Certainly.

Mr. WOODS: Suppose a man is acquitted and it turns out that that verdict was based upon perjured testimony. Has there been a trial of that proposition?

Mr. WINN: It does not take a lawyer to see the fallacy of that suggestion. How are you going to determine whether or not he was acquitted upon perjured testimony? That means a trial of the question of whether the witness has testified truthfully or falsely, and then after that you would go into another court.

Mr. PETTIT: A point of order. That has nothing to do with the amendment and is not before the Convention.

The PRESIDENT: The point of order is not well taken.

Mr. WINN: After having determined that question, the question might be brought up whether that determination was arrived at by perjured testimony. I see it is not in this proposal, but it was originally in the proposal, and I am astounded that a lawyer who has given any attention to criminal practice would think of such a thing as putting that in this proposal.

But now on this other matter; suppose the court says finally to the jury, "The fact that this man has not taken the witness stand shall not be considered by you." That is a fiction. Do you believe there ever sat twelve men in a jury box, where a man did not take the stand in his own behalf, that the jury did not consider that fact? If it were possible for the law to say, "Wherever a guilty man has failed to take the witness stand, there shall not be any objection to referring to that," it would be all right, but think of the hundreds of cases where some weak man or weak woman or child, by advice of a law-

yer, refrains from taking the witness stand because counsel knows how dangerous it will be for that frail man or weak woman or child to commit himself or herself to cross-examination by skilled counsel on the other side!

Mr. KRAMER: I want to ask the gentleman from Defiance [Mr. WINN] a question.

The PRESIDENT: The time of the member from Defiance [Mr. WINN] has expired.

Mr. KRAMER: I just intended to ask, does he think when a judgment of acquittal is reversed and a case retried, that that is monstrous? That is all it can mean. It cannot mean anything else. It simply means that the strong arm of the state is on one side and a weak man on the other, and he can be dragged to the supreme court and back again, just as any other case can be taken there. I should say it is monstrous to say that a weak man or a weak criminal, or a man charged with crime, can be dragged from one court to another and a judgment of acquittal reversed, and be dragged back again to the court of common pleas and retried upon some technical error in the law.

Mr. WOODS: You don't think he could be dragged into the supreme court?

Mr. KRAMER: Certainly; if the prosecutor takes the case there, he takes it on a prosecutor's bill, and the court, at the instance of the county, appoints a lawyer.

Mr. PETTIT: I think the matter is all one-sided. If the defendant is convicted the state furnishes him a transcript and a lawyer.

Mr. KRAMER: But if he is declared to be innocent by the jury the state has no right to say that that man who has been declared innocent shall lie under that charge for four or five years by taking him up to the supreme court and then back to the common pleas court again. I say it is monstrous, and in order to test the feeling of the Convention, I move to lay the amendment of the gentleman from Adams [Mr. PETTIT] on the table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 54, nays 15, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Harbarger,	Moore,
Brown, Pike,	Harris, Hamilton,	Nye,
Campbell,	Harter, Stark,	Peck,
Cody,	Henderson,	Peters,
Collett,	Hoffman,	Pierce,
Colton,	Holtz,	Price,
Cordes,	Johnson, Williams,	Read,
Crosser,	Keller,	Redington,
Cunningham,	Kramer,	Roehm,
Davio,	Kunkel,	Shaffer,
Doty,	Lambert,	Smith, Geauga,
Dunlap,	Lampson,	Stalter,
Dwyer,	Leete,	Stewart,
Earnhart,	Longstreth,	Stilwell,
Fackler,	Ludey,	Thomas,
Farrell,	Matthews,	Ulmer,
Halenkamp,	Mauck,	Watson,
Halfhill,	McClelland,	Winn.

Those who voted in the negative are:

Baum,	Hahn,	Rockel,
Bowdle,	Miller, Crawford,	Stevens,
Cassidy,	Okey,	Taggart,
Donahay,	Pettit,	Walker,
Fess,	Riley,	Wise.

So the amendment was tabled.

The PRESIDENT: The gentleman from Hamilton.

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Mr. STEWART: I move the previous question.

The PRESIDENT: The gentleman from Hamilton was recognized.

Mr. PECK: Is there any other amendment pending?

The PRESIDENT: No.

Mr. PECK: Then we are on the proposal as recommended by the committee.

The PRESIDENT: Yes.

Mr. PECK: Gentlemen of the Convention: This proposal was for a long time under consideration by the Judiciary committee. The number of the proposal is 15, and it was one of the first that came to us, and we had it under consideration for two months. At last, after long consideration, we reported it in its present form. Personally I think it is a good proposal as it now stands, and that it ought to be adopted. We had a great deal of difficulty with this very amendment that has just been voted down. We finally, among ourselves, by a bare majority, rejected the amendment that has just been voted down, and the proposal was sent to you in the way it appears in the books. As I said to you the number of the proposal is 15, and the amended proposal is just ahead of the other one.

There are two or three propositions in it that are important. The first is about taking depositions. I do not see any objection to that at all as it stands. I doubt if it is feasible to take depositions out of the state, or whether the general assembly can make any arrangement to do so, but if it is not, it is feasible within the state, and to that extent the relief should be given. This thing of having criminals escape by reason of testimony not being produced in court happens too frequently. Sometimes the testimony is in the state and could be procured by this procedure and ought to be had. Now there is no doubt in the world that the criminal procedure of this country needs speeding up. There is no greater reproach to American jurisprudence than the present condition of criminal misuse and administration. The whole machinery is to acquit. Everybody's sympathy is worked up for the poor prisoner. We hear it now from those who are in the habit of appearing on that side of the case. That is one of the difficulties here. We have too many men whose minds are prejudiced from the fact that they have been in the habit of defending criminals. They have cases now pending, and we are told about them. Obviously the mind of that delegate is prejudiced by that and other similar cases. He never sees the other side of the matter. Now here is our friend from Medina who sees the prosecutor's side, and he is inclined perhaps to see too much of that side, and to go too far on that side.

Mr. HALFHILL: Agreed.

Mr. PECK: Yes, you are agreeing there, but not when I refer to the other side. That is the trouble with the arrangement. In every bar there will be fifty lawyers who are in the habit of defending and only one prosecutor. There are fifty who see it from the side of the defense and only one from the side of the state, and for that reason it is almost impossible to get anything done for the state. The fifty are opposed to anything because their precious clients may not get out and they cannot get fresh fees.

Mr. HALFHILL: Is not that so in every lawsuit,

civil as well as criminal, that the counsel are prejudiced on their side of the case?

Mr. PECK: Yes, but they are on different sides of the case civilly. They vary. One time they are for the plaintiff, and the next time for the defendant, but in criminal cases you are on one side all the time. You are always for the defendant.

Mr. HALFHILL: No, sir; I have been appointed to help the prosecuting attorney.

Mr. PECK: Maybe you were when you first got admitted, and were kind of practicing, and they threw you a case to give you a fee or two. Then you may have been advocating the pleas of the state, but you haven't been many times since.

Mr. HALFHILL: I have been appointed several times to assist the prosecutor in important cases.

Mr. PECK: That is unusual. All the prosecutors are regularly elected, and are regularly paid prosecutors, and all the rest of the bar is against the prosecution, and so get more or less prejudice in favor of the defendant. That is true of a majority of the bar in this state. In England the prosecutors are selected from term to term from the bar. One time a man may be a prosecutor, and the next time he may be for the defense, and the prejudice is not always one way there, and they get a better system than we do. They see it from both sides. Here our attorneys see it from only one side, generally the side of the prisoner, and they are afflicted with the same conservatism that afflicts the bar in everything that pertains to their precious practice. In the matter of depositions there is no reason why depositions should not be taken by the state when the defendant's presence can be had.

Mr. STILWELL: Do you not think, Judge, that it would be wise to add at the end of line 26 "as may be provided by law"? That refers to the right of the prosecutor to comment upon the fact that the defendant does not take the witness stand.

Mr. PECK: That would simply permit the legislature to nullify the law, and under the leadership of the gentleman from Defiance [Mr. WINN] and others they would probably proceed to do it, and I am opposed to that.

I do not think anybody can find any reasonable objection to this matter of taking depositions. Now I want to say, in order to save this proposition, if there is any part that can be carried, I shall ask that it be divided, and shall ask a separate vote on each of the propositions contained in it.

The PRESIDENT: Does the member ask for a division of the question at this time?

Mr. PECK: No; not now.

The PRESIDENT: The chair will take note of the fact that the gentleman from Hamilton [Mr. PECK] has demanded a division of the question.

Mr. PECK: Now about the last three lines, "No person shall be compelled in any criminal case, to be a witness against himself?" That is a repetition of the present constitutional provision, but it has outworn its usefulness, yet, in deference to the opinions of many other people, I have agreed it should remain. But just a word on that. Whenever anybody in your household is charged with doing anything wrong, who is the first person you interrogate? It is the person charged. So in business transactions, if a man is charged, who is the first person to be put on the witness stand? The man charged. That

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is the natural mode of procedure, and there is no other system of jurisprudence on earth in any civilized country which prevents it except ours. We have it, and it has come down to us with the wisdom of the fathers, although the wisdom of the fathers may not have a confounded bit of sense in it. Yet it was their wisdom, and we bow to it. But we added to it this: "But his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel." The defendant is already authorized to testify. The law permits him to do so, and that law was passed in the interest of the prisoners. I know the case out of which it grew, a famous case in the annals of criminal jurisprudence in Hamilton county, where the party accused was the only person present when the crime was committed. He desired to testify, and between the time the act was committed and the trial, the law was passed, and it was passed at the instance of his counsel. That is the way the criminal law in this state has been moulded, by those in favor of the criminal. Now I do not see any objection to the last part of that. The defendant is not bound to take the witness stand. He can stay off of it if he wants to. This does not affect anything as to his obligations on that subject, except that it may be alluded to or considered by the jury. In nearly every case the jury does consider it. There is generally somebody on the jury smart enough to see that that defendant has not testified on his own behalf, and they ask the question in the jury room, "Why didn't that fellow get up and testify?" If the man who knows most about it does not tell what he knows it raises a strong presumption against him in the minds of the persons trying any case. The jury does consider it, and this only authorizes them to do what they do do as a matter of fact. The prosecutor ought to have the right to allude to it. If it results in a great many of them taking the stand and testifying, what harm is done? Someone says, "Oh, they may be cross-examined and something may be gotten out of them about their former life; it might bring to light some of their former evil deeds." Dreadful calamity. It would be perfectly dreadful to prove that a man had had several terms in the penitentiary! But, as has been said, the court always has it in its power to protect the witness against that sort of cross-examination; cross-examination on collateral matters is always at the discretion of the court, and the court can always stop it when it thinks proper, and the judges will furnish all the protection needed in that line.

Look at the thousands of crimes that are committed here. The statistics are dreadfully against this country on crime. Why, we have more in proportion to our population than any country in the world! And why have we so many lynchings? What brings greater disrepute than a lynching? I want to tell you, if you go across the water and read the newspapers, you will find that there is nothing they gloat over over there as much as the details of an American lynching. Every one of them is published in full, with all the details, in the London papers.

Mr. HALFHILL: Are you not in error in stating that there are more homicides in this country to the population than any other country on earth?

Mr. PECK: No, sir; this country very greatly ex-

ceeds any civilized country. There might be some in Africa that would exceed it.

Mr. HALFHILL: Italy is civilized.

Mr. PECK: Yes; and they are not equal to us in homicides.

Mr. HALFHILL: I call your attention to the fact that the latest statistics show that there are 105 homicides per million inhabitants in Italy, and that is more than in the United States.

Mr. PECK: I have seen a comparison of statistics and the percentages figured out and the actual numbers given, and they have been very much against this country, and I thought everybody knew it. If I had thought everybody did not know it I could have brought them here.

Mr. HALFHILL: I do not want to dispute your authority without giving mine. I am referring to an article on "Crimes and Criminal Procedure" in the Encyclopedia Britannica, tenth edition. These statistics are gathered together and given.

Mr. PECK: I do not know anything about that article. The article I was referring to was a magazine article. Perhaps it was in Collier's. I saw it, and there is no doubt as to its substantial correctness. But suppose there are more in Italy than here. Do we want to lag at the tail-end of the procession in a matter like this? Do we want to be at the bottom, below a country notorious for crimes, like Italy? Are we to be put on a par with the country that has the Blackhand, the Mafia and the Camorra, or are we trying to be civilized and are we trying to stop crimes and criminals? Are we trying to suppress homicides?

I tell you, this is an important proposition. There has not been a more important one before this body. We must do our duty, and we must not let our professional notions keep us from passing this proposal. The trouble with the lawyers is that they have heard all these old legal maxims and legal saws until they have come to look upon them as a sort of ten commandments. We are likely to think that they are entitled to as much sanctity as the ten commandments. We represent a state, the people of the state, a law-abiding people and a law-abiding state, and we are not here to represent lawbreakers, or to facilitate the escape of lawbreakers, or to make specious pleas for the poor, weak, miserable criminal. Pleas may be made to a jury for them, but not here. What we want is to convict that poor, weak criminal, and not let him do it again. It is to the interest of society that punishment should be prompt. I am opposed to extreme punishment. I think the length of terms in this state are all greater than they need be. In England imprisonment for a long term is not much given, but the certainty and promptness of the punishment are the two elements for the prevention of crime. The criminal elements there understand that just as sure as they commit a crime they will be brought to book and the law applied to them, and as a result you see a diminution in the commission of crime.

Mr. RILEY: In view of the fact that there are comparatively few present, I move that further consideration of this proposal be postponed until tomorrow, and that it retain its place on the calendar.

The motion was carried.

Reports of Standing Committees—References of Proposals to Committees—Petitions and Memorials.

The PRESIDENT: If there are any reports from any committees now is a good time to offer them.

REPORTS OF STANDING COMMITTEES.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 330—Mr. Dwyer, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all of said proposal after line 3 and in lieu thereof insert the following:

Until further provided by law the state is hereby divided into ten appellate court districts as follows:

The present first, third, fifth, sixth and eighth judicial circuits shall each constitute with the same numbering, counties and boundaries, the first, third, fifth, sixth and eighth appellate court judicial districts.

The counties of Preble, Darke, Shelby, Champaign, Miami, Montgomery and Greene shall constitute the second appellate court judicial district.

The counties of Brown, Adams, Highland, Pickaway, Ross, Pike, Scioto, Lawrence, Gallia, Jackson, Meigs, Vinton, Hocking and Athens shall constitute the fourth appellate court judicial district.

The counties of Lake, Ashtabula, Geauga, Trumbull, Portage and Mahoning shall constitute the seventh appellate court judicial district.

The counties of Columbiana, Jefferson, Belmont, Harrison, Carroll, Monroe, Noble, Guernsey and Washington shall constitute the ninth appellate court judicial district.

The counties of Franklin, Madison, Clark and Fayette shall constitute the tenth appellate court judicial district.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Dwyer the proposal as amended was ordered printed.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposals on the calendar were read the second time by their titles and referred as follows:

Proposal No. 335—Mr. Dunn. To the committee on Taxation.

Proposal No. 336—Mr. Read. To the committee on Education.

Proposal No. 337—Mr. Watson. To the committee on Initiative and Referendum.

Proposal No. 338—Mr. Dunn. To the committee on Judiciary and Bill of Rights.

Proposal No. 339—Mr. Dunn. To the committee on Judiciary and Bill of Rights.

By unanimous consent the Convention took up resolutions laid over under Rule 96.

Resolution No. 109—Mr. Stilwell, was taken up.

Mr. Lampson moved that the resolution be indefinitely postponed.

The motion was carried.

Mr. Thomas moved that Resolution No. 110—Mr. Thomas, be informally passed.

The motion was carried.

PETITIONS AND MEMORIALS.

Mr. Halfhill presented the petition of W. B. Bradshaw and twenty-one other citizens of northwestern Ohio protesting against the initiative and referendum proposition adopted by the Convention, protesting against any compromise with the interests and praying the Convention to submit to popular vote a proposition that will provide for genuine and unrestrained government of the people, by the people, and for the people; which was referred to the committee of the Whole.

Mr. Halenkamp presented the petitions of Sullivan Walter and eighteen other citizens of Cincinnati; of F. Steffen and nineteen other citizens of Cincinnati, asking for the abolition of the legislature; which were referred to the committee of the Whole.

Mr. Ulmer presented the petition of E. P. Gauder and thirty-eight other citizens of Lucas county, asking for the abolition of the legislature; which was referred to the committee of the Whole.

Mr. Miller, of Fairfield, presented the petition of W. H. Palmer and fifty-two qualified electors of Fairfield county, disapproving of the majority report of the taxation committee and urging favorable consideration of the minority report of the committee; which was referred to the committee on Taxation.

Mr. Nye presented the petition of James B. Morrow and twenty-four other citizens of Lorain county, requesting that an amendment shall be proposed to the constitution providing for the abolition of the legislature and for the passage of laws through initiative of the people by direct vote; which was referred to the committee on Legislative and Executive Departments.

Mr. Farnsworth presented the petition of George Prendergast and forty-seven other citizens of Lucas county, asking for the passage of the initiative and referendum; which was referred to the committee on Initiative and Referendum.

On motion of Mr. Harris, of Hamilton, the Convention adjourned.

SIXTY-NINTH DAY

AFTERNOON SESSION.

MONDAY, May 6, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and opened with prayer by the Rev. Dr. Louis B. Bradrick, of Columbus, Ohio. The journal of yesterday was read and approved.

MOTIONS AND RESOLUTIONS.

Mr. Lampson offered the following resolution:
Resolution No. 118:

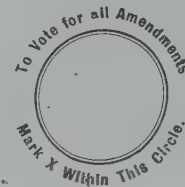
Resolved, That the foregoing amendments to the constitution shall be submitted to the electors of the state at an election to be held on the _____ day of _____, one thousand nine hundred and twelve, in the several election districts of this state. The polls at said election shall be open at five thirty o'clock a. m. of said day, and remain open until five thirty o'clock, p. m. of said day; the said election shall be conducted and the returns thereof made and certified to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and if it shall appear that a majority of all the votes, cast at such election, on any of said amendments, are in favor of such amendment or amendments, then the governor shall issue his proclamation, stating that fact, and said amendment or amendments shall become a part of the constitution of the state of Ohio, and not otherwise. That said amendments submitted shall be numbered in the order in which the proposals were adopted by the Convention on second reading, and each amendment shall be designated by such number and a title which shall suggest its subject matter. Said proposals with the number of the amendment corresponding thereto are as follows, to-wit: 54 (1); 118 (2); 100 (3); 151 (4); 91 (5); 2 (6); 184 (7); 236 (8); 93 (9); 212 (10); 163 (11); 5 (12); 249 (13); 62 (14); 64 (15); 242 (16); 122 (17); 209 (18); 24 (19); 7 (20); 261 (21); 309 (22); 169 (23); 72 (24); 304 (25); 241 (26); 166 (27); 322 (28); 252 (29); 272 (30). The ballots at such election shall be printed in the following form, with each amendment designated by number and title thereon; those voters in favor of all of said amendments may vote for all of said amendments by placing an X in the circle at the top of the ballot, or by placing an X in the space before the word "For" in each and every title; those voters opposed to all of said amendments may vote against the same by placing an X in the space before the word "Against" in each and every title; those voters who desire to vote for certain amendments and not for other amendments may place an X before the word "For" in the title of such amendment or amendments; those voters who desire to vote

against certain amendments and not against other amendments may place an X in the space before the word "Against" in the title to such amendment or amendments. Ballots marked with an X within the circle at the top of the ballot shall be counted for all of said amendments, except such amendments as may be erased or marked within the space before the word "Against" in the title. Ballots not marked shall not be counted for or against any amendment. Ballots so marked as to clearly indicate the intention of the voter shall be counted.

The following is the form of ballot with the designations and titles to amendments thereon:

CONSTITUTIONAL AMENDMENTS.

YES.



To vote for certain amendments only, mark X in the space at the left of the word "For" in each title. To vote against any amendment or all amendments, mark X in the space at the left of the word "Against" in the title of each amendment you desire to vote against.

1.	<p>ARTICLE I, SEC. 5 FOR Reform of Civil Jury System.</p>
	<p>AGAINST Reform of Civil Jury System.</p>
2.	<p>ARTICLE VIII, SEC. 1. FOR State Bond Limit for Good Roads.</p>
	<p>AGAINST State Bond Limit for Good Roads</p>
3.	<p>ARTICLE IV, SEC. 9. FOR Abolition of Justices of the Peace in certain cities.</p>
	<p>AGAINST Abolition of Justices of the Peace in certain cities.</p>
4.	<p>ARTICLE XV, SEC. 9. FOR License to Traffic in Intoxicating Liquors.</p>
	<p>AGAINST License to Traffic in Intoxicating Liquors.</p>
5.	<p>ARTICLE X, SEC. 1. FOR Woman's Suffrage.</p>
	<p>AGAINST Woman's Suffrage.</p>

Form of Ballot Submitting Amendments to the People.

6.	ARTICLE II, SEC. 1. FOR Initiative and Referendum.
	AGAINST Initiative and Referendum.
7.	ARTICLE IV, SECS. 1, 2, 6. FOR Reform of Judicial System.
	AGAINST Reform of Judicial System.

OHIO CONSTITUTIONAL AMENDMENTS.
PLAN OF BALLOT (Suggested).
Special Election—Tuesday, Sept. 3, 1912.



	YES	Limiting Veto Power of Governor.
	NO	
	YES	Reform of Civil Jury System.
	NO	
	YES	State Bond Limit for Good Roads.
	NO	
	YES	Abolition of Justices of the Peace in certain Cities.
	NO	
	YES	License to Traffic in Intoxicating Liquors.
	NO	
	YES	Woman's Suffrage.
	NO	
	YES	Initiative and Referendum.
	NO	
	YES	Reform of Judicial System.
	NO	
	YES	Investigations by Each House of General Assembly.
	NO	

	YES	Double Liability of Bank Stockholders and Inspection of Private Banks.
	NO	

The resolution was laid over under the rule.

On motion of Mr. Lampson the resolution was ordered printed.

Mr. Lampson offered the following resolution:

Resolution No. 119:

Resolved, That the foregoing amendments to the constitution shall be submitted to the electors of the state at an election to be held on the _____ day of _____, one thousand nine hundred and twelve, in the several election districts of this state. The polls at said election shall be open at five thirty a. m. of said day, and remain open until five thirty o'clock p. m. of said day; the said election shall be conducted and the returns thereof made and certified to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of all the votes, cast at such election, on any of said amendments are in favor of such amendment or amendments, then the governor shall issue his proclamation, stating that fact, and said amendment or amendments shall become a part of the constitution of the state of Ohio, and not otherwise. That said amendments submitted shall be numbered in the order in which the proposals were adopted by the Convention on second reading, and each amendment shall be designated by such number and a title which shall suggest its subject matter. Said proposals with the number of the amendments corresponding thereto are as follows, to-wit: 54 (1); 118 (2); 100 (3); 151 (4); 91 (5); 2 (6); 184 (7); 236 (8); 93 (9); 212 (10); 163 (11); 5 (12); 249 (13); 62 (14); 64 (15); 242 (16); 122 (17); 209 (18); 24 (19); 7 (20); 261 (21); 309 (22); 169 (23); 72 (24); 304 (25); 241 (26); 166 (27); 322 (28); 252 (29); 272 (30). The ballots at such election shall be printed in the following form, with each amendment designated by number and title thereon; those voters in favor of all said amendments may vote for all of said amendments by placing an X in the circle at the top of the first column on said ballot, or by placing an X in the space before the word "For" in each and every title; those voters opposed to all of said amendments may vote against all said amendments by placing an X in the circle at the top of the second column on said ballot; or by placing an X in the space before the word "Against" in each and every title; those voters who desire to vote for certain amendments only may place an X before the word "For" in the title of such amendment or amendments; those voters who desire to vote against certain amendments and not against other amendments may place an X in the space before the word "Against" in the title to such amendment or amendments.

Form of Ballot Submitting Amendments to the People—Relative to Postal Savings' Banks. *

Ballots marked with an X within the circle at the top of the (first) column on said ballots shall be counted for all of said amendments, except such amendments as are erased or marked within the space before the word "Against" (in the opposite column). Ballots marked with an X within the circle at the top of the second column on said ballot shall be counted against all of said amendments, except such amendment or amendments as are marked within the space before the word "For" in the opposite column. Ballots not marked shall not be counted for or against any amendment.

CONSTITUTIONAL AMENDMENTS.

YES.



To vote for certain amendments only, mark X in the space before the word "For" in the title. To vote against certain amendments only, mark X in the space before the word "Against" in the title.

1.	ARTICLE I, SEC. 5. FOR Reform of Civil Jury System.
2.	ARTICLE VIII, SEC. 1. FOR State Bond Limit for Good Roads.
3.	ARTICLE IV, SEC. 9. FOR Abolition of Justices of the Peace in certain cities.
4.	ARTICLE XV, SEC. 9. FOR License to Traffic in Intoxicating Liquors.
5.	ARTICLE X, SEC. 1. FOR Woman's Suffrage.
6.	ARTICLE II, SEC. 1. FOR Initiative and Referendum.
7.	ARTICLE IV, SECS. 1, 2, 6. FOR Reform of Judicial System.
8.	ARTICLE II, SEC. 8. FOR Investigations by Each House of General Assembly.

Ballots so marked as to clearly indicate the intention of the voter shall be counted.

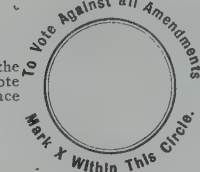
To vote for certain amendments only, mark X in the space at the left of the word "For" in each title.

To vote against any amendment or all amendments, mark X in the space at the left of the word "Against" in the title of each amendment you desire to vote against.

The following is the form of ballot with the designations and titles to amendments thereon:

CONSTITUTIONAL AMENDMENTS.

No.



1.	ARTICLE I, SEC. 5. AGAINST Reform of Civil Jury System.
2.	ARTICLE VIII, SEC. 1. AGAINST State Bond Limit for Good Roads.
3.	ARTICLE IV, SEC. 9. AGAINST Abolition of Justices of the Peace in certain cities.
4.	ARTICLE XV, SEC. 9. AGAINST License to Traffic in Intoxicating Liquors.
5.	ARTICLE X, SEC. 1. AGAINST Woman's Suffrage.
6.	ARTICLE II, SEC. 1. AGAINST Initiative and Referendum.
7.	ARTICLE IV, SECS. 1, 2, 6. AGAINST Reform of Judicial System.
8.	ARTICLE II, SEC. 8. AGAINST Investigations by Each House of General Assembly.

The resolution was laid over under the rule.

On the motion of Mr. Lampson the resolution was ordered printed.

RESOLUTIONS LAID OVER.

Resolution No. 110—Mr. Thomas, was taken up. The resolution was again read.

Mr. THOMAS: Mr. President and Gentlemen of the Convention: One of the first proposals adopted by the Convention was one relating to the issuing of \$50,000,000 of bonds for good roads. I am informed by the officers over at the postal savings department of the post office that the money which is deposited there is turned over to the banks at two and one-half per cent

Relative to Postal Savings Banks—Taxation.

interest, and the banks are permitted to lend that money out at different rates of interest, whatever they can get for it. The security the banks give is to deposit with the United States state or municipal bonds, and it strikes me, if we are going to build good roads by the issuance of bonds, the state of Ohio could save money by asking Uncle Sam to lend the money from the postal department at two, and one-half per cent interest, the same as it is given to the banks. I think the money would be better placed with the people as a whole than with the banks, and I therefore request the adoption of the resolution so that congress, which is now in session, may take the matter up.

Mr. DOTY: How is this to be transmitted to congress? When the legislature petitions congress there is something said about the secretary of state's transmitting it.

Mr. THOMAS: I think it should go from the secretary of this Convention.

Mr. KING: I do not know whether I would be for the resolution as a separate matter or not. But I am not sure that the substance is worthy of consideration here. I submit that we are not here either to petition or to instruct the United States congress. We have a specific duty to perform here, and when we are through with that we should go home. I am against this resolution.

The resolution was lost.

SECOND READING OF PROPOSALS.

The PRESIDENT: The next order of business is the second reading of proposals, and the matter in hand is Proposal No. 170—Mr. Worthington. The proposal has been read the second time. The chair recognizes the delegate from Allen [Mr. HALFHILL].

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: To frame the organic law of Ohio so as to permit a better method of taxation than now exists is probably the most important work to be considered by this Convention, affecting as it does the temporal well-being of all of us and our children after us.

In the ten years last past the population of Ohio has increased fourteen and five-tenths per cent, the tax duplicate has only increased thirty-five per cent and the amount of money raised by taxation has increased sixty-eight per cent.

The foregoing figures show that the cost and expenses of administering the agencies of government in Ohio are too excessively high and there is a crying demand for an effective remedy. Very likely it would be incorrect to say that the per capita cost of running the state machinery should be no greater per head of population than it was ten years ago. In conducting private business we find that many of the fixed charges are higher than ten years ago, and the state in its organized capacity is only a great public business with many departments. The cost of living has advanced so far as the price of most food stuffs is concerned, and there are many thousands of mouths to be fed and bodies to be warmed, cared for and clothed in the asylums, hospitals, reformatories and other charities that care for the unfortunate of the state.

To prosecute an inquiry into the why and wherefore of the increase in the money levied for taxes and to show why the increase in this item is so much greater in per cent than the increase in population and in the tax duplicate, is a greater task than I can hope to thoroughly or successfully accomplish. It would mean nothing less than a review of, first, the constitutional provisions; secondly, the entire statute law on the question of taxation, both before and since the adoption of the present constitution; and thirdly, the decisions of the courts in construing these laws. The subject is a technical one, governed by economic principles as true as mathematics, but hard to demonstrate, and it is especially hard to say anything on such a subject that does not sound stilted and academic. One who could enlighten us in popular language and conduct us through the maze of inconsistencies and contradictions that envelop the whole theory of taxation in Ohio, and could lead us to an understanding of a practical, intelligent, progressive and up-to-date system of taxation, would indeed be a public benefactor.

The tax laws of Ohio are unscientific from the standpoint of the political economist, work the grossest kind of inequalities in distributing the burdens of taxation and are generally bad. The general property tax, substantially as we have it today, was adopted in 1846 and was written into the constitution in 1851 in the language of section 2, article XII, which is as follows:

Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting bonds of the state of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted shall, from time to time, be ascertained and published as may be directed by law.

The exemption from taxation of state, county, township and municipal bonds has been added to this section by the amendment of 1905, but otherwise it is as originally adopted. Here is the "cast-iron rule" that has worked the grossest inequalities and hardships, under which no satisfactory tax system can be established in this state without removing the following:

Laws shall be passed taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money.

Taxation.

In 1906 Hon. Andrew L. Harris, then governor, appointed an honorary commission composed of Wade H. Ellis, then attorney general of Ohio, Atlee Pomerene, since elected a United States senator from this state, and three other efficient and able citizens, to investigate the tax laws and make recommendations for their improvement. In this commission's report to the governor, they have this to say concerning the above quoted cast-iron rule governing the making of tax laws:

The general property tax has long ago served its day. The requirement that all property, tangible and intangible, should be taxed by a uniform rule answered well enough for a time when nearly all property was tangible. The attempt to tax stocks and bonds in the same way as cattle and farms seemed entirely feasible in an age when there were few stocks or bonds. The effort to secure from railroads and similar corporations a fair contribution to the public revenues in return for their public franchises, by methods identical with those adopted as to other classes of property, disclosed no hint of failure in a day when there were only two locomotives in Ohio and less than twenty miles of railroad track, and before telegraphs were in use or telephones or electric lights or transportation had been invented.

Nearly every state in the Union which followed Ohio in the establishment of the general property tax has either long since abandoned it or is now struggling with an effort to get rid of the system. No state has adopted such a plan of taxation in recent years. Many of the more progressive states have never had any specific restriction upon the power of taxation, and no state which has once abolished the general property tax has ever returned to it.

Governor Harris in a special message to the general assembly indorsed this report and its recommendations and this was the beginning of a desperate attempt on the part of the legislature to better conditions if possible. This resulted in submitting to the electors in 1908 a constitutional amendment doing away with the uniform rule and giving the legislature practically unrestricted power in levying and collecting taxes, but this proposed amendment was defeated. Later was passed the Smith one-per-cent maximum general levy, to which is added emergency levies and sufficient to meet the requirements of the sinking fund and interest on outstanding bonds. This is a desperate if not an heroic attempt to overcome inequalities and bad conditions imposed by the uniform rule of valuation fixed by the constitution, but it is only an experiment, and the axe should be laid at the root of the tree.

This Smith law is an attempt to secure a better return of personal property for taxation and take off from the home, the business block and the farm some of the burdens of the iniquitous general property tax saddled there by the laws framed under the uniform rule of valuation prescribed by the present constitution. Such laws have produced, and ever will continue to produce, an increasing burden upon real property and an ever-diminishing share of the burden that should be borne by personal property in the support of the state that

gives equal protection to both. The total value of all the property of Ohio as returned for taxes in 1910 is the sum of \$2,484,315,574, only one-third of which is personal property, but under the forced appraisalment of 1911 made necessary by the Smith law, the grand duplicate shows \$6,000,000,000 and the former proportion between real and personal property is preserved.

It is a safe estimate that under any law now in existence, or any form of law that can be drawn under the restrictions of the present "uniform rule of valuation at its true value in money" rigidly fixed in the present constitution, not ten per cent of the moneys, credits, stocks and bonds or other intangible property is ever listed for taxation, and not fifty per cent of the tangible personal property, both as to amount and valuation thereof, is returned for tax purposes. If the visible and invisible personal property of the state could be reached under just and equitable laws the aggregate valuation would exceed that of all real estate in Ohio by a ratio of two to one, and exactly reverse present conditions. This startling fact is the hope of the single-taxer, who, by a system of false philosophy claims that he will unfetter all industries and help labor by removing taxation altogether from personal property and placing the entire burden on the land.

And this, too, means all the land, including that used and held by churches, schools, colleges and charities not maintained by law as public institutions, which doctrine is nothing but the madness of the commune and socialistic to the last degree.

The inequalities and injustice revealed in the working of every tax law that has been enacted, or that can be drafted under present constitutional restrictions, makes one wonder that the existing system has been so long perpetuated, but the very complexity of the subject permits concealment of its workings. Some of the more apparent evils may be summarized by condensing the report of the commission mentioned as follows:

1. The first and most important of these is that the general property tax bears unjustly upon the owners of real estate, whether farm lands or city homes, and permits with increasing advantage the escape from taxation of all forms of personal property, and particularly of that class of personal property which can be most easily concealed from the taxing authorities.

2. The next in importance is that which has developed among the owners of real property by reason of the infrequent valuation of such property for purposes of taxation and the inducement on the part of local assessors and taxing boards to assess the same as low as possible in order to shift to other communities their own share of the uniform levy for state purposes. This has been remedied in part by the laws creating the tax commission with power to arbitrarily increase valuation in any county, township, or municipality; but the exercise of such arbitrary power without right of appeal has already worked many instances of injustice.

3. Another inequality is that existing among the owners of personal property caused by the attempt to tax, by a uniform rule and according to its true value in money, tangible chattels on the one hand, such as live stock and farm implements, merchants' and manufacturers' goods and the like, which ought to be easily found by the assessor, and intangible property on the

Taxation.

other, such as money, mortgages and bonds, which are not returned unless their owner voluntarily admits the ownership.

4. Still another inequality is that existing between the individual owner of real and personal property on the one hand and the owner of certain classes of corporate property on the other, as a result of the requirement that all property, however used and benefited by public grants and franchises and whatever its earning capacity, shall be valued for taxation by a uniform rule and subjected to one fixed method in determining the contribution it shall make to the support of state and local government.

5. Finally, there are many instances of peculiar hardship between classes of corporations caused by an effort from time to time, and without any consistency of plan or purpose, to avoid constitutional obstacles in securing a just return from those who enjoy special privileges in the control and management of such property.

One of the evils most easily understood or of most frequent occurrence is double taxation. If John Doe owns a farm worth \$10,000 and borrows from Richard Roe \$5,000, secured by a mortgage on his farm, Doe must pay taxes on the full value of the farm and Roe must pay full taxes on the \$5,000 mortgage, all of which is equally true of the owner of a small home. One struggling to become a home-owner finds a house and lot that can be purchased for \$1,500, and by paying one-third down and executing a mortgage for the deferred payment of \$1,000 the expectant home-owner is given a deed, and immediately he pays taxes on three times the value of all that he actually owns. In each instance the land and lot owner should in justice only pay taxes on the value of the equity that they have in this property; but those illustrations might be multiplied many times in other classes of property, to show that the general property tax in Ohio has long since served its day.

Between 1889 and 1908 there were six amendments proposed to section two of article XII of the constitution, but only one adopted, when, in 1905, the voters provided for exempting state, municipal, county and public school bonds from taxation, and this was by a vote of five to one in nearly a million votes.

I do not pretend to say that I could devise anything approaching a perfect system of taxation, for that is a work for the highest and best experts on questions of political economy, finance and statecraft, yet I do know that a much better system than the one now existing can be devised and put into execution. There is no occasion, reason or sense for the continued existence of the present general property tax in a state like Ohio, with its ever-increasing burden upon real property, when personal property of all kinds, if it could be got at, would exceed the value of real estate twice over.

The state's statistics for the year 1910 reveal some astonishing facts, as, for instance, the total value of all credits, moneys invested in bonds, stocks, joint stock companies, annuities or otherwise, plus the value of all moneys in possession or on deposit to order, equals the pitiful sum of \$139,685,578, although the actual bank deposits of the state in the year 1910 exceeded the sum of \$500,000,000. For a long time in Ohio under the uniform rule a corporation like The Western Union Telegraph Company returned for taxation only so many

poles, so many miles of wire and so many brass instruments, but finally the legislature found a constitutional way to get at the actual value of the good will, privileges and franchises of this and similar corporations, and the present state tax commission under its power has materially enlarged the tax duplicate with this kind of property.

Evidently the general assembly should have a freer hand, with right to classify property for taxation according to equitable rules, uniform as to each class, with a proviso that no laws should be passed authorizing the levying of a special tax upon one class of property for the purpose of benefiting another class, and at all times avoiding double taxation. Some such amendments to the constitution looking to this end or something similar, have been proposed and defeated, for it seems the people do not want to trust the legislature entirely without restrictions as to taxing power, and the problem is how to give the legislature a freer right and yet not make the right absolutely unlimited.

The most unjust, unfair and inequitable taxes are imposed in those states of the Union whose constitutions are similar to ours, and the best systems of taxation are in those states where the legislature is practically unhampered by constitutional restrictions. Thus when the "uniform rule" of the present constitution is removed, as I firmly believe will be accomplished in the near future, even if this Convention fails to do its duty to the people of Ohio in that respect, there are yet certain safeguards which in my judgment should always be provided:

First. The legislature should be prohibited from contracting away the right to tax by making any irrevocable grants of exemption. The converse of this proposition is true, and the constitution should not expressly require every kind and class of property to be taxed, but should leave to the discretion of the legislature the right to exempt property of churches, educational institutions, private charities, etc.

Second. The legislature should be prohibited from discriminating between persons or property similarly situated, so that the rule of valuation should act uniformly on any class of property which naturally comes in for classification; and should always be prohibited from imposing any tax whatsoever for the benefit of any private or corporate interest.

Third. All property of a strictly public nature supported by public taxes, such as instrumentalities of government, should be absolutely exempted from taxation.

Thus I am suggesting what might be worked out and accomplished by the accepted rules governing the best theories of revenue and taxation and forever excluding from consideration such a heresy as the single tax, or exclusive land tax.

It is out of the question to elaborately present to this Convention any code of rules or scheme of statutory law classifying property for taxation purposes, but permit me to add a few specific reasons to show why this should be made possible.

The money value of property is constantly shifting and is never a true index of ability to pay taxes. Actual money value of an equal amount of property in the hands of two different people can be and is taxed under our

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present law so that the net result is injustice and positive immorality. For instance, a widow has \$10,000 and her income is \$400, for she cannot hazard her money in business and must put it in a bank at four per cent interest. An active man has \$10,000 and his income from handling and turning this in business is \$1,000. Both pay one per cent tax on \$10,000, but this exacts from the widow twenty-five per cent of her income and from the able-bodied man but ten per cent of his. If this is justice then crime can be committed in the name of justice, for ability to pay is ability to bear the burdens of taxation. If not hampered by restrictions such as exist in Ohio, the merest tyro in legislation can classify property on the basis of its earning power so that it might be taxed by a differential instead of a uniform rule and thus establish justice between the taxpayers. A state should enact just laws and not charge its citizens with dishonesty because they are driven to evade the operation of unjust and inequitable laws. Inheritance taxes, graduated income taxes, mortgage recording taxes, fixed flat-rate taxes that may be moved up and down until the point of greatest productivity is determined, can all be made effective under a scheme of classification, and Ohio can progress as other states have progressed by wise tax laws.

In New York the revenue from the recording tax is nearly three hundred per cent greater than when taxed annually on full value at a uniform rate of one per cent, and this same state now derives over \$5,000,000 annually from an inheritance tax. Within ten years, under the fixed flat rate, the city of Baltimore, Md., increased its revenue from \$120,000 to \$500,000 solely from intangible personal property.

Ohio can accomplish all that has been done elsewhere if the existing obstacle to progress is removed from our fundamental law.

Now, gentlemen of the Convention, in conformity with the views I have expressed up to this point, I desire to offer what I have prepared as a substitute for Proposal No. 170, and the amendments thereto, as it now appears before the Convention, for consideration.

The amendment was read as follows:

Amend Proposal No. 170, and all amendments thereto, by striking out all after the word "Proposal" and substituting therefor the following:

To submit an amendment to sections 1, 2 and 6 of article XII of the constitution relative to taxation.

SECTION 1. The general assembly shall levy and collect taxes in such manner as it may deem proper; but all taxes shall be just and uniform upon the same class of subjects; and the power of taxation shall never be surrendered or suspended by any contract or grant to which the state shall be a party.

SECTION 2. All property and instrumentalities of government, created or supported by public funds, including the bonds and obligations of the United States, the state or any political subdivision or district thereof, shall not be taxed. The general assembly may exempt from taxation, churches, universities, colleges, seminaries, schools all institutions of public charity and their endowments, and such property of individuals not exceeding

one thousand dollars in value, as shall be deemed best for the public good; but all such exemption laws shall be subject to alteration or repeal; and the value of all property, so exempted by general laws, shall, from time to time, be ascertained and published, as may be directed by law.

SECTION 3. Except as otherwise provided in this constitution, the state shall never contract any debt for the purposes of internal improvement.

Mr. HALFHILL: This substitute proposal, which has been read for your consideration, sets forth what I believe to be a just and proper grant of power authorizing the classification of property for the purposes of taxation. Permit me to call attention to the fact that with all the great increase that has been made in the property of Ohio, so far as the grand tax duplicate is concerned, with all the great advancement that has been made in the changed social conditions, you observe in the present proposal as you have it now before you for consideration practically the same lines of thought that were crystallized into the constitution by the convention of 1851. In such places as you have departed from the express provisions of section 2, article XII, as they now obtain, you have departed with the endeavor to do something which to a certain extent would unshackle the uniform rule, while in fact preserving it as a basis; and it might as well be known and considered that in Ohio in times past the exigencies of the situation have required the legislature and the supreme court to depart in logical effect from the operation of the uniform rule, because excise taxes and franchise taxes, which did not come into existence in Ohio until within a score of years last past, are not taxes at all in the sense in which taxes are levied under the rule of uniform taxation. But the constituted authorities were driven by virtue of the condition of practical bankruptcy that confronted the people of Ohio to start off on a line of franchise, excise and license taxes, all of which properly belong under any scheme of classification that may be devised.

There was introduced here for consideration of the Convention a proposal to grant to a home-owner the right to own \$1,000 in real estate that should not be taxed. That met with no consideration or approval at the hands of the Convention. You have stayed by the same hard-and-fast line of \$200 exemption, just as though there was not a tremendous amount of property which could be brought upon the tax duplicate, and a great revenue that could be derived whereby it would be entirely possible that you might raise abundant revenue and yet relieve those who could least afford to pay taxes. To encourage the small home-owner and aid those who are poor in purse and property I have put into this substitute an authorized exemption of \$1,000. Not that the legislature shall do it, but the power is given to the legislature to do that thing, if in the interest of justice and equality it seems right and advisable that it should be done; and I have kept in this substitute the exemption of municipal bonds from taxation, because it has seemed to me that by every consideration of good business and correct finance there is no sense whatever in departing from a policy that had met with the approval of the people of Ohio to the extent that they have already modified and changed their constitution on that point.

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Mr. ANDERSON: A question please?

Mr. HALFHILL: Wait until I get through with my statement, and I will answer all questions that I can.

It seems to me it would be a parallel point to show you the condition that the Emerald Isle was in when it was owned exclusively by foreign landlords. At that time all the rent and income went away from home and that was a condition that was not good for the people of Ireland. You have here a great state in which the instruments of government, to wit, the bonds of municipalities, etc., are part and parcel of the things in which you are all interested, and in which your and your neighbors' excess capital can be invested and kept at home; and when interest day comes the money circulates in your communities instead of going outside of the state.

Gentlemen of the Convention, you must meet conditions, and you must not combat conditions with theories. This whole situation so far as the uniform rule is concerned is in the form of an ellipse with two foci; at one of the foci you find your theories, but at the other all the time exist the facts, and the facts are against your theories, because human nature permits a man, as an American citizen, to live outside of the boundaries of his native state if the tax rate is more favorable to him elsewhere, and it is senseless and useless to say that he is not patriotic and that he has not state pride because he lives in another state where the tax rate is better. That condition exists and you have to meet it, and that is exactly what we have failed to do in Ohio.

Mr. WOODS: Will the gentleman yield for a question?

Mr. HALFHILL: When I get through with my statement I will give you all an opportunity.

That is the situation that exists in Ohio, and has existed for a number of years past. Now, so far as municipal bonds are concerned, just a word. I want to call your attention to the fact that when you study all of the theorists on taxation, and all of the text-writers on taxation, you will never find one who has departed from the axioms that are laid down by Adam Smith in his "Wealth of Nations." You cannot find one authority or one writer or one political economist that has ever written a chapter that would successfully combat, or even attempt to combat, the axioms of taxation laid down by Adam Smith. I desire to read a few of them to you, and I refer to chapter 2 of book 5:

Before I enter upon the examination of particular taxes, it is necessary to premise the four following maxims with regard to taxes in general:

I. The subjects of every state ought to contribute toward the support of the government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation. Every tax, it must be observed, once for all, which falls finally upon one only of the

three sorts of revenue above mentioned (rent, profit, wages), is necessarily unequal, in so far as it does not affect the other two. In the following examination of different taxes I shall seldom take much further notice of this sort of inequality, but shall, in most cases, confine my observations to that inequality which is occasioned by a particular tax falling unequally even upon that particular sort of private revenue which is affected by it.

II. The tax which each individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person. Where it is otherwise, every person subject to the tax is put more or less in the power of the tax gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself. The uncertainty of taxation encourages the insolence and favors the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality, it appears, I believe, from the experience of all nations, is not near so great an evil as a very small degree of uncertainty.

III. Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. A tax upon the rent of land or of houses, payable at the same time at which such rents are usually paid, is levied at the time when it is most likely to be convenient for the contributor to pay; or, when he is most likely to have wherewithal to pay. Taxes upon such consumable goods as are articles of luxury, are all finally paid by the consumer, and generally in a manner that is very convenient for him. He pays them little by little, as he has occasion to buy the goods. As he is at liberty, either to buy or not to buy, as he pleases, it must be his own fault if he ever suffers any considerable inconvenience of such taxes.

IV. Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state. A tax may either take out or keep out of the pockets of the people a great deal more than it brings into the public treasury, in the four following ways. First, the levying of it may require a great number of officers, whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people. Secondly, it may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes. While it obliges the people to pay it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily

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to do so. Thirdly, by the forfeitures and other penalties which those unfortunate individuals incur who attempt unsuccessfully to evade the tax, it may frequently ruin them, and thereby put an end to the benefit which the community might have received from the employment of their capitals. An injudicious tax offers a great temptation to smuggling. But the penalties of smuggling must rise in proportion to the temptation. The law, contrary to all the principles of justice, first creates the temptation, and then punishes those who yield to it; and it enhances the punishment too in proportion to the very circumstance which ought certainly to alleviate it, the temptation to commit the crime. Fourthly, by subjecting the people to the frequent visits and the odious examination of the taxgatherers, it may expose them to such unnecessary trouble, vexation and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it. It is in some one or other of these four different ways that taxes are frequently so much more burdensome to the people than they are beneficial to the sovereign.

The evident justice and utility of the foregoing maxims have recommended them more or less to the attention of all nations. All nations have endeavored, to the best of their judgment, to render their taxes as equal as they could contrive; as certain, as convenient to the contributor, both in the time and in the mode of payment, and in proportion to the revenue which they brought to the prince, as little burdensome to the people.

Now, if you will consider that Adam Smith was dealing with a government that had plenary powers, and will exclude from his maxims the language which shows that he was dealing with a government that had plenary powers, then you have the maxims that apply unquestionably to the conditions that exist right here in Ohio, and have existed for sixty-one years under the uniform rule.

The conditions which he set forth in these maxims would apply directly to the federal government which exercised all of the greater powers of sovereignty so far as its intercourse with other nations is concerned. But you will remember that in our own state we have reserved much the greater portion of all governmental powers. It is only the few powers that are granted to the federal government, and therefore these maxims of Adam Smith are applicable to the conditions and the situation that confronts us here today. I stated to you in the beginning a proposition that in ten years the population in the state of Ohio had increased 14.5 per cent. The tax duplicate has only increased 35 per cent, and the amount raised by taxation has increased 68 per cent, and you will find right in one of these maxims of Adam Smith that I have read to you a solution and an absolute demonstration of why that condition exists in Ohio today, wherein he says the levying of taxes may require a great number of officers whose salaries may eat up the greater part of the products of the tax, and

whose perquisites may impose another additional tax upon the people. That is the situation that exists in Ohio today, and each legislature undertaking to garner or gather in greater sums for taxation proceeds to enlarge the tax machinery, creates the tax commission and new swarms of tax deputies, and bills are introduced and laws passed in order to get property out of hiding by getting additional officers to pursue it. The complex machinery of taxation is of itself expensive and greatly adds to the burdens and problems of taxation in Ohio. Under the idea of classification it is perfectly possible to pass a general law which will allow property to be taxed practically by the operation of the law in each subdivision so that the auditor, or some similar officer, with a small corps of deputies can collect all of the taxes right in the treasury of each county, and save all of the commissions and exercise the authority that now is instituted and in operation for the purpose of gathering all the taxes, including the regular property tax and the franchise, license and excise taxes. Furthermore, right in the first maxim is something that applies to inequalities and injustice under our present system:

The subjects of every state ought to contribute toward the support of the government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

Now, gentlemen of the Convention, if anybody can demonstrate to me where there is justice and equity and equality under the operation of the uniform rule in Ohio, I have failed to hear the man or read the writer. If you abandon the idea that property is the basis and measure of taxation and adopt the accepted principle that ability to pay ought to be the measure and basis of taxation, then you have approached near to the place where you can pass laws that will deal justly with the citizens of the state, for upon the shoulders of the strong should rest the greater burdens of the government, and under the uniform rule that is impossible. I submit that when you take from a revenue of four per cent interest twenty-five per cent of it in taxes, you have discriminated in a way that it is impossible to remedy under the uniform rule.

Mr. WATSON: Will the gentleman yield to a question?

Mr. HALFHILL: Yes, I will now.

Mr. WATSON: You said a moment ago you would put the burden of taxation upon the rich. Is it not the poor men who have money to lend and to draw interest?

Mr. HALFHILL: You do not quote me correctly. I said I would put the burden of taxation on those who had the ability to bear the burden.

Mr. WATSON: Then a moment ago you said something about a man lending money at four per cent, and that if you took one-fourth of it, etc. Now, is it the poor men who have that money to lend or is it the rich men?

Mr. HALFHILL: You cannot in framing a law frame one for the rich and one for the poor people, but the same rule applies to all the people, and if a man has \$100,000,000, and his income is only four per cent, and

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a widow has \$1,000, and her income is one per cent, the same justice ought to apply to both alike, and they ought to have the same rule, and if by the uniform rule you take one-fourth of the income, you are not doing justice.

Mr. WATSON: Well, how can you classify property and remedy that?

Mr. HALFHILL: I would classify property by putting an increased burden on income, and as the income was greater put on a larger requirement for the government. An income tax is far away and apart from the general property tax, and when you attempt to levy an income tax you depart from the rule of the general uniform property tax.

Mr. WATSON: Does not the majority report impose an income tax?

Mr. HALFHILL: Yes, and the minority report proposes an income tax, and wherein they do it they depart from the uniform rule, and when you depart on that point in order to do partial justice, why not abandon it and go to the classification of property where you can do entire and exact justice? That was the reason why I thought it was a very wise provision that was suggested by the gentleman from Cuyahoga [Mr. DORV], that when these two reports came in here we would consider and discuss them the same as if they were engrossed and had been read a second time, because under that arrangement it might be entirely possible for us to canvass both reports. As I recollect, you are the gentleman who immediately, on the following morning, attempted to move the previous question and prevent the consideration of both of those reports and to get the Convention to decide upon a certain line, to wit, to exclude the idea of classification and incorporate the idea of the general property tax which is set forth in the minority report, and it was to that effort I objected.

Mr. WATSON: That was in conformity to the agreement.

Mr. HALFHILL: It must have been a private agreement. It was not in conformity to anything stated in the Convention.

Mr. WATSON: What do you say in regard to the doctrine enunciated by the gentleman from Hamilton [Mr. HARRIS] Thursday, when he stated that he would classify according to the ability of the taxpayer to collect the taxes?

Mr. HALFHILL: The gentleman from Hamilton [Mr. HARRIS] is quite able to take care of his own ideas and theories.

Mr. WATSON: Do you subscribe to that doctrine or not?

Mr. HALFHILL: The doctrine you have stated?

Mr. WATSON: Yes.

Mr. HALFHILL: I do not know whether you have stated it correctly or not.

Mr. WATSON: I have correctly stated it.

Mr. HARRIS, of Hamilton: The political economist from Guernsey county has very much overstated it. You can read the report of the official stenographer and see what I said.

Mr. WATSON: I took a note of it, but I will call on the official stenographer and see what the statement was.

Mr. HALFHILL: I would suggest that the gentleman from Guernsey [Mr. WATSON] is far afield from

anything I heard the gentleman from Hamilton [Mr. HARRIS] state.

Mr. HARRIS, of Hamilton: Will the gentleman from Allen [Mr. HALFHILL] yield for a statement from me on the remarks of the modern Adam Smith from Guernsey county?

Mr. HALFHILL: Yes.

Mr. HARRIS, of Hamilton: As a matter of theory, and having a practical operation also, is it not absolutely the fact that the theory of the graduated income tax advocated by the member from Guernsey [Mr. WATSON] in his minority report absolutely opposes the uniform rule of taxation?

Mr. HALFHILL: That is unquestionably the fact. That is better than I stated it a moment ago. The minority report is full of that sort of idiosyncrasies.

Mr. LAMPSON: How do you justify a situation like this: Suppose the general property tax is one per cent, and A owns \$20,000 worth of real estate and is assessed at \$20,000 and would pay \$200 tax. B in the same taxing district has \$20,000 in cash, and under your proposition of classification of property for taxation, and limiting the tax upon money on deposit to one-quarter of one per cent, B would pay \$50. Why should there be that discrimination?

Mr. HALFHILL: Because the property is not the measure of value, and you are on a wrong basis. There is no rule for fixing the value of property; \$10,000 here may be earning more than another \$10,000 some place else.

Mr. LAMPSON: Suppose A and B are neighbors and each has the same number of children, and the children attend the same school. Why should A pay his share of that \$200 to attend that school, while B would only pay a proportionate share of \$50, both having the same amount of assessed property?

Mr. HALFHILL: I do not know that I fully comprehend your question, but if your question embodies the idea of valuation of property, it is upon a wrong basis, because the ability of the citizen to pay, together with the earning power of the property, is the basis that I contend for.

Mr. LAMPSON: Yes, but under ordinary circumstances is not the earning power of \$20,000 in cash equal to the earning power of \$20,000 in land?

Mr. HALFHILL: I would be wholly unable to answer that, but I do know that, with the products of the farm selling as they do now, a man with good business ability owning \$20,000 worth of land will far exceed in income a man who lends out \$20,000 at interest rates.

Mr. RILEY: Do you not know that that is a tax on the industry of a man rather than on property? You say a man of fair ability can do that?

Mr. HALFHILL: I have no objection to taxing industry. I am not a singletaxer.

Mr. RILEY: What would you do with vacant land that does not produce anything whatever?

Mr. HALFHILL: I would do justice in that instance, and that is what I have been contending for.

Mr. RILEY: What is justice?

Mr. HALFHILL: Her seat is in the bosom of God, and her voice is the harmony of the world.

Mr. LAMPSON: Does not the gentleman know that her seat is on the "pee-des-tal"?

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Mr. HARRIS, of Hamilton: Will the gentleman from Allen [Mr. HALFHILL] yield to me to answer the question of the gentleman from Ashtabula [Mr. LAMPSON]?

Mr. HALFHILL: I shall be delighted.

Mr. HARRIS, of Hamilton: Answering the question of the member from Ashtabula, the next governor, the question was, why should the owner of \$20,000 in real estate pay \$200 in taxes as against the owner of \$20,000 of cash in bank paying \$50? That was the question?

Mr. LAMPSON: Yes.

Mr. HARRIS, of Hamilton: Would not the proper answer be that the state officials and all taxing machinery are not interested in the morality of the question because the morality will not pay public or private debts, but it is a practical question? The \$20,000 in real estate cannot be moved the day preceding the second Monday in April. If it could be moved the owner of it would move it. The \$20,000 in cash in bank can easily be moved in the twinkling of an eye, so that the sole reason in putting money in a lower class in classification is to appeal to human nature by saying that the rate will be so low that we will induce you to list it, and the penalty for failure to list it will be so high that it will be profitable for you to list it. It is a question of practical things in taxation, and that is the sole reason on which it is justified.

Mr. LAMPSON: Do you not think if the rate were limited to one per cent that the man with the cash would pay on his cash just as quickly as if limited to one-half or one-quarter of one per cent?

Mr. HARRIS, of Hamilton: I do not, on account of the ease and facility with which he can move it from his bank in Ashtabula to Pittsburgh. There will be no trace of it in any banking jurisdiction in the state of Ohio.

Mr. LAMPSON: He still has the money?

Mr. HARRIS, of Hamilton: Unless you are a poor banker.

Mr. LAMPSON: Do you not think after all that that gentleman would move his money for thirty cents?

Mr. HARRIS, of Hamilton: As against that theory of yours we have the concrete example of Baltimore and everywhere else where it has been tried, where the reduction of the rate of taxation on personal property has brought out an immense amount of personal property, and yielded the state three or four times the revenue, and that is what the state is interested in. We need not consider morality. Morality doesn't count in an auditor's office. It is what is brought out. I have read from a report of the tax commission in Kentucky begging the legislature for classification instead of the uniform rule, and there is no better rule in taxation matters than experience.

Mr. Hoskins here assumed the chair as president pro tem.

Mr. HALFHILL: I would say to the gentlemen from Hamilton [Mr. HARRIS] and from Ashtabula [Mr. LAMPSON] that they respectively represent facts and theories. The gentleman from Hamilton [Mr. HARRIS] has the facts with him, and the gentleman from Ashtabula [Mr. LAMPSON] is wedded to his theories, and

being wedded to his idols, I do not suppose we can convince him.

Mr. WATSON: Will you yield to a question from me?

Mr. HALFHILL: Not now; another has arisen for questions.

Mr. DOTY: I want to ask a question about this \$20,000 that the gentleman from Ashtabula referred to. Assuming it is in the state, where did that value originate—where did it come from? You need not answer if you don't want to.

Mr. HALFHILL: I fear you are endeavoring to lead me into a discussion of the single-tax theory.

Mr. DOTY: All I want to say is that I think you are a singletaxer and have not yet found it out.

Mr. HALFHILL: That may be so, and that is where ignorance is bliss.

Mr. BROWN, of Pike: In view of what has been said about morality, would not it be a good idea to repeal all of the criminal laws of the state so that we shall have no more criminals?

Mr. HALFHILL: I shall have to rule that question out of order. That will come on the next proposal.

Mr. ANDERSON: I understand you to say that one of the reasons you do not want to put the bonds back on the tax duplicate is because in 1905 they were voted upon and the people of Ohio showed that they were very much in favor of changing their constitution in this regard. Do you not know that that was under the Longworth act, and there was not one person in twenty of the people who voted for it who voted intelligently, so far as the bonds were concerned?

Mr. HALFHILL: I have a pretty good idea of the intelligence of the people of Ohio and a good deal of respect for it, and I think they understood it.

Mr. ANDERSON: Do you mean to say—I am not asking it at an index to your intelligence—but do you mean to tell these delegates that when the people voted in 1905 to take the bonds from the tax duplicate, that twenty per cent of the people understood what they were doing?

Mr. HALFHILL: Yes; I think ninety-nine per cent did, and those who voted in favor of it voted intelligently.

Mr. ANDERSON: Are you just as sincere in all the other part of your argument as you are in that statement?

Mr. HALFHILL: I am entirely sincere in the belief that they voted intelligently because they reached an intelligent conclusion. That is reasoning from effect back to cause.

Mr. STOKES: Because it happens that they turned down every constitutional amendment except those submitted and ratified by the party vote, is that the reason you say they are intelligent?

Mr. HALFHILL: Do you mean to say they turned down everything?

Mr. STOKES: Except where one party or the other, or both parties, ratified one of the amendments, and they voted for it on the party ticket. They turned down all except those, and is that the reason you say they are intelligent?

Mr. HALFHILL: No, sir; the amendments that were of enough importance to be taken notice of by the

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political parties were of enough importance to be taken notice of by the people.

Mr. ANTRIM: Referring to municipal bonds, if we were to restore municipal bonds to taxation is it not true that about one-half would go to the banks, and the other half would go out of the state, and we would not get any taxes on them?

Mr. HALFHILL: I certainly believe that is so, and that is what I have attempted to state.

Mr. ANTRIM: Would not the rate be higher and would not the whole people, therefore, suffer as a result of their not being exempt, in that they would pay a higher rate of interest and would get no return in taxes?

Mr. HALFHILL: And that is why I believe it would be unwise not to specifically exempt the municipal bonds, because, as has been argued here by some of our very progressive brethren, it is a good thing to have the shotgun above the door. Now, when it comes to the question of capital, there is not anything that is more timid than capital, and if the legislature has the power to levy a tax and it is not expressly excluded by the constitution, then and in that event the bond bids will be framed so as to provide against the possible execution of that power, and you will immediately fail to get either the low rate of interest or the high amount of premium that you would ordinarily get upon bids for bonds offered under the existing exemption of the constitution.

Mr. STOKES: I have not fully made up my mind about how I am going to vote on this proposition, and I want all the information I can get. There is a little bit of discredit so far as putting the proposition entirely up to the legislature. Would you not think it wise for the Convention to classify, if they are going to classify, as much as they can in the constitution?

Mr. HALFHILL: No, sir; I do not, because I am opposed on principle to legislating in the constitution, and some of the good work we have done here, if it meets with defeat, will meet defeat on the ground that it is statutory legislation and has no place in the constitution.

Mr. STOKES: Do you not think it would be wise for us to "safeguard" that?

Mr. HALFHILL: Do you use that word with quotation marks?

Mr. STOKES: Yes.

Mr. HALFHILL: If so, I shall have to refer you to the gentleman from Cuyahoga [Mr. DOTY], because he understands these ideas of safeguards and has so many in the initiative and referendum that his constituents are finding fault with it.

Mr. STOKES: I thought that was "de novo" with you.

Mr. HALFHILL: Absolutely not. I can prove an alibi on that.

Mr. COLTON: How do you avoid double taxation under the classification of property?

Mr. HALFHILL: I certainly think it would be a very easy proposition to provide that there shall be no double taxation, and it would be a very easy proposition to tax a man on the equity of what he has. As I said in my remarks here, it is impossible in an address to even outline a scheme of classification. I can only suggest what I believe would be proper.

Mr. LAMPSON: Do you mean by that that we should allow a deduction of debts from credits?

Mr. HALFHILL: I do. I do not think a man should be taxed on what he has not.

Mr. LAMPSON: If a man has one hundred acres of ground and has debts to the full amount of what the one hundred acres of ground are worth, do you mean that that land should not pay any taxes?

Mr. HALFHILL: I mean that the man should not pay on that which he does not own. It is easy to frame a statute that will meet that situation.

Mr. HARRIS, of Hamilton: I was suggesting an answer to Mr. Lampson, the next governor of Ohio, if he gets enough votes—is the ownership of the land a credit? Does he own anything?

Mr. EBY: I have been out part of the time and I may not have understood. Were you advocating the exemption of mortgage or the substitution of a mortgage tax?

Mr. HALFHILL: I do not understand your question.

Mr. EBY: I understood that you were talking about exempting mortgage liens and substituting mortgage taxes?

Mr. HALFHILL: I said that was beneficial in the state of Ohio to the borrower.

Mr. EBY: Upon what do you base your assumption?

Mr. HALFHILL: On the fact that it would reduce the rate of interest.

Mr. EBY: Do you believe that it will get a low rate to the borrower, or that the borrower will get the benefit of it?

Mr. HALFHILL: Your question is a good deal like the one I have heard. Is it right for a man under certain conditions to lick his mother-in-law?

Mr. EBY: No, sir; you are advocating something that is quite a change in Ohio, but has been tried in New York and Maryland. There must be one of three reasons, that we have felt that this is the right amount to tax, but we cannot get it, or that it is not right and is not sound, and we should not try to get it, or we may conclude that the public in general should get the benefit from lower interest rates than we do on bonds.

Mr. HALFHILL: Let me ask you a question: Why is it not right, under certain circumstances, to take all of these things into account and classify them?

Mr. EBY: I am not trying to trip you. A farmer never tries to trip a lawyer. I just asked for information.

Mr. HALFHILL: I submit it is impossible to define how much is ethics, or how much is finance, or how much is expediency, or how much is political government that is included in what you state, but I do say on this simple proposition that under the uniform rule of taxation in Ohio real estate pays too much taxes and personal property escapes taxation. One of the reasons why it escapes is that under certain circumstances it should escape, because the uniform rule works an injustice. In other instances it may be unjust that it escapes. Wherein it is unjust I want to make it pay, and where it is just that it should pay a lesser amount it should pay the lesser amount. All of which can be brought about by abandoning the uniform rule and adopting classification.

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Mr. EBY: How do you explain that the real estate owners are not asking for classification and that the other people are?

Mr. HALFHILL: That is something I did not want to touch on, because it is absolutely inexplicable to me. I came to the conclusion that I have reached because I was a friend of the landowner and the farmer; I have more real estate than anything else, and I think I am paying too much taxes on it, and as a result of my investigation of this subject, I believe that by getting upon the duplicate the property that ought to be taxed we can relieve real estate from some of the burdens it now unjustly bears.

Mr. EBY: Taxing real estate only and exempting mortgages, do you not know that that would take one-third or even one-half from the poor districts?

Mr. HALFHILL: I do not believe that I fully comprehend that question.

Mr. HOLTZ: Do I understand you to say that under classification a law might be enacted that would bring out hidden wealth or intangible property?

Mr. HALFHILL: I think so.

Mr. HOLTZ: What is to prevent laws being enacted under the uniform system to bring out this property?

Mr. HALFHILL: If you adopt property or any other thing of value except money as the basis, it works an injustice so frequently that it won't come out, as I have tried to show.

Mr. HOLTZ: I cannot understand or see the justice of one man with \$10,000 paying \$100 and another man with \$10,000 paying \$25, and I cannot see why laws that can be enacted to bring out under the one rule certain property, cannot be enacted under the other rule to bring out that same property?

Mr. HALFHILL: It is utterly impossible under the uniform rule to enact laws that will bring upon the duplicate the amount of property that ought to be there and ought to be paying taxes, and one reason for that is because it is unjust.

Mr. HOLTZ: If a person makes a false statement to save one per cent, what will prevent him from making a false statement to save one-quarter of one per cent?

Mr. HALFHILL: It is a question of risk and of perjury. It is the old idea, where a man who is making a tax statement feels in the bottom of his heart that the law is unjust to him and that he is justified in escaping an unjust burden that the law places upon him, he will endeavor to escape this injustice even at a hazard.

Mr. DWYER: Speaking from the farmers' standpoint, suppose the school board of a township desires to build a school house, and they issue nontaxable bonds to build the school house, will not they get more money if the bonds are not taxed?

Mr. HALFHILL: Certainly.

Mr. DWYER: Then if that be the case it is to the interest of the township to have nontaxable bonds?

Mr. HALFHILL: I cannot see it any other way than that.

Mr. DWYER: If those bonds are taxed and the people have to pay higher by reason of that and there is no return from the bonds in the way of taxation afterwards, are not the townships and the farmers the sufferers?

Mr. HALFHILL: That is an economic proposition

that does not require demonstration. It is a matter of common knowledge. A bond will sell higher where it is never to be taxed.

Mr. FLUKE: Every individual receives some of the benefit of government?

Mr. HALFHILL: Undoubtedly so.

Mr. FLUKE: And in return for that, undoubtedly something must be given on his part?

Mr. HALFHILL: Yes.

Mr. FLUKE: In the scheme of exempting all bonds, if I take all my property and invest it in bonds in the state of Ohio, how would you assess me for the benefits I get?

Mr. HALFHILL: I would go after you on the income tax, the bigger the income the more I would make the man pay.

Mr. FLUKE: How do you arrive at that?

Mr. HALFHILL: I have just stated that I could not right here frame a full system, but it can be arrived at. England is under that system. Gentlemen of the Convention seem to forget that Ohio and a few other states are the last refuges of the general property tax, and that in other civilized countries of the world, notably in Great Britain, France and Prussia, the income tax and the other methods of classification are the ones they have been living under, and they have operated their government successfully.

Mr. FLUKE: "It all resolves itself in the ability to locate the property in the hands of the individual?"

Mr. HALFHILL: No, sir; it resolves itself into our inability to frame a just system of taxation under the uniform rule.

Mr. CUNNINGHAM: Under the other one, too.

Mr. HALFHILL: Which other one?

Mr. CUNNINGHAM: Under classification, it is equally impossible to frame a just tax law. There never was one framed, and never will be one framed.

Mr. HALFHILL: You are speaking of universal justice. Universal justice does not exist under any law.

Mr. CUNNINGHAM: Why not reach incomes under one system as well as the other? That is the only way you can make it equal where one man has a larger income than the other, and you can have it just as well under the uniform rule as under classification, and it is right in this proposal now. What is the use of talking about that particular thing, when you can do it better, or at least as well, under the uniform system as you can under the classification system?

Mr. HALFHILL: You do not mean to say that under the minority report and the proposal before the Convention you can reach as many classes of property as could be reached under a scheme of classification?

Mr. CUNNINGHAM: Yes, sir; you can reach every kind of property under that proposition that is reached by classification.

Mr. HALFHILL: That is where we disagree. You gentlemen, in my judgment, have reached out in the direction of classification in order to bolster up a condition in Ohio which ought not to exist.

Mr. CUNNINGHAM: There never was anything to prevent an income tax in Ohio.

Mr. HALFHILL: There never was anything to prevent a franchise tax.

Mr. CUNNINGHAM: No.

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Mr. HALFHILL: Nor an excise tax, nor a license tax; and yet I do not think any gentleman who knows anything about the theories of taxation will claim that that is levied under the uniform rule, or that it is a uniform rule of taxation.

Mr. HARRIS, of Hamilton: Mr. President:

The PRESIDENT PRO TEM: Will the gentleman yield?

Mr. HALFHILL: Yes; if there is anybody who has any question to ask.

Mr. HARRIS, of Hamilton: As a matter of fact, have not the greatest constitutional lawyers —

The PRESIDENT PRO TEM: The gentleman has yielded for a question.

Mr. HARRIS, of Hamilton: I am going to ask a question. Have not the greatest lawyers expressed doubt as to whether any income tax can be levied? Yet they said that inheritance taxes could be, but not income taxes.

Mr. HALFHILL: I do not think all of those causes have been before the supreme court. Everybody knows that the legislature and the then auditor of state, Mr. Guilbert, who was a very capable man from Noble county, got the corporations of Ohio to accede to that law and pay their excise taxes without bringing it before the supreme court. The supreme court of Ohio has never passed on it to this day and the question can still be raised.

Mr. MILLER, of Fairfield: Do I understand you to say that you are in favor of classification because you hope that we shall receive more taxes under that system?

Mr. HALFHILL: No; I didn't say that. I said — and you probably misunderstood me — that I had reached my conclusion that there ought to be classification of property, starting from the basis of a landowner, and believing that the land paid too much taxes, and that, by a just system of classification, we could enlarge the duplicate and relieve the taxes now paid by the land. Two-thirds of the grand duplicate is land and one-third personality.

Mr. MILLER, of Fairfield: Is or is not the Ohio Bankers' Association advocating classification?

Mr. HALFHILL: The Ohio Bankers' Association or any other association, the State Board of Commerce or any other board of commerce that deals with taxes, have their own views as to that which will be best, and very likely in those instances they are trying or advocating that which will help throw some of the burden from some place to somewhere else. Is not that all human experience?

Mr. MILLER, of Fairfield: Onto whose shoulders?

Mr. HALFHILL: I do not know. Do you mean to imply by your question that it is not the duty of every member of this Convention honestly to advocate what he believes to be best for all the people of Ohio, or do you expect to confuse me by that question? Very well, then, I say that every one of us here advocates that which he believes best as to the particular system of taxation.

Mr. CUNNINGHAM: I would like to know if one class is to take up the whole of the discussion in the Convention? They have been doing it so far, and I want to have a vote on this thing before it is talked to death.

Mr. HALFHILL: Is that a question.

Mr. CUNNINGHAM: Yes.

Mr. HALFHILL: Do you ask me?

Mr. CUNNINGHAM: Yes, and I want further to ask, was it not the arrangement that the vice president, who is supposed to be honest, was to be kept out of the chair until this matter was to be finally determined?

Mr. HALFHILL: I will answer your question. I know of no such arrangement as suggested, and I will say further that I waited patiently three or four days to make an address giving my theories on the subject of classification. Now I ask you, have I taken more than a fair share of the time?

Mr. CUNNINGHAM: I don't think you ever waited any three or four days to get a chance to talk in this Convention.

Mr. HALFHILL: I have had no opportunity before, and, furthermore, I have contended against the calling of the previous question always, and you gentlemen who are in favor of the general property tax have always been very ready to move that question, and have moved the question, and you have taken your share of the time.

Mr. CUNNINGHAM: No; we haven't. Mr. Doty took two hours and a half.

Mr. HALFHILL: Suppose he did. Is he not chairman of the committee?

Mr. CUNNINGHAM: Yes, but he is not entitled to talk a week and tire everybody out.

Mr. HALFHILL: I will listen to you as long as you or anybody on the other side wants to talk, but I am within my rights, and I do not propose to be criticised by any member of the Convention as long as I am within my parliamentary rights.

Mr. CUNNINGHAM: I am not making any reflection on you; I am just simply asking for information.

Mr. HALFHILL: I will say to the honorable gentleman from Harrison county, whom I have always respected, that I think it comes with poor grace for him to charge me as a member of the Convention on this floor with being a party to anything unparliamentary. I have my rights here, and I expect to assert them. If anybody thinks I have exhausted my time under the rules, I beg to notify him that I have all the time there is, and as I am pretty able-bodied, I will stay just as long as I want to.

Mr. WINN: You know that before the recess was taken and while this matter was under discussion last week there was a list made up by the president of those who desired to talk and that your name was on the list?

Mr. HALFHILL: Yes.

Mr. WINN: You spoke in your order?

Mr. HALFHILL: Where?

Mr. WINN: When your name was reached.

Mr. HALFHILL: Today?

Mr. WINN: Whenever you obtained recognition.

Mr. HALFHILL: I do not know where my name appears on the list. I know I put my name on the list three days ago.

Mr. WINN: Do you know that the president of the Convention destroyed that list today and made out another new list?

Mr. HALFHILL: The gentleman from Defiance [Mr. WINN] certainly does not intend me to answer that question. If he intends to cast any reflection on the president of the Convention I would counsel him to cast that reflection when the president is present. Wait until that time to make the charges. While I have not always

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agreed with the president of the Convention, yet I have never gone behind his back to tell him about it.

Mr. WINN: Did you have any great trouble in getting recognition today?

Mr. HALFHILL: It has taken me three days to get recognized.

Mr. NYE: I want to ask a question about double taxation. I ask this for information. Suppose you have \$1,000 and you want to buy a farm worth \$2,000, and I have \$1,000 and I want to get a livery stable or any other business worth \$2,000. If you exempt the \$1,000 that is owed on the farm, ought you not only to exempt the \$1,000 that I owe on the livery stable or the business I bought? I ask that for information.

Mr. HALFHILL: As I stated in my remarks, it would be impossible here to outline a statutory scheme on this point. I say that double taxation exists today and you agree with me.

Mr. NYE: Yes, and I want to avoid it.

Mr. HALFHILL: My belief is it is possible to avoid it, but into what difficulties we will get in avoiding it I am unable to say, but I do believe it can be avoided. That is as far as I can answer the question. I entirely agree with you on the question of wanting to avoid double taxation.

Mr. ANDERSON: Would you have any objection to letting the friends of classification frame a proposal and those for uniform rule get up a proposal, and submit them to the voters?

Mr. HALFHILL: I would be delighted to do that. If I thought there was that much justice and good common sense in the Convention I would be delighted.

Mr. ELSON: You said that we have double taxation in Ohio and that we ought to get rid of it?

Mr. HALFHILL: Yes, sir.

Mr. ELSON: Is it possible to do so?

Mr. HALFHILL: Yes.

Mr. ELSON: A tax on an income is a double tax?

Mr. HALFHILL: Yes.

Mr. ELSON: Money.

Mr. HALFHILL: Yes.

Mr. ELSON: Mortgages?

Mr. HALFHILL: Yes.

Mr. ELSON: Can you get rid of all that?

Mr. HALFHILL: It might be right and just in one instance to tax an income, or tax a property from which the income is derived, and it might be wrong and unjust in another instance, and under these differing circumstances justice and equity would say where an exemption should be made.

Mr. ELSON: You would leave all such discriminations to the legislature?

Mr. HALFHILL: Yes; I would leave it to the legislature to frame just and equitable rules of taxation.

Mr. EVANS: What inherent justice is there or can there be in favor of this so-called uniform rule?

Mr. HALFHILL: I have endeavored to denounce the uniform rule as generally bad. If I have not made my position plain to the Convention on that point I believe I shall be unable to do so.

Mr. HOLTZ: The inequality in the valuation of property is one of your arguments for classification?

Mr. HALFHILL: That is an illustration and not an argument, a pointing out of a single thing that is wrong.

Mr. HOLTZ: Suppose at the beginning of the last decennial appraisement one man had \$10,000 in money and another man had \$10,000 that he put in real estate at that time. At this present appraisement the \$10,000 in money is still \$10,000 in money, but the real estate will probably represent \$15,000 or \$18,000. Which is the standard of value, is it the land or the money?

Mr. HALFHILL: There is no standard of value.

Mr. HOLTZ: It looks to me that money is the standard of value.

Mr. HALFHILL: There never was any standard of value and never can be under the uniform rule. It is a fraud and never was capable of demonstration, as I think was clearly stated in the argument of Mr. Doty, the chairman of the committee. I fully agree with that part of his argument.

Mr. WATSON: Not impugning your motives, do you know who is to follow you with an amendment, whether it is the gentleman from Hamilton [Mr. HARRIS] or the gentleman from Cuyahoga [Mr. DOTY]?

Mr. HALFHILL: I have no idea who is going to offer amendments or substitutes other than the one I have presented, and which I labored at earnestly when I was away from the Convention during the recess over Sabbath.

Mr. WATSON: Aren't you aware of any plan to carry on this discussion for the purpose of wearing us out by adjournment or any other way?

Mr. DOTY: No, and you don't either.

Mr. HALFHILL: I did not know it was possible to wear out the gentleman from Guernsey.

Mr. WATSON: Another question: Are you sure that the list upon which our names were recorded last week to talk upon this question has been destroyed? Don't you know many of our names were eliminated?

Mr. HALFHILL: Do you?

Mr. WATSON: Are you aware of that?

Mr. HALFHILL: You have impugned some gentleman's motives.

Mr. WATSON: I have done it openly.

Mr. HALFHILL: Then state your man openly.

Mr. WATSON: It has been destroyed by the chair. The list now up there is not the list on which I recorded my name last week.

Mr. HALFHILL: Do you mean to say that the chair has surreptitiously and wrongfully destroyed the list your name was on?

Mr. WATSON: I mean to say that the list on which my name was recorded is not in existence, and that a new list without my name on it is on the desk now.

Mr. JOHNSON, of Williams: I rise to a point of order.

Mr. HALFHILL: I rise to a point of order.

The president here resumed the chair.

Mr. JOHNSON, of Williams: What has this to do with the subject under discussion. I have been wanting to get recognition to move the previous question. These gentlemen are out of order, and discussing things not at all before the Convention, and as a member of this Convention I am disgusted with it.

Mr. HALFHILL: So am I.

Mr. JOHNSON, of Williams: The insinuation that a list has been destroyed is out of order.

Mr. HALFHILL: I agree with you.

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Mr. JOHNSON, of Williams: I don't care whether the gentleman agrees with me or not. I have some rights here as well as anybody else.

Mr. HALFHILL: Nobody that I know of has been trying to deprive anybody of any rights.

Mr. LAMPSON: Don't you think this whole situation is as bad as the "Crime of seventy-three"?

Mr. HALFHILL: Yes, and is a crime of nearly the same nature. I would like to know if the gentleman from Guernsey imputes to me any knowledge of those things he has suggested?

Mr. WATSON: I simply asked if you were aware of those things.

Mr. HALFHILL: I have said I have no such knowledge.

Mr. WATSON: Do you know that Mr. Harris, of Hamilton, is to introduce the next amendment, and that Mr. Doty is to introduce the next one?

Mr. DOTY: I rise to a question of personal privilege. This is the second time that the gentleman from Guernsey has said that I am going to introduce an amendment after the gentleman from Hamilton [Mr. HARRIS] and I don't know anything about it.

Mr. WATSON: Is it not so recorded?

Mr. DOTY: I don't know anything about it.

Mr. WATSON: The gentleman from Auglaize [Mr. HOSKINS] said so.

Mr. DOTY: I don't know anything about it, and I don't want any manipulation charged to me. I suggest that you exercise more judgment in choosing your words.

Mr. HALFHILL: I regret that the gentleman from Guernsey [Mr. WATSON] in his zeal desires to charge somebody with unparliamentary conduct. I pointed out something that was unparliamentary in the gentleman from Guernsey when he rose last Friday and moved the previous question before we had had any consideration of these two reports, and the Convention agreed with me at that time, and later in the evening session the Convention further agreed and at that time the chairman of the minority of the committee [Mr. COLTON] making this report said that we should have a full right to discussion. Now I would like the gentleman from Guernsey to listen to my answer.

The PRESIDENT: The member from Guernsey will please maintain order as far as it is possible for him so to do.

Mr. HALFHILL: I was just remarking that Professor Colton agreed when he addressed us that it was not the purpose to shut off any debate, and this is the first opportunity I have had to present my views on classification of property for the purposes of taxation. I think it would be wise if there were a number of amendments offered and if the debates were thorough upon each and every one of the amendments, and by what authority or right or rule of decency even, any member can arise in the aisles, be he from Guernsey or any other place, and object to anybody offering an amendment, or the amendments receiving full discussion, I do not know. I thank you, gentlemen.

Mr. HARRIS, of Hamilton: I offer an amendment. The amendment was read as follows:

Amend Proposal No. 170 as follows: Strike out the words "at present outstanding" in line 10,

Strike out the words "so at present outstanding" in line 13.

Mr. LAMPSON: This is to the original bill and not to Mr. Halfhill's amendment.

Mr. HARRIS, of Hamilton: That is right. I want to say if the gentleman from Allen [Mr. HALFHILL] who has just surrendered the floor, had any guilty knowledge of my amendment, as was intimated by the member from Guernsey [Mr. WATSON], then he acted uncavalierly toward me, but I absolve him, for my amendment treats of the question of making the bonds of the state and of all political subdivisions thereof free from taxation; and you will recall that the member from Allen [Mr. HALFHILL] discussed that to some extent on the floor. The matters involved in this amendment are so profound that I feel I would not be doing my duty to the state if I failed to try to impress them upon you.

Mr. WINN: I rise to a point of order. The member has spoken more than twice on this question of taxation of bonds. He spoke at the opening, then made another extensive speech and now is making another one.

Mr. HARRIS, of Hamilton: I addressed the Convention once on this subject, but not on this amendment at all.

Mr. WINN: The rule is that no member shall speak more than twice on the same subject.

Mr. HARRIS, of Hamilton: I have spoken only once on this subject.

The PRESIDENT: The member from Hamilton is in order and will proceed.

Mr. HARRIS, of Hamilton: I want to impress it upon you that those who advocate the exemption of the bonds of the state and all political subdivisions thereof from taxation are not interested in the least in the holders of those bonds. We are not here to speak for the holders of those bonds. We are here to speak for the state and the political subdivisions thereof. If it were merely in the interest of the holder of the bonds I would not have said a word in his defense, because he does not interest me in the least.

Now I am going to give you a few concrete illustrations and show how this proposition will work out. I shall start with the proposed issue of \$50,000,000 of bonds for good roads. I state that in my judgment there is no shadow of doubt that if these bonds are exempted from taxation as they would be under the present constitution, there will be no difficulty at all in floating them at three and a half per cent, on which basis all our calculations were made in the discussion of the good roads proposition. To that I add that if the bonds are not exempt from taxation it will be impossible to float them under four per cent, and further, in that flotation the difference to the state of Ohio, which is ourselves, which difference we must pay in taxes, will be in round numbers the difference of one-half of one per cent, or about \$17,000,000 in the additional charge of interest which must be paid in the form of taxes by the people of the state of Ohio. Now I further venture the statement that if by constitutional enactment you make them subject to taxation, not only will you be not able to float them at less than four per cent, thereby increasing your burden \$17,000,000, but the state will get no revenue from them. They will not be listed for taxation if owned in the state, and certainly not listed for taxation

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if owned outside of the state. A few days ago this Convention passed the home rule proposal for cities, and you all know the great sentiment underlying the home rule was the public ownership of public utilities.

Mr. ANDERSON: May I ask a question?

Mr. HARRIS, of Hamilton: Pardon me, I have neither a prepared speech nor notes, and you are likely to drive me off at a tangent from what I want to say.

Every city and village, and especially the small ones, expect within a few years to own their own public utilities. They expect, and we have given them the power to acquire the present utilities that may be existing and now owned by private corporations—we have given them the power to acquire them by condemnation, so that if they have the money there is no utility which they can not acquire through legal proceedings, and they will have a jury of twelve men selected from their own neighborhood to determine the value of those privately owned utilities. If you stop and consider a moment that the purchase of those privately owned utilities means a vast outlay of millions and hundreds of millions of dollars throughout the state, and that the purchases will be made by the proceeds of bonds issued by the village and cities, you will understand what the increase of interest may mean to the cities and villages of this state.

Then, too, when you make those bonds subject to taxation, you immediately deprive the bonds of the magnificent market which they have today in the state of Ohio, and you further penalize yourselves by forcing the interest rate up one-half to one per cent. So you are lopping off, or at least making it exceedingly difficult for you to accomplish, public ownership of private utilities by such action as is proposed in the minority report. You see how easily these innocent provisions creep into these reports. You saw section 7 inserted in the best of good faith and yet it would absolutely have nullified one of the vital principles of the home rule proposal.

Now let me point out what is likely to happen in any one of your cities, and I shall not take Cincinnati or Cleveland. There was recently offered to me by brokers in Cincinnati some bonds issued by the city of Youngstown for the purpose of providing funds for the waterworks, and I will therefore refer to the city of Youngstown. These bonds were offered to me last week on a 3.95 basis, showing not only magnificent credit on the part of Youngstown, but facilities for disposing of the bonds. Assume that the city of Youngstown wishes to acquire by condemnation proceedings, the lighting plant, if there is one privately owned in the city of Youngstown. It will require say \$2,000,000 to acquire that lighting plant. It can be done through condemnation proceedings if this home rule proposal becomes part of our fundamental law. At present the city of Youngstown can issue securities at four per cent and sell them readily at better than par. My judgment is that the city of Youngstown and all other similar municipalities will be required to pay four and one-half to five per cent when bonds are not specifically exempted from taxation. The difference in the interest between four and five per cent on this one issue is \$20,000 per annum. We will assume that the bonds run for forty years, so that in forty years there is forty times twenty thousand or \$800,000 excess in interest paid out. In the meantime, of course, the city has been securing in some way the money to pay

the interest on those bonds, and as the bonds run forty years the average time of payment would be twenty years. Say that there is interest to be calculated on the \$800,000, for twenty years at five per cent. Money doubles at compound interest at five per cent in about thirteen and one-half years. So the city of Youngstown would be penalized the small sum of \$2,000,000, an amount equal to the principal of the debt in the one issue of bonds running forty years, if they had to be sold on a five per cent instead of a four per cent basis.

Now you can take that example and apply it all over the state, in every small political subdivision as well as in the larger ones. If this proposal to make the bonds of our municipalities subject to taxation had been cunningly devised by those opposed to home rule they could not have done it better, because, while I do not say it will prevent the consummation of one of the vital principles of home rule, the public ownership of privately owned facilities, it will increase the burden millions and millions of dollars upon the people of the state of Ohio without any direct or immediate benefit to them.

You can readily see from the illustration given of the city of Youngstown that in order for the city to save or secure through taxation the one per cent difference in the rate of interest on the supposed issue of \$2,000,000 of bonds at 5 per cent, two things would have to happen; first, all the \$2,000,000 bonds would have to be owned by the people of Youngstown; and secondly, all of them would have to be reported for taxation. Now you know that these two conditions are of themselves absolutely impossible. If \$50,000 or \$100,000 of those bonds were bought and owned by the people of Youngstown and all so owned actually reported by them for taxation, then the city of Youngstown would get back in taxes one-twentieth of the amount which it had paid out in the penalty of that one additional per cent.

Mr. JOHNSON, of Williams: Will the gentleman yield for a question?

Mr. HARRIS, of Hamilton: Please let me finish. I shall be through in a minute and then will answer any question that is asked me.

Now as to the question of sound policy in this Convention: There are two great schools of taxationists. There is the school of classificationists and the school of uniform rule. There is a difference and a very great difference of opinion, but the uniform-rulers seem to have a majority of this Convention, and yet they are about to defeat their very purpose because they seem to have forgotten or never to have learned, which latter is much more probable, that the wise principle of statesmanship is concession. I am addressing you on the practical side of politics. It may be very foolish so to do, and not up to that high ideal that some of us talk about frequently but forget to practice. Now let us see the position you are in before the people in the state of Ohio. Do not forget that in 1908 there were something like three hundred and forty thousand people in the state of Ohio who voted for classification, not under any Longworth act, but after serious consideration and because it was an issue, and they voted on it accordingly. Three hundred and forty thousand voted for classification. At present the constitution provides for the exemption of bonds issued by the state and all of the political subdivisions thereof. Now you have gained much in

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many sections of your proposal. In the Lampson amendment and the Anderson amendment you have gained much, those of you who advocate home rule. You have the limitation on taxation, and that is proper and of great importance. I think it is wise, but if that which I advocate to the people of Ohio, and not for any bondholder, whose interest to me is not more than one of those stone pillars—but if you fail to do this patriotic thing by exempting the bonds of the state and all political subdivisions you force us, who might otherwise take our medicine on the other propositions and work with you, to do everything we can to defeat this proposal. We have everything to gain and nothing to lose. Is it not the part of statesmanship and wise public policy not to divide the people of the state of Ohio at the start and offer temptations to oppose your measure? I submit this for your earnest and practical consideration.

Mr. DWYER: I wish you would look at lines 11 and 12 and see whether your amendment covers future issues of school bonds and that they will be exempt from taxation.

Mr. HARRIS, of Hamilton: I thought it covered everything. That escaped me, but we will put it in. That will be covered.

Mr. JONES: I understood you to say the bonds of Youngstown now could be sold on a four per cent basis, but if this exemption is removed they would have to be sold on a five per cent basis. I want to ask you, as a man having some knowledge, whether you know of any large cities in the United States, whose bonds can not be sold anywhere, whether taxable or nontaxable, on the four per cent basis?

Mr. HARRIS, of Hamilton: You can answer that question as well as I can. I can say to you that there are any number of towns and villages—

Mr. JONES: I am talking about large cities. I ask you if you can tell this Convention of any large cities in the United States whose bonds will not sell anywhere, taxable or nontaxable, on a four per cent basis?

Mr. HARRIS, of Hamilton: I will say to you there are very few large cities west of Cincinnati that are able to sell bonds at that rate. Memphis is on a higher basis. Portland, Oregon, is on a higher basis. Vincennes offered me last Saturday public utility bonds on a basis of 5.95. I have read printed circulars about Portland, Oregon, offering public utility bonds—

Mr. JONES: I am not talking about public utility bonds or towns like Vincennes, but I am talking about large cities in this country. Do you not know that the bonds of all large cities will sell on a four per cent basis anywhere, taxable or nontaxable?

Mr. HARRIS, of Hamilton: I state as a fact, without fear of successful contradiction, that that is not so. I ask you as a banker to tell us what are the city of New York bonds selling for now?

Mr. JONES: Do not New York and Philadelphia and Boston bonds sell on a four per cent basis?

Mr. HARRIS, of Hamilton: The city of New York bonds are selling at a fraction over four per cent. They have advertised \$65,000,000 to be sold on May 19, within two weeks, bearing four and a quarter per cent, because they could not be sold at four per cent.

Mr. JONES: Are they nontaxable?

Mr. HARRIS, of Hamilton: Nontaxable in the state of New York.

Mr. JONES: How does it come, if there is anything in your argument, that in a city that has four-fifths of the liquid assets of the country, New York, they have to pay four and a half per cent when the bonds are nontaxable in New York?

Mr. HARRIS, of Hamilton: First, I do not say they would sell on a four and a half per cent basis. They are selling now on a 4.02 per cent basis. I simply answered your question and said they are offering bonds at four and a half per cent expecting to sell them on a 4.02 to 4.10 basis. And I say, as a complete refutation of your statement, that if the bonds of the city of New York were taxable they would not sell on a better basis than five per cent.

Mr. JONES: Do you not know that if the bonds of the larger cities of this country were offered to any large bank in Ohio that it would be glad to take any amount of them on a four or four and a half per cent basis?

Mr. HARRIS, of Hamilton: I say they will not do it if they are subject to taxation, because you know and I know that the only reason the banks buy them is to sell them at a profit.

Mr. JONES: You mentioned the other day an instance of where one bank had a million and a quarter of Cincinnati bonds that had been in their hands for forty years, and another place where a bank bought one million and held them during the entire term of the issue. Are not all issues of bonds of large cities bought by the banks that want to hold them as an asset easily convertible and practically as a reserve?

Mr. HARRIS, of Hamilton: You are familiar with the old axiom that "nothing lies like figures" when not properly presented?

Mr. JONES: I do not know that they are not properly presented.

Mr. HARRIS, of Hamilton: What I said was that one bank in the city of New York held a million and a quarter of bonds of the city of Cincinnati and had held them from the time of issue, and that another bank held about a million, and, what you are ignorant of, or you would not make the statement as a banker, is that under the laws of New York those particular bonds are exempt from taxation in the state of New York.

Mr. HARRIS, of Ashtabula: You have given us some information as an expert.

Mr. HARRIS, of Hamilton: I do not qualify as an expert.

Mr. HARRIS, of Ashtabula: Well, we are willing to accept it. I want to ask you what I think is a practical question. You have stated that these municipal, township or other public bonds would not be returned for taxation, or that taxes could not be obtained upon them?

Mr. HARRIS, of Hamilton: Yes.

Mr. HARRIS, of Ashtabula: Do you mean to state that it is not within the range of possibility for the general assembly to devise means whereby intangible property can be put on the duplicate?

Mr. HARRIS, of Hamilton: I do not believe it is possible for a general assembly to do that. The general assembly of which you were a member for two or more sessions, and all of those that preceded and followed you, have put upon the statute books what tax experts

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claim to be the most drastic system of statutes for the bringing out of personal property for taxation that any state in the Union has. You will find that many of the political economists have referred to the drastic laws of the state of Ohio on this subject.

Mr. HARRIS, of Ashtabula: It is true that the constitutionality of certain suggested laws has been in question, and it is said they are a violation of the section of the constitution relative to impairment of contracts. That we could remedy by a constitutional provision.

Mr. HARRIS, of Hamilton: Let me answer that. I know you are conservative and would not make a misstatement. The constitution of California had in it a provision somewhat similar to that to which you refer, making mortgages in the hands of the mortgagee subject to taxation. There was a right for the mortgagor to deduct the amount of the tax. There was a limitation as to the rate of interest. It seemed to be ironclad. You can refer to Thorpe's Digest for this section. That was a constitutional provision and if there was one section that seemed impossible to get around, that was it. It provided that taxes must be paid on those mortgages and after two or three years' trial—do you recollect the time, Professor Knight?

Mr. KNIGHT: I do not remember.

Mr. HARRIS, of Hamilton: After two or three years' trial they changed it by constitutional amendment because experience proved that the mortgagor bore the burden. He had to come to the man lending the money for his terms, and there was always added to the rate of interest an additional half or one per cent on account of the fear or risk that the mortgage could not escape taxation. After the fullest discussion and investigation, that provision was repealed because it was found that the poor man bore the burden, as usual.

Mr. HARRIS, of Ashtabula: I want you to state to the Convention if it is impossible to get those bonds and mortgages on the duplicate.

Mr. HARRIS, of Hamilton: There is one way of getting a small tax on mortgages or on notes and personal property in the form of bonds, and that is by placing them in a separate class bearing a very low rate of taxation; supplement the low special rate by a high penalty for failure to return for taxation and the problem will be solved.

Mr. HARRIS, of Ashtabula: How will you enforce the penalty if you do not find the bond?

Mr. HARRIS, of Hamilton: You can not, if you are unable to locate the personal property.

Mr. HARRIS, of Ashtabula: Why mention the penalty then?

Mr. HARRIS, of Hamilton: It simply appeals to human nature, it is the sword of Damocles. The same element which makes the man refuse to report intangible personal property in Cincinnati, where the rate is fifteen mills, and the bonds bring an income of three eighty-fives, because it is almost forty per cent of the income. Now the same element of human nature that will not pay forty per cent on the income derived from bonds, etc., if the rate were low enough—say one-quarter of one per cent, which would be equal to only ten per cent of the income (and the penalty being high)—would induce the holder to report them. It is essentially a practical question and not one of theoretic morality.

Mr. HARRIS, of Ashtabula: Haven't you omitted the idea that if the men who hold intangible personal property of all sorts would list it the tax rate would be very much lower than it is now and their burden would be lower?

Mr. HARRIS, of Hamilton: I will acknowledge that without any form of qualification.

Mr. HARRIS, of Ashtabula: It is pretty strange that we must encourage men to do what they ought to do by granting them exemptions in the twentieth century in the state of Ohio.

Mr. HARRIS, of Hamilton: But that is the history of the world. In your legislative career have you not often looked at the practical side of the question?

Mr. HARRIS, of Ashtabula: Once or twice.

Mr. HARRIS, of Hamilton: Do you not look at the practical side in dealing with your fellow men?

Mr. HARRIS, of Ashtabula: Yes. Now a last question: You have cited the case of the city of Youngstown, the credit of which is good, and which is able to offer bonds under the present exemption at an exceedingly low rate of interest. Suppose in benighted Ashtabula there is a man who has \$50,000 or \$60,000 worth of bonds and he is living there enjoying the police protection and fire protection and every protection the city affords—not many of course, but what we have—

Mr. HARRIS, of Hamilton: Judging from their representatives, they are up to date.

Mr. HARRIS, of Ashtabula: Is not he a valuable citizen, and ought they not to desire to have a lot more like him?

Mr. HARRIS, of Hamilton: You fall into the fallacy of many members of this Convention—the same as the member from Fayette [Mr. JONES] does, so you are in good company.

Mr. HARRIS, of Ashtabula: Yes.

Mr. HARRIS, of Hamilton: And the fallacy is worthy only of the only modern Adam Smith in this Convention. Do you not know that when you lend money at the established rate of six per cent interest, when you are paying one per cent in taxes you are getting a net income of five per cent on your money, and the man who buys a bond that is exempt from taxes takes four per cent, and the taxes are paid in the form of lessened rate of interest, so the bondholder's income is twenty-five per cent less than that of the banker?

Mr. HARRIS, of Ashtabula: Well, get down to Youngstown now.

Mr. HARRIS, of Hamilton: It is running in a circle. That is where the great fallacy of this whole proposition comes in. I say to you that the man who is buying municipal bonds in your neighborhood is paying a greater proportion of taxes than any single person in Youngstown, not excepting the man who owns real estate, because the rate of lessened interest on bonds is on one hundred per cent of value, while the real estate is very often assessed on seventy-five to eighty per cent of its real value.

Mr. HARRIS, of Ashtabula: I am afraid not.

Mr. HARRIS, of Hamilton: You are too fair-minded not to accept the correctness of this principle.

Mr. HARRIS, of Ashtabula: I am afraid not.

Mr. HARRIS, of Hamilton: Now there is one more proposition to which I want to call the attention of the

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Convention which is remarkable if you think over it for a minute. A person today who is taking (as we in Cincinnati are doing,) 3.85 per cent income on our city bonds, is getting one-third less income than he received ten years ago. It is a startling proposition and shows how wonderfully this exemption of municipal bonds from taxation has worked out to the credit of the different cities in the state and on what a relatively low basis our bonds are selling in the state.

According to the United States statistics the cost of living in the past ten years is about fifty-five per cent greater than ten years ago.

Mr. HARRIS, of Ashtabula: The same kind of living?

Mr. HARRIS, of Hamilton: So far as statisticians can arrive at it, but we won't quibble on that. Those are the statistics of the United States department. Therefore bonds selling on a 3.85 basis now, are selling on the equivalent of 2.50 as of ten years ago, bearing always in mind the lessened purchasing power of the dollar today.

Mr. HARRIS, of Ashtabula: Now one more question. You stated the other day that the man who had his property or wealth in four per cent bonds at the rate limited to fifteen mills would pay about forty per cent of his income?

Mr. HARRIS, of Hamilton: Yes.

Mr. HARRIS, of Ashtabula: And a man with \$10,000 in merchandise probably would make more out of that, but it would be subject to the same rate of taxation. Now if the man in business handling merchandise pays rent and interest and taxes and guarantees his help and puts his whole life in the business, is it not pure assumption on your part that he is getting any more net out of his \$10,000 than the other man, who does not have to lay awake at night and can spend his time in South Africa or Egypt, or anywhere else, knowing that what is left after he has defrauded the public out of taxes would enable him to continue during the period of his life free of care?

Mr. HARRIS, of Hamilton: He is not defrauding the public out of anything.

Mr. HARRIS, of Ashtabula: He would be if the municipal bonds were taxed.

Mr. HARRIS, of Hamilton: It is not a question of morality at all. It is a question of self preservation. I made that point as clear as the English language could make it.

Mr. HARRIS, of Ashtabula: I do not question the morals, but it is clear that you are assuming that merchandising is unvaryingly successful.

Mr. HARRIS, of Hamilton: Not at all—I made no such statement.

Mr. HARRIS, of Ashtabula: You are assuming that manufacturing is unvaryingly successful, and that the net income is higher than the income on bonds.

Mr. HARRIS, of Hamilton: No, sir; I did not assume anything of the kind. All bonds are not good either. Some railroads have been known to default. Every successful business pays a great deal more than four per cent on the capital invested.

Mr. HARRIS, of Ashtabula: That would not affect the principle we are considering; we are assuming they are all good.

Mr. HARRIS, of Hamilton: I think both sorts of

people are needed—the one with idle capital who, because he hasn't the desire, ability or courage, does not engage in business, and he who is willing to take the risks of a mercantile career. The first named furnishes part of the capital to the municipality by buying its bonds so that it can carry on public work.

Mr. HARRIS, of Ashtabula: Should he be exempt from all taxes to live in luxury?

Mr. HARRIS, of Hamilton: If you had the proper conception of taxes, you would not ask that question. The exemption of municipal bonds from taxation is not for the benefit of the buyer of the bonds, but for the credit of the city, so that the city can sell its securities at a very low rate of interest.

Mr. HARRIS, of Ashtabula: If he has enough invested in nontaxable bonds he can.

Mr. HARRIS, of Hamilton: The gentleman from Ashtabula, like a great many others, fails to take into account that great element of human nature against which all statutes are powerless.

Mr. HARRIS, of Ashtabula: I have never wholly believed it was not within the range of possibility to bring intangible property on the duplicate.

Mr. HARRIS, of Hamilton: I have not said it was impossible. I say it is improbable—intangible property is very elusive.

Mr. HARRIS, of Ashtabula: I mean at the same rate.

Mr. HARRIS, of Hamilton: The city of Baltimore has brought out of hiding hundreds of millions in a short period by exercising common sense. Personal property has there been put in a separate class with a rate high enough to bring in a fine revenue, and just low enough, with heavy penalties for non-listing, to tempt and encourage the owners to return same for taxation.

Mr. HARRIS, of Ashtabula: I do not see how you can find it better under the one system than the other.

Mr. HARRIS, of Hamilton: You do not have to find it. If you make the rate low enough, then capital in the form of this intangible property that now is not listed by the owners, because the uniform rate is confiscatory, will exclaim as did the inhabitants of the West Indies when Christopher Columbus came over in 1492, "We are discovered."

Mr. FLUKE: What is the rate on bonds in Baltimore?

Mr. HARRIS, of Hamilton: I think it is about four-tenths of one per cent.

Mr. FLUKE: Would not there be more property given in at two-tenths than four-tenths?

Mr. HARRIS, of Hamilton: Probably—but perhaps not twice as much.

Mr. FLUKE: Four-tenths is an arbitrary rate.

Mr. HARRIS, of Hamilton: Any rate is necessarily an arbitrary one. It is the part of statesmanship to fix on a rate that will produce the largest revenue, with the least friction in its collection. I believe that one question that has bothered the farmers is the question of mortgages, where the farmer does not distinguish between the mortgage note and the land. The sole reason he must always pay taxes on the land is because the land cannot be moved from place to place, nor concealed in a safe deposit vault, as can intangible personal property. If it could be readily moved or easily concealed, the "honest

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farmer" would be placed in the same class as the "bloated bondholder" who fails to list his property for taxation. If mortgages were put in a separate class bearing not over one-half of one per cent, the state would get a great deal of revenue and the farmer would get a low rate of interest.

Mr. PIERCE: I move to lay the Halfhill amendment and the Harris amendment on the table.

Mr. DOTY: On that I call the yeas and nays.

Mr. HARRIS, of Hamilton: I demand a division.

Mr. DOTY: I demand the yeas and nays on either division.

Mr. HARRIS, of Hamilton: My amendment is not to the Halfhill amendment.

Mr. PIERCE: That being true, I withdraw from my motion the Harris amendment, and I move to lay the Halfhill substitute on the table.

Mr. ANDERSON: I believe, in the first place, the Harris amendment was out of order, because the business before the Convention was the Halfhill substitute, and I can not imagine how we can table something that is not before the Convention.

The PRESIDENT: The motion is to lay the amendment of Mr. Halfhill on the table.

Mr. WINN: A point of order. The motion of the member from Butler was to lay both the substitute of the gentleman from Allen [Mr. HALFHILL], and the amendment of the delegate from Hamilton on the table. The gentleman from Butler [Mr. PIERCE] is willing to withdraw part of his motion, but I seconded it and I do not consent to the withdrawal.

Mr. DOTY: Upon that I demand a division of the question.

Mr. ANDERSON: A point of order. We have first the original proposition, then the Anderson substitute was adopted for the report of the committee, then we added to that amendment the substitute amendment of the gentleman from Allen, and the substitute amendment was the only thing at that time before the Convention. Then we have an amendment offered by the gentleman from Hamilton [Mr. HARRIS] to the Anderson substitute. Now I insist that under the rule the Harris amendment was and is out of order.

Mr. LAMPSON: The gentleman is too late to make the point of order. If he desired to make that point of order it should have been made at the time the Harris amendment was offered.

The PRESIDENT: The point of order is not well taken. The question is, Shall the amendment of the delegate from Allen be tabled?

The yeas and nays were regularly demanded, taken, and resulted—yeas 63, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	Dwyer,	Johnson, Madison,
Baum,	Earnhart,	Johnson, Williams,
Beatty, Morrow,	Eby,	Jones,
Beyer,	Fackler,	Keller,
Brattain,	Fess,	Kilpatrick,
Brown, Pike,	FitzSimons,	Kramer,
Cassidy,	Fluke,	Kunkel,
Cody,	Fox,	Lambert,
Collett,	Harbarger,	Lampson,
Colton,	Harris, Ashtabula,	Longstreth,
Crites,	Henderson,	Marshall,
Cunningham,	Holtz,	Mauck,
Dunlap,	Hursh,	McClelland,

Miller, Crawford,	Price,	Tetlow,
Miller, Fairfield,	Riley,	Thomas,
Norris,	Rockel,	Wagner,
Okey,	Solether,	Walker,
Partington,	Stevens,	Watson,
Peters,	Stewart,	Winn,
Pettit,	Stokes,	Wise,
Pierce,	Tannehill,	Woods.

Those who voted in the negative are:

Antrim,	Harter, Huron,	Nye,
Campbell,	Harter, Stark,	Read,
Cordes,	Hoffman,	Redington,
Crosser,	Hoskins,	Roehm,
Davio,	Kerr,	Rorick,
Doty,	King,	Shaffer,
Elson,	Knight,	Smith, Geauga,
Evans,	Leete,	Stamm,
Farrell,	Leslie,	Stilwell,
Hahn,	Malin,	Taggart,
Halenkamp,	Marriott,	Ulmer,
Halfhill,	Matthews,	Mr. President.
Harris, Hamilton,		

So the amendment of the delegate from Allen [Mr. HALFHILL] was tabled.

The PRESIDENT: The question now is, Shall the amendment offered by the member from Hamilton [Mr. HARRIS] be tabled?

The yeas and nays were regularly demanded, taken, and resulted—yeas 55, nays 45, as follows:

Those who voted in the affirmative are:

Anderson,	Hoskins,	Peters,
Baum,	Hursh,	Pettit,
Beatty, Morrow,	Johnson, Madison,	Pierce,
Beyer,	Johnson, Williams,	Riley,
Brattain,	Jones,	Rockel,
Brown, Pike,	Keller,	Solether,
Cody,	Kilpatrick,	Stevens,
Crites,	Kunkel,	Stewart,
Cunningham,	Lambert,	Stokes,
Earnhart,	Lampson,	Tannehill,
Eby,	Leslie,	Tetlow,
Fess,	Longstreth,	Thomas,
Fluke,	Marshall,	Wagner,
Harbarger,	Mauck,	Walker,
Harris, Ashtabula,	Miller, Crawford,	Watson,
Harter, Huron,	Miller, Fairfield,	Winn,
Holtz,	Okey,	Wise,
	Partington,	Woods,

Those who voted in the negative are:

Antrim,	Hahn,	McClelland,
Campbell,	Halenkamp,	Norris,
Cassidy,	Halfhill,	Nye,
Cordes,	Harris, Hamilton,	Price,
Crosser,	Harter, Stark,	Read,
Davio,	Henderson,	Redington,
Doty,	Hoffman,	Roehm,
Dunlap,	Kerr,	Rorick,
Dwyer,	King,	Shaffer,
Elson,	Knight,	Smith, Geauga,
Evans,	Kramer,	Stamm,
Fackler,	Leete,	Stilwell,
Farrell,	Malin,	Taggart,
FitzSimons,	Marriott,	Ulmer,
Fox,	Matthews,	Mr. President.

So the motion to table the Harris amendment prevailed.

Mr. HOSKINS: I want to get straightened out a little. We ordered the Anderson substitute printed?

The PRESIDENT: Yes.

Mr. HOSKINS: Whose amendment was it in line 10 that struck out after "bond" the words "at present outstanding"?

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Mr. HARRIS, of Hamilton: That was just what I tried to put in.

The president here recognized the gentleman from Warren.

Mr. EARNHART: Mr. President and Gentlemen of the Convention: In the matter of taxation, or rather the methods employed to create a system for levying of taxes, we are all vitally interested. It is the patriotic duty of every man to pay his just share without partiality or equivocation. The uniform rule is the only fair method for the distribution of the burdens imposed. Classification opens the door for favoritism and evasion. Its tendency is to protect the idle rich at the expense of the toiling masses. The Smith one per cent law is made the butt of ridicule by classificationists, who are in the boat of singletaxers and are trying to propel their unseaworthy craft against the current of popular sentiment. They seek to shield those best able to pay under the pretense that by giving them a lower rate they may be induced to list their property for taxation, and thereby derive some benefit which is now withheld. This would be a cowardly compromise with predatory criminals. What a spectacle! Must we treat with conspirators to induce them to partially obey the law, or shall we try some other means to regulate them? It would be more creditable and vastly more profitable to invoke and exercise the Jacksonian spirit and tell them to "come in or by the Eternal we will whip you in."

The Ohio tax commission has been doing a splendid work in increasing the aggregate of the grand tax duplicate despite the efforts of privileged classes and singletaxers to obstruct their efforts and revile their purpose. They deserve the hearty co-operation of every man who wants to be found upon the side of "equal and exact justice" in the matter of raising revenue for public expenses. It must be borne in mind that the legislature to be elected next fall should be men of intelligence and courage, whose sympathy will be in the interest of the masses and who will stand firm against the intrigue of the designing classes. It will be within their power and their imperative duty to provide means whereby each interest shall be subject to a uniform rate of taxation. And any violation of this principle should be subject to a prison sentence. All notes, mortgages, bonds and other papers of money value should bear the stamp of the assessor on tax day, each year, and be non-collectable without it. This could be easily provided for by the legislators if they were not susceptible to bribery.

There is no justification in any kind of state, county, township or municipality bonds being exempt from taxation. Their greater security will always be a potent factor in their being sold at a lower rate of interest than can be obtained by the private borrower, even though they were taxed the same as other property. Their identity can be maintained the same as notes and mortgages and this plunderbund oligarchy can be brought within the pale of common decency. The old familiar cry of special privilege that "this would drive capital out of the state" would be set up, but would soon be disproved despite the efforts of bondbrokers and corporation lawyers to fatten by plying their vocation. Now that real property is appraised at its full value, and with the one per cent law in force, there is no longer any form of excuse for concealment.

The argument that it is human nature to evade the law is a sad commentary upon the dignity of the present-day civilization. I cannot conceive how any member can stand upon this floor and subordinate what his conscience must tell him is simple justice to a desultory scheme of unprincipled expediency. Such dogmas ought to bring the blush of shame upon the countenance of every sane person. Highly favorable conditions to the borrowing of money, whether it be by the individual or corporation, generally leads to extravagance and want. The present practice of saddling a debt upon posterity greatly exceeds the limit of propriety. Instead of transmitting to them a valuable heritage, we encumber them with an unjust liability. Present needs do not warrant such a procedure. We need not take a backward step or even slacken our pace in the march of progress, but should economize, and avoid riotous living.

Tax bonds rob the small counties and center the money in the large cities. It is said assessors are incompetent. If so, we should elect better men and not change the principle. The chairman of the Taxation committee declared in his speech that classification would benefit farmers. Does he have a special commission to speak for them, or is he simply acting in the role of the Good Samaritan?

The people unconsciously exempted bonds from taxation by voting a straight ticket under which an affirmative vote on the amendment was ingeniously placed. They are now anxious to correct their mistake if given an opportunity to do so. It is the duty of this Convention to give them such opportunity. If cities need more revenue, let them see to it that a larger duplicate is obtained and all will be well. The country districts have some rights that should be respected.

The Convention here recessed until this evening at seven o'clock.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. MILLER, of Crawford: Mr. President and Gentlemen of the Convention: I purpose to use but a few minutes in the discussion of the tax proposition now before us.

I think if there is one thing in which our constitution should be explicit and provide for some degree of permanence it is the matter of taxation. The uncertainty as to the rates in the past has afforded the excuse for hiding property, a practice that has been approved, though it has struck at our integrity and patriotism.

I am earnestly in favor of the limitation of rates, and that limit should be one per cent, but I realize that some of the cities claim that it will be impossible to carry on their local government under that rule, and as we do not wish to impose any hardship on any district, I voted for the increase as provided for in the Lampson amendment, although I think that if the same efforts were to be made to find the hidden property as are made to increase the rate, there would be no necessity even for asking an increase.

I am pleased that the amendment to continue bonds on the nontaxable list was defeated, and now, in connection with that, we should adopt the suggestion of the member

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from Meigs [Mr. STEWART], and write a mandate into the constitution compelling the bond-issuing authorities to provide for the retiring each year of a certain per cent, and not allow the practice to continue that has been accountable for the conditions that now exist in some places, where bonds and obligations are maturing and no provision is made for their payment, except the refunding process.

We would certainly think that any business enterprise, corporate or private, that failed to provide for the meeting of at least a portion of its debts each year was not a very carefully managed concern, and it would take only a few years to prove the unsoundness of that kind of financiering.

The whole discussion upon this subject of taxation seems to be based on how to secure more money, greater revenues, and scarcely a word or suggestion as to how the expenditures could be reduced. How would it be if some real efforts were to be made in establishing some intelligent, effective budget system for each division of the local government, with a view of introducing sound business economy in the management of the business affairs of our state and local governments?

When we once come to consider that a dollar wasted in public expenditures is a dollar just the same, and cease to treat it as a joke, but demand that public business be just as carefully transacted as a well-managed private business, we will have made some progress.

I should like to see written into the constitution the elimination of the direct state tax. This provision was made in both the majority and the minority reports, and should be retained in the substitute.

The mixing of state and local levies and the taxation of the same property for both state and local purposes affords the opportunity and inducement to conceal from the taxpayers the real cost of local government, and it would remove the generous rivalry which now exists in every county to keep down the appraisements in order to avoid paying more than the proper part of the state taxes.

Eliminate this state levy and then direct our efforts to relieving, in a measure at least, the general taxpayer whose property is subject to the intolerable burdens for the support of county and municipality.

I quote from Charles J. Bullock, professor of economics, Harvard University, Cambridge, Mass.:

Intangibles escape pretty largely, of course, but tangibles are undervalued. That is particularly true in the country when they value cattle. It is also true with assessors in industrial districts when they value machinery and stock in trade. Tangibles are undervalued and intangibles escape or are undervalued, but doubtless the evasion is greater in the case of intangibles than tangibles.

The small home-owners and the farmers have been the taxpayers that have been imposed upon under the old regime. With the new they are satisfied. But now comes the clamor for the classification of property, and every petition and every request have come from other than the home-owners, because they feel that if the present law is strictly enforced and there is some real effort made looking to economy in the administering of our public affairs, there will be some relief afforded to those who

are entitled to it. Two farmers have said their taxes are lower under the present Smith law to one that has said the taxes were higher, notwithstanding the member from Cuyahoga [Mr. DOTY] characterized this statement as buncombe. He supposed that the secretary of agriculture had asked for answers to this one question alone. He did not know that thirty other apt and pertinent questions were included on the same sheet, and interesting answers given to all.

Mr. DOTY: You do not contend that the Smith Law lowers taxes?

Mr. MILLER, of Crawford: I contend that we have gotten away from the system of appraising, that we are appraising up to one hundred per cent, and under that arrangement, with a one per cent limit, there is no doubt that taxes have been lower than they were.

Mr. DOTY: You recognize that the one per cent law is not an assessment law?

Mr. MILLER, of Crawford: It is the means of securing the amount of money necessary to be raised by taxation.

Mr. DOTY: Is not the assessment taken care of by another statute?

Mr. MILLER, of Crawford: Yes.

Mr. DOTY: I do not think I used the word buncombe, but that is neither here nor there. Do you not recognize that the Smith tax law had nothing to do at all with the raising or lowering of anybody's taxes?

Mr. MILLER, of Crawford: No, sir.

Mr. DOTY: Do you contend that the Smith tax law increased or lowered taxes?

Mr. MILLER, of Crawford: That, in connection with the requirement that property should be valued at one hundred per cent.

Mr. DOTY: Why should it raise some and lower others?

Mr. MILLER, of Crawford: I cannot answer that.

Mr. DOTY: Is it not because of the assessment?

Mr. MILLER, of Crawford: No, sir; it is more likely that the people whose taxes were increased had improvements.

Mr. DOTY: That is entirely a matter of appraisement then?

Mr. MILLER, of Crawford: It is a matter of appraisement, but if that property were not there to appraise their rate would not be lower under that one per cent.

Mr. DOTY: Has the one per cent anything to do with it? Is it not the assessment entirely?

Mr. MILLER, of Crawford: I cannot concede that. The whole contention seems to be that intangible property escapes taxation, and yet the advocates of classification do not seem to be able to suggest how this kind of property is to be reached even under the classification scheme, except that because of the low rate they propose to place upon this intangible property it will induce the holders of this property to list the same for taxation. Then they proceed to show how the one per cent limit, a reduction of over one-half of the former rate, has been an entire failure; in other words, they might as well acknowledge that if a property holder is willing to perjure himself for a one per cent tax, he will do it for one-half per cent. I contend that what we need is to give our moral and hearty support to our tax commission in their

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earnest efforts to find this hidden property. If they are hampered by the lack of laws to enforce the listing of this property, then I believe the legislature will grant some additional power, since now there can be no reason for any loyal citizen to seek to evade his taxes. In this connection I wish to read from a clear and fair statement in an editorial of the *Ohio State Journal* of April 24, 1912, and a comment thereon by another paper:

It is said the assessors will add materially to the personal property list for taxation. Most of them are pushing their work with vigor, and are adding vast sums that have not heretofore appeared on the tax duplicate. It has not appeared heretofore because of the high rate. A property holder considered it oppression to pay three per cent on his possessions. It was, but he should have returned his property notwithstanding.

Now the incentive to perjury and dishonesty has been withdrawn. Public authority no longer encourages the property owner to tell a lie. The one per cent rate promotes integrity, which is a greater thing than plenty of revenue. The lowest public policy imaginable is fixing a rate that men will lie out of. We can better do without schools, fire protection, parks, or anything else, than honest and faithful citizens.

We are making more today in the honest returns of property than the revenue will amount to, for a true life is measured not by money, but by virtue and integrity.—*Ohio State Journal*.

The *Journal* advances moral ideas which are ideal, but in some respects its reasoning appears lame. As a matter of fact, the reform so far applies only to chattels, and today chattels pay less than ever before, and real property more.

It may well be doubted how sincere is the virtue which needs a bonus for its integrity. It may well be doubted what incentive to honesty appears in increased valuations and lowering rates. It may well be doubted how long such honesty would endure, if it exists at all, when the bonus is no longer in sight.

The incentive to perjury is not withdrawn. Its ground is shifted. The man who will lie for \$100 will lie for \$50. What is needed is a system which will compel the listing of all property, chattel as well as real, and enforce it. It is poor business to give Paul a part of Peter's property, to induce Paul to put on the front of an honest man.

When the papers of this state, such as the *Ohio State Journal*, join with us and advocate the listing of property, both from a sense of duty and integrity, and forget to intimate that the whole scheme is political buncombe, and cease to excuse the unfair listing of property, then we will begin to make some noticeable strides in the correction of unequal burdens in taxation.

To show that classification of property does not produce the results that are claimed for it, in reference to intangible property, let me state that section 13 of the constitution of Virginia permits the classification of property.

At the Fourth International Tax Conference, held in Milwaukee in 1910, Mr. T. C. Townsend, state tax com-

missioner of West Virginia, was discussing taxation work in West Virginia, and Mr. Byrd, of Virginia, asked Mr. Townsend the following questions:

Mr. Byrd: How do you equalize your assessments of personal property? How do you bring out the intangible property? What is your method? Is that under central control or under local control?

Mr. Townsend: That is under central and local control combined. We are like a great many other states, we do not bring it out. We can't get at all of it.

Mr. Byrd: I am interested in the question of how to get that personal property out, particularly intangible property. I was in hopes you had some method by the exercise of some central authority by which you could bring that out. We are laboring with that question now in Virginia.

Mr. Townsend: We have labored in West Virginia for a low tax rate. We cannot classify property for taxation. I would recommend we pursue the policy adopted by the states of Pennsylvania and Maryland; that is, a specific rate on intangible property. But inasmuch as we cannot do that under the restrictive provisions of our constitution, we are in favor of a low rate, and we have reduced the rate to such an extent that we have brought out a great deal more intangible property than we had on the books under the high rate.

This is certainly a frank admission that the hidden property is the source of as much annoyance in Virginia, with its classification, as it is in West Virginia or any other state where the uniform rule prevails. A challenge as to rates was issued by Mr. Townsend to the states of the American Union, and who accepted the challenge? Was it a state with classification? No, but one with the uniform rule—Kansas. Ohio has taken her lesson from West Virginia, and if we only sustain and uphold our tax commission by a clear and expressed public opinion, we will soon have removed the odium from our method of taxation.

Let us for once try the expediency of upholding the law and the constitution; having resorted to everything else, we might try the experiment of obeying them.

I maintain that the good citizens of Cleveland have a duty to perform in the investigating of the returns of some of their corporations, and if the reduction of from ten to sixty per cent from last year's personal returns is not justifiable, then the assessing officers and the corporations should be punished. The citizenship of Cleveland and of every other taxing district should stand as a unit for full and honest returns from every owner of property, be the owner a corporation or an individual.

Provide for the elimination of the direct tax by the state, and nothing remains but for each taxing district to secure the just portion from each property owner within its limits.

I am pleased that the substitute of the member from Allen [Mr. HALFHILL] was offered first, because it would have left the whole matter to the legislature. This would open up the fight every session of the general

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assembly, and results would be very unsatisfactory, as shown by an address of Clement F. Robinson, of Portland, Me.:

After examining the mass of legislation which was put forth by the comparatively few legislatures which met this year, and after noting how few of the acts on the subject of taxation show any real attempt to grapple with the difficult problems of the method of obtaining revenue, one is more than ever convinced of a lack of well-educated public opinion, and of the need of conferences such as this to formulate and direct the needed reforms.

Mr. Halfhill said that with classification would come the shifting of the burden of taxation from real estate to personal property. Listen to what Professor Charles J. Bullock, of Harvard, said under the caption of classification—that classification of property must be based upon facts, and the first fact it must recognize is that the heavy taxes needed at the present time to defray the increased cost of local government must fall, chiefly, upon real estate:

Intangible property is easiest of all to conceal or remove from one jurisdiction to another. It can be taxed successfully only by making the rate moderate and uniform throughout the widest possible area. For this reason it is desirable not only that the rate should be the same through an entire state, but that the various commonwealths should, so far as practicable, bring their rates to a common standard. In the next place, intangible property consists of investments from which the owners on an average derive but simple interest; perhaps five per cent is a fair average in most parts of the United States. In a reasonable system of classification, then, it would seem that the rate for intangibles should not exceed such a figure as a government can collect with reasonable certainty from property that is easily concealed and yields only an income of five per cent. Experience shows that from five to six per cent of the income is a reasonable figure for any tax upon intangible wealth; and that taxes exceeding this rate, by causing evasion, are less productive than those which do not exceed it. Pennsylvania and Maryland have learned this lesson and have demonstrated that a tax of 30 or 40 cents per \$100 is the safe limit in the taxation of intangibles.

Much has been said in reference to the inconsistency of the uniform advocates, because they allow some classification; they are no more inconsistent than those favoring classification. For proof listen to the same authority quoted above. Professor Charles J. Bullock says:

I take it that we are all agreed that our committee on uniform classification of real estate have performed a very important task, and that this report is a very substantial record of progress. It is not to be expected, however, that any such first report could cover all the ground; and the report is such as to give me at least a desire for more of the same sort of thing. I am going to move, Mr. Chairman, that the report be accepted, and

then serve notice at this time that I am going to submit to the committee on resolutions a resolution asking for the continuation of this committee, with a view of further investigation. I believe, for instance, that if this committee should send this report to every state and local official to whom they applied for information, they would receive a volume and a kind of information about local conditions that would enable them to bring out a report next year that would be of great value.

The resolution referred to by Professor Bullock is as follows:

WHEREAS, This conference is of the opinion that the adoption by the several states of the Union of an inheritance tax law, framed along the lines of that submitted by the special committee of the association, would provide a fair return to the state treasuries, avoid double taxation, and promote interstate comity;

Resolved, That the secretary of the International Tax Association be requested to forward to the proper officials of the several states of the Union a copy of the proposed law, together with the text of this resolution, with a request to submit the same to the proper committee of the legislature at its next session.

What is the idea of modern taxation tendencies? I quote from page 304, Third International Conference, 1909:

In the taxation efforts of the nation there are three distinct tendencies:

First. The exemption of credits and the gradual shifting of the burden of taxation from personal property to land holdings.

Second. The employment of taxation as an introductory and partial agency in the regulation of mercantile and manufacturing corporations.

Third. A recognition of the principle which fixes taxation upon the earning power of man and property.

What report was made to the conference in reference to Ohio's recent laws and the creating of a tax commission? On page 269, Fourth International Conference, 1910, is the following:

By creating a permanent tax commission Ohio has this year joined in a movement, inaugurated a few years ago by some of its neighboring states, which seems to have won the general support both of practical administrators and of theorists. Minnesota, Wisconsin, Michigan and West Virginia, by centralizing their tax systems, have increased their revenues and equalized the burdens of taxation, and Ohio seems inclined to attempt the same result. The Ohio law is the most elaborate of any I have seen, and embodies the most effective terms of the acts in those states which have been taken as models.

And I only cite this because it has been charged that all the argument produced by the uniform advocates is unsupported by any worthy or learned authority.

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Mr. HALFHILL: The maximum rate of one cent under the present valuation is about equal to the rate of three cents under the valuation of 1910?

Mr. MILLER, of Crawford: I think so.

Mr. HALFHILL: So that when this amendment proposed by Mr. Lampson of twelve mills goes into the constitution it will equal thirty-six mills under the old valuation?

Mr. MILLER, of Crawford: Yes, sir.

Mr. HALFHILL: And this proposal then does raise the tax limit as fixed by the legislature to the extent of six mills?

Mr. MILLER, of Crawford: Yes; I think I stated in the beginning that I was very favorable to the one per cent limit, but if there is any truth in the statement that they can not possibly get along with that one per cent limit, I would vote for the Lampson amendment on that account. In our town and county we can get along on the one per cent.

Mr. HALFHILL: This twelve mills in the Lampson amendment applies to property outside of a municipality?

Mr. MILLER, of Crawford: I am very sorry it does. I would like to see the amendment general.

Mr. HALFHILL: And the limit in this—the extreme limit—is fifteen mills?

Mr. MILLER, of Crawford: Yes, but it is not mandatory. It is permissive.

Mr. HALFHILL: Suppose in raising levies in the city they find it necessary to raise in the country also?

Mr. MILLER, of Crawford: I don't think it will be necessary.

Mr. HALFHILL: Are you in favor of putting a tax limit into the constitution?

Mr. MILLER, of Crawford: Yes.

Mr. HALFHILL: Then by putting this limit in here have you not voluntarily voted to raise the tax limit to the extent of six mills on property outside of the municipality?

Mr. MILLER, of Crawford: As I stated, out of consideration to the municipalities I am willing to have that done.

Mr. HALFHILL: You could raise it in the municipalities and not outside?

Mr. MILLER, of Crawford: Yes; we could have done that, and I shall not be surprised if it is yet done.

Mr. HALFHILL: Do you not suppose that the legislature will be prevailed upon immediately to repeal the existing one per cent law, and then the only limit will be in the constitution?

Mr. MILLER, of Crawford: They might be prevailed on if there is no limit in the constitution. They could not go above twelve mills.

Mr. HALFHILL: Do you not suppose that the legislature will justify itself by saying that this Convention raised the tax limit?

Mr. MILLER, of Crawford: It is possible.

Mr. HALFHILL: And, therefore, they will repeal the other law?

Mr. MILLER, of Crawford: I do not know what they will do. I do not know but what, if the opportunity is presented, I will vote to retain the one per cent.

Mr. LAMPSON: Does not the gentleman know that we do not limit at all, but just put a maximum above

which the legislature cannot go, and if we do not put any maximum—

Mr. MILLER, of Crawford: The legislature can go as high as it pleases.

Mr. NORRIS: I understand that this proposal now under consideration is the amendment introduced by Mr. Lampson. Is that it?

Mr. MILLER, of Crawford: That is part of it.

Mr. NORRIS: Does that limit taxes at all?

Mr. MILLER, of Crawford: Yes.

Mr. NORRIS: How?

Mr. MILLER, of Crawford: It provides for a limitation of twelve mills.

Mr. NORRIS: It provides for a limitation of twelve mills?

Mr. MILLER, of Crawford: Yes; twelve mills for the country districts and fifteen mills in the municipalities.

Mr. NORRIS: Excluding interest and sinking fund?

Mr. MILLER, of Crawford: Yes.

Mr. NORRIS: Can the legislature not assess fifty mills for sinking fund purposes, and is there in fact any limit as to the sinking fund and the issuing of bonds?

Mr. MILLER, of Crawford: Under the present law?

Mr. NORRIS: Under this proposal.

Mr. MILLER, of Crawford: No.

Mr. NORRIS: I suspect not, too. So, is there any limit at all?

Mr. MILLER, of Crawford: I do not know. The words, "exclusive of sinking fund", of course, do not apply to the country.

Mr. NORRIS: They do not?

Mr. MILLER, of Crawford: No, sir.

Mr. NORRIS: I advise the gentlemen in charge of the matter to look to the wording of their proposal.

Mr. MILLER, of Crawford: The proposal, as far as the country is concerned, gives an extreme limit of twelve mills.

Mr. JOHNSON, of Williams: Mr. President: The question of taxation is an important one, not only in this country but in every country in the world. The first duty of the government is to protect its citizens so that they may enjoy their life, their liberty and their property. A government that does that well has furnished sufficient reason for its existence. A government can not be maintained without money. Its very existence depends upon its authority to compel its citizens to contribute to its support. A government to be successful must have the confidence and support of its citizens and this is especially true in a republic. A hated government can not last. I presume that the one thing that has caused more discontent in this country than all the other questions combined is the question of taxation. I do not know that I can furnish the Convention with an information that will help solve that question. After this question had been discussed and thoroughly considered by the committee on Taxation, and no agreement reached, I agreed to sign the majority report so that it could be presented to the Convention for its consideration. I might further add that the report was signed with a positive understanding that I would be at liberty to speak and vote just as I thought best when the matter was considered by the Convention. I was somewhat amused when my friend, the member from Cuyahoga county [Mr.

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DOTY], said that the member from Guernsey [Mr. WATSON] and the member from Medina [Mr. WOODS] were paying the taxes of the city people and did not know it. The chairman of the committee on Taxation says property does not pay taxes. People pay taxes. I read something like that many years ago. There is much truth in it. Notwithstanding he asserted that property does not pay taxes and never did pay taxes, yet he claimed that every one who owns property desires to have his particular class of property exempted. I quite agree with him that people pay taxes. Yes, every one of them, men, women, children imbeciles and idiots, all are supposed to pay taxes if they own property, and I sometimes think that those who do not own property pay taxes also. Not only do they pay taxes, but they pay more than their just share of the taxes for the support of the government. It is claimed by many that the consumer pays all the taxes; perhaps it is true that the consumer in the end pays the taxes.

In the discussion in regard to classification of property for taxation much is said about the single tax. If classification is right, and if there is a demand for it, I think it is wrong at this time to oppose it because of the claim that it will lead to single tax. In my opinion classification will not lead to single tax; it has nothing whatever to do with that subject, and if it should prove a good thing it would have a tendency to prevent the adoption of single-tax measures.

I do not know whether I am a singletaxer or not, but I do know that if there ever is a landed aristocracy in this country, or if the land in this country is owned by persons who do not farm it, and if we become a nation of tenant farmers, then single tax will not hurt the land owner, for he will simply shift the taxes upon the consumer, who will be compelled to pay it. Nothing is more certain.

I repeat, I do not know whether I am in favor of the single tax or not, but I do know that all this cry about single tax does not frighten me in the least.

There is a great deal of discussion about the classification of property for taxation. I am inclined to think that a just classification might be a good thing but that it should not be made in the interest of any particular class.

It is sometimes supposed that all classes of intangible property should be taxed at its full value in money, and if it is not so taxed corporations will be relieved from contributing their just share of taxes for the support of the government. In my opinion that is a fallacious supposition. The taxation of all classes of intangible personal property has never been a success no matter what penalties were attached thereto.

In his discussion of this question I was surprised to hear the member from Fayette county say that no one in that county ever evaded or even attempted to evade paying his just share of the taxes, and in the next breath say that the people in the same county elected their assessors in the past with the understanding that the property of the county should be assessed at less than its true value in money.

In this discussion I wish to read a few paragraphs taken from a collection of essays by Bolton Hall in a book entitled "Who Pays Your Taxes?" These paragraphs will be found in chapter 7, entitled "Robbing One

Another.' This chapter is Mr. T. G. Shearman's lecture delivered before the Ohio legislature about twenty-five years ago:

There is no more persistent notion than that the taxation of personal property will transfer the burdens of government to corporations and relieve various classes of the community, especially the farmer, from taxation that they are little able to bear.

In some states the business of perjury is mostly confined to the assessors who regularly make returns which they know to be false but cannot make true. In others, such as Ohio, Vermont and Connecticut, perjury is the business of the taxpayers.

Experienced Ohio assessors say that the most honest returns of property are always made by the poorer classes and the most inadequate returns by millionaires, while widows, who have no experience in business and trustees who represent widows and orphans, are taxed upon every dollar that they own.

In 1879 California adopted a new constitution. It was carried through by the votes of farmers. Merchants, bankers and capitalists generally voted against it. Under that law it was attempted to get most of the chattel property of the state listed at a fair value; with this result: In 1880 the personal property of San Francisco, not including money, amounted to \$68,584,000, but in 1886, six years after the constitution was amended, personal property was returned to the amount of only \$48,705,000. But in regard to money returned for taxation the discrepancy was even greater. In 1880 the money returned amounted to \$19,747,000, but in 1886, six years later, it amounted to only \$6,188,000.

I do not care to be responsible for the accuracy of the statements made in my quotation from Mr. Shearman's lecture, but assuming that these quotations are in the main correct, it is evident that the constitutional amendment in California has not resulted in bringing personal property out of its hiding place. Whether personal property can be placed on the tax duplicate for taxation in Ohio remains to be seen.

Now, in regard to my own views concerning taxation. I very much dislike to have the tax rate fixed in the constitution, but if the rate is placed in the constitution I am opposed to having it fixed at greater than ten mills, or one per cent, for the rural communities. I would like to have the constitution provide for the income tax as well as a tax on inheritances; and while I am personally in favor of a just and fair classification of property for taxation, and think that it would be an excellent thing for the people of the state, because I believe that it could be so arranged as not to discriminate against the farmer, yet, Mr. President and gentlemen, I shall not vote to put classification into the constitution of Ohio because nine-tenths of my constituents are opposed to it, and also because I think its submission might have a tendency to defeat the constitution as a whole.

I am opposed to submitting a proposition to tax the bonds of the state. Only a few years ago an amendment was adopted providing that state and municipal bonds

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should not be taxed. I voted against the amendment, but notwithstanding the opposition to it, it was carried by a large majority. I think it would be best to give that amendment a little further trial before it is repealed. I think it is very unwise to submit too many questions at this time upon which there is such intense feeling. I hope that this Convention may provide for some progressive measure in regard to taxation so that it may meet with the approval of the people. In my opinion, if such a course is not adopted we might better leave the constitution as it is in regard to that subject.

Mr. JONES, I want to inquire if the gentleman did not misunderstand my statement with reference to evasion of taxes in Fayette county? What I meant to say was that it had been almost universal heretofore to evade taxes as to intangible property, but to my great satisfaction we are greatly improving that situation since the passage of the one per cent law.

Mr. JOHNSON, of Williams: I misunderstood the gentleman then, and it does him no harm if he didn't say it. I understood him to say it.

Mr. FACKLER: I offer an amendment and will make a short explanation, not taking any other gentleman's time. This amendment is offered to reach a ground upon which—

Mr. WINN: I rise to a point of order. The amendment has been offered, but it has not been read.

The amendment was read as follows:

Amend Proposal No. 170 as follows: Strike out all after the resolving clause and substitute the following:

ARTICLE XII.

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing

for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Strike out the title and insert:

"To submit an amendment to article XII by amending sections 1, 2 and 6 and by adding new sections Nos. 7, 8, 9 and 10.—Relative to taxation."

Mr. HARRIS, of Ashtabula: In section 2, the first line, should not that read "a uniform rule"?

The SECRETARY: It reads "a uniform rule".

Mr. HARRIS, of Ashtabula: You read it "the uniform rule".

Mr. EVANS: Would you have any objection to putting "uniform rules" instead of "a uniform rule"?

Mr. FACKLER: I think I would like to adhere to the language that I have. This is an effort made to arrive at a compromise. Sufficient votes have been taken in the Convention to clearly demonstrate that the sentiment of the Convention is against classification, and it seems is against leaving the matter open to the legislature. Frankly I would be in favor of leaving the whole taxation matter to the legislature, but the sentiment of the Convention is against that. On the other hand, an effort has been made to limit the tax rate in the constitution. I believe that such a limitation as a constitutional matter should not be enacted. There are so many good things in the proposal that for the purpose of getting some of the good features provided in it those in favor of limitation should waive that point, inasmuch as they now have the limitation by law more drastic than is proposed here, and it is extremely improbable that the legislature within anything like the near future, unless there should be some great public necessity, or some overwhelming public opinion in its favor, would vote for an increase in the tax rate to such a point as is provided in the amendment of the gentleman from Ashtabula [Mr. LAMPSON].

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This amendment takes out all limitation from the proposal as it now stands. It adds to the inheritance tax provision a section whereby the legislature can tax collateral inheritances at a higher and a different rate than it taxes direct inheritances. Certainly upon collateral inheritances the weight of the taxes would rest most easily, and it would be perfectly natural to allow a larger portion of the estate that goes to collateral heirs to be taken for public use than where it goes to direct descendants.

The next point changed is section 9, which provides for excise and franchise taxes and taxes upon the production of coal, oil, gas and minerals. Now there is no means under the present existing law whereby society can avail itself of the vast resources which have been placed here by Providence, presumably for the benefit of all, but which have been appropriated for the benefit of a few. It cannot be told where oil is, it cannot be taxed until it comes from the ground, and there could not be any fairer method of taxing than to tax it when it comes from the ground.

Section 10 provides that in contracting indebtedness arrangements shall be made to pay it. It provides that at least two per cent of the debt must be paid each year, which would liquidate it in fifty years, a much longer period of time than most of the bonds issued in the state of Ohio run. Certainly neither the state nor any of its subdivisions desires to go into debt without providing for liquidating the debt. Such a course would lead to disaster, and I provide that the debt should be paid gradually. Of course, the debt can be paid more rapidly than here provided, but let this limit be placed so that this Constitutional Convention can say to the different subdivisions, "You must pay on your debts as you contract them, and you must not pass the burden on to succeeding generations."

The income tax is provided for here. There is no fairer way of levying taxes than upon incomes. The man drawing a large income is deriving greater benefits from society than any other man, and upon his shoulders should be placed a very large part of the burden of carrying on the government. Gentlemen, I believe there are so many things of merit in this proposition, and so many things that are progressive and really demanded by the spirit of the times, that it will pay us to lay aside our differences on uniform taxation and classification, and to lay aside our difference on the bond proposition, and to adopt this, and I believe that if we adopt this it will be overwhelmingly ratified by the people at the polls.

Mr. ELSON: You exempt \$200 for each person. Does that mean there shall be \$2,000 exempted in a family of ten?

Mr. FACKLER: That is the provision of the present constitution. Usually the head of the household owns the property, and it would only exempt \$200 from the owner, and not for each person in his family.

Mr. ELSON: How would you in any possible way apply the uniform rule to taxing the products of the earth?

Mr. FACKLER: If the gentleman pleases, I am not making an argument in favor of or against the uniform rule or in favor of or against classification, but this Convention has voted in favor of the uniform rule on a number of roll calls, and it should be considered that that question is now a closed one, and the Convention should go ahead and make the most progressive taxation pro-

posal possible, assuming that the uniform rule is an accomplished fact.

Mr. HARTER, of Stark: I did intend to make a speech this afternoon, but I waive my privilege, because I am very thoroughly in favor of Mr. Fackler's proposal. I am so much impressed with this and the discussion we have had in this Convention, that I willingly waive my opportunity to speak. I am in favor of this sensible, practical compromise.

Mr. WATSON: I offer an amendment.

The amendment was read as follows:

Amend the amendment of Mr. Fackler as follows:

At the end of the amendment add the following:

"SEC. 11. Revenues for the payment of the expenses of the state may be provided by assessment upon the counties, but every such assessment shall be apportioned among all the counties ratably according to the aggregate amount expended during the preceding year in each county by the county and all political subdivisions thereof."

Mr. WATSON: Just a word. The committee as a whole agree to that proposal. It is in both reports, and I think it should go in.

Mr. DOTY: May I correct the member before he makes a speech? Substantially you are correct, but the two reports differ in the wording. The majority report and the minority report provide for the doing away of all state levies, but the minority report does it one way, and the majority report includes some other provision that Professor Knight asked to have incorporated. Do you not remember that?

Mr. WATSON: I thought the phraseology was the same.

Mr. WOODS: I am one of those in favor of the uniform rule, and also one of those who have been in favor of putting a debt limit and a maximum tax levy in the constitution. We have talked about this matter long enough, and I am satisfied that there are two sides to the maximum tax levy and debt-limit propositions. Our friends from the cities insist very strenuously against those limitations going into the constitution. Now I wish that those of us who are in favor of the uniform rule might have an opportunity to talk a little, and let me say right here, if this Fackler proposition is adopted we have gained a whole lot. I am one of those who has been raised to view the uniform rule as the only rule. It is right. It has been the law of this state for years, and the only trouble has been that our administrative part of the law has not been right. We have not had a tax system in Ohio until the last three years that was worth the paper it was written on. There was no head and no top and no bottom and no side. We passed a law providing for a tax commission about three years ago, and I helped draft that bill. I am proud of it to this day. That bill is based upon the fact that all taxes shall be levied under the uniform rule and all property shall be taxed at its true value in money. That is what the old constitution says, and I think the new constitution should say the same thing, because it is right.

Now if any of us expect to put a provision in here that will do exact justice in every case, we are expecting to do something that cannot be done. It is absolutely

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impossible, but here is the thing: After fighting for years and years we have a tax commission that is doing good work. Nobody can deny that. We provide in that tax commission law that they should commence with the big fellows, they should commence there first, and if they could not get the big fellows, we don't want the little ones. You all admit they got the big fellows—the railroads and the banks and the telephone companies—and all those public utilities are on the tax duplicate at near their true value in money. Before we had the law, railroads paid only about fifteen per cent of what they were worth, and other utilities were the same way. Banks were nearer their true value in money than any other business in the state of Ohio. I say to you that this tax commission has put the corporations of these big concerns on the tax duplicate at nearly their true worth. They have not got the intangible property yet. We gave them all they could be expected to accomplish in two years. I have talked with the tax commission and I know they want us to keep the uniform rule in the constitution. If it is not kept in the constitution, if you provide for classification or change this uniform rule, you will undermine the whole work of the tax commission. After the fight that has been made in this state for all these years, and after the recommendations that that commission has made, and after the good work that they have done, do we propose here, when most of us admit we do not know anything about taxes, do we propose to go under their work and tip the whole tax machinery over into the ditch? I do not think we should do it, and I do not think we can afford to do it. I am for the Fackler substitute and for stopping the talk about this matter. I say to you who are for the uniform rule that in the Fackler amendment you are getting it, and when you get it you are saving the tax commission law, and you are saving all the good work the tax commission has done.

Not only that, but you are putting bonds back on the duplicate, and they ought to be back on the duplicate. I was in the house when bonds were taken off the duplicate. My friend Doty and I remember the day, and I say to you, gentlemen, that one of the worst things that was ever done in the state of Ohio was the taking of those bonds off the tax duplicate. It was not a square deal with the people from start to finish. It was forced through this house—the roll call was held up in this house until they could send over to the Neil House to get members here to pass it. Am I right on that, Mr. Doty?

Mr. DOTY: Was the roll call ever held up so that the member from Medina [Mr. Woods] could vote?

Mr. WOODS: Yes, but not that day, and that proposition, after it got through the houses here, was submitted to the people through the action of a state convention, and people who were against it voted for it on election day without knowing they were doing it.

Mr. PECK: How did you find that out?

Mr. WOODS: The action of the people brought about in the legislature the repeal of the Longworth act, and it ought to have been repealed long before.

Mr. DOTY: Allowing that to be all so, and there is some modicum of truth in the statement, I would like to ask the gentleman if he does not think it is about time to put this whole question of whether the people really want classification or the uniform rule up to the people

on a fair, square basis, where there can be no hocus pocus about it—don't you think it is time to do that?

Mr. WOODS: No, sir.

Mr. DOTY: I thought you were in favor of the people ruling.

Mr. WOODS: I am in favor of the people ruling—

Mr. DOTY: Oh!

Mr. WOODS: —but I am not in favor of submitting forty propositions in the alternative.

Mr. DOTY: In other words, you are in favor of people ruling, but—?

Mr. WOODS: Yes; if you want to put it that way.

Mr. DOTY: Well, I want to say that you are not getting a limitation of the tax rate or the debt rate.

Mr. WOODS: Those propositions are the law of the state of Ohio, and if I could do it I would pick up that statute and put it in the constitution bodily, but I cannot do it, and if you stay here and argue this proposition much longer I am afraid you will lose all. We cannot afford to do it. The other side have come, and have offered to come, more than half way. Let us meet them. This is a debatable proposal. I don't think we are, but we may be, wrong, and we cannot expect to get all we want in this life. Now, let us end it. We are getting the uniform rule. We are getting the bonds back on the tax duplicate, and when we speak of that I want you to remember that the tax commission in their 1911 report, on pages 4 and 5, ask that this constitution be so amended that bonds might be placed back on the duplicate. Let us put them there. We cannot have the uniform rule and leave all the bonds off the duplicate. I think the uniform rule and putting these bonds back on the duplicate is a great victory for us, and let us end it now.

Mr. HARRIS, of Hamilton: You advocates of uniform rule are urging the friends of uniform rule to wipe out all limitation on indebtedness. In other words, you are willing to let the legislature double or treble the present limitation, notwithstanding they think that farms are taxed up to one hundred per cent?

Mr. WOODS: I am not willing to do it—I do not want to do it—but I am willing to give up some things in the fight.

Mr. NORRIS: Are you willing to give up the things you are fighting for?

Mr. WOODS: Not all of them.

Mr. NORRIS: The things you are fighting for?

Mr. WOODS: No, sir.

Mr. NORRIS: Well, you are trading them off for a mess of pottage.

Mr. WOODS: I am not trading them off for anything.

Mr. HALFHILL: Do you believe it is right to compromise on a principle that you are contesting for?

Mr. WOODS: Not always.

Mr. HALFHILL: Are you contesting for any principle on that side of the house?

Mr. WOODS: Yes, sir; the big principles that we are fighting for are the uniform rule and the taxation of bonds.

Mr. HALFHILL: That is in the constitution now.

Mr. WOODS: The taxation of bonds? No.

Mr. HALFHILL: Is the principle you are fighting for the uniform rule or the taxation of bonds?

Mr. WOODS: Those two.

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Mr. HALFHILL: Both of them?

Mr. WOODS: Yes.

Mr. HALFHILL: Then why are you not willing to submit the two propositions in the alternative?

Mr. WOODS: I do not think we should do that any more than we should do it on two-thirds of all the other matters that have come before us. We are here to settle some things ourselves.

Mr. HALFHILL: You think it would be wrong, inasmuch as we are disputing and cannot agree upon the two principles—you think it would be wrong to submit them so that the issue could be fairly tested by a vote of the people?

Mr. WOODS: I do not know that I would put it that strong, but I am not in favor of submitting classification to the people. Furthermore, I do not think any two of you can agree on any classification scheme.

Mr. HALFHILL: Do you not think the great question of taxation now before us is of as much importance as the license question under the police power, and did you not vote to submit an alternative proposition there?

Mr. WOODS: If I remember right, I don't think there is an alternative proposition there.

Mr. HALFHILL: Is it not submitted in the alternative, and is the form not in the alternative?

Mr. WOODS: The proposal for liquor license?

Mr. HALFHILL: Yes. Whether we shall proceed under certain police power.

Mr. WOODS: You vote for or against every proposal.

Mr. HALFHILL: Could not we now submit to the electors an alternative proposition providing for the uniform rule, and your theory of taxing bonds, and submitting also our view, which is the classification idea, and leave it to the legislature how property should be taxed provided our views are adopted and made part of the constitution?

Mr. WOODS: Do you mean, could it be done?

Mr. HALFHILL: Yes?

Mr. WOODS: It could be, but I am not in favor of doing it.

Mr. HALFHILL: Then I will ask you if it is not as important to do that as it was to settle what theory of police power you would exercise in the control of the liquor traffic.

Mr. WOODS: No, sir; I have not gone into any argument on classification. I am against it. I could give you a lot of reasons, but I do not care to take up the time of the Convention.

The PRESIDENT: The gentleman from Mahoning [Mr. ANDERSON].

Mr. DOTY: Will the gentleman from Mahoning [Mr. ANDERSON] yield?

Mr. ANDERSON: Yes, if I do not lose the floor.

Mr. DOTY: All right. There are two amendments pending, and I offer an amendment that does not take the place of any standing amendment—

Mr. WINN: I object, and I rise to a point of order. There are three amendments now pending.

Mr. DOTY: Will the secretary tell us how many there are?

The SECRETARY: Two.

Mr. WINN: Three.

Mr. DOTY: The secretary says two. The amend-

ment I desire to offer does not affect any of the pending amendments. It proposes to add this amendment that I offer to whatever may be in the Fackler amendment or the Anderson proposal, or any amendment thereto, and therefore I offer it at this time, and after it is read I will explain what it is.

Mr. WINN: I rise to a point of order. I make the point that after the member from Mahoning [Mr. ANDERSON] has been recognized he cannot yield the floor to somebody else to offer this amendment and then have the floor again.

The PRESIDENT: The point is not well taken.

Mr. WINN: The point certainly is well taken.

The amendment offered by the delegate from Cuyahoga [Mr. DOTY] was read as follows:

At the end of the proposal add:

That, at the same time and upon the same ballot, which ballot shall be separate from all other ballots upon which amendments may be submitted, the following alternative proposed amendment be submitted to the electors of the state:

ARTICLE XII.

- SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money, or other thing of value.

SECTION 2. The general assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It may classify the subjects of taxation so far as their differences justify the same in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended or contracted away. Bonds of the state of Ohio, bonds of any city, village, hamlet, county or township in this state and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, burying grounds, public school houses, houses used exclusively for public worship, institutions for purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value. A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax.

SECTION 8. Laws may be enacted providing for

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the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to income derived from investments not directly taxed in this state, but a part of each income not exceeding three thousand dollars in any one year may be exempted from such tax.

Resolved, further, When these competing amendments to the constitution are submitted to the electors, the ballot shall be printed as follows:

	For uniform rule in taxation.
	For classification in taxation.
	Against both amendments.

so that each elector may express separately by making one crossmark (X) his preference for either of the two amendments or against both amendments. If the majority of votes are cast "Against both amendments" as compared with the total of those cast for either amendment, there shall be no amendment to the constitution; if not, the amendment which has the larger number of votes shall be adopted as the amendment to article XII, sections 1, 2 and 6 of the constitution.

Mr. ANDERSON: First I want to ask the gentleman from Cuyahoga [Mr. DOTY] if this amendment is the same as the Fackler substitute, except that this provides for classification and the Fackler amendment provides for uniform rule?

Mr. DOTY: Not quite. It is only because I had not seen the Fackler amendment at the time, however. It was meant to be the same. I meant to have section 2 as you have it in the Fackler amendment, providing for the amendment voted upon by the people six years ago.

Mr. ANDERSON: In other words, you want to give the people an opportunity of voting for the uniform rule or for classification?

Mr. DOTY: Or against both.

Mr. ANDERSON: All the other things being the same?

Mr. DOTY: Yes.

Mr. ANDERSON: It seems to me that we should start to voting to determine what we want. We have only a few more hours left in which to consider the other proposals upon the calendar, and there is a quite a number that are of relatively great importance. I notice that when men are speaking very little attention is paid to them. In other words, we are ready to vote. I don't think we shall receive any more light on this subject. Now I want to say a word in reference to bonds and the limit.

We all seem to be claiming that the taxpaying public of Ohio is a taxpaying public of rogues and scoundrels who are trying to escape that which they should morally and legally do, and yet you want to provide through the medium and channel of non-taxpaying bonds an opportunity, to the extent of tens of millions, to further disregard their obligations. A gentleman told me at recess

that a client of his had been notified by the bank that that bank could exchange \$70,000,000 or \$80,000,000 of bonds for money, and if he would put his money and securities in those they would be nontaxable, and after the assessor had gone around he could put the bonds back and take his money out. I would ask the men here, who would like to have a roll call, commencing with my name, because it comes first on the list, every man who has listed his watch for taxation to pull it out and hold it up. Then I would like to have an examination made at home to find out all about that.

MANY DELEGATES: Agreed.

Mr. ANDERSON: If this roll call could be had next week so that I could ride around to the different counties I would like the test to be made.

The subject before us is not a matter of constitutional enactment or organic law, unless we are satisfied that for years to come there will be no necessity for a change. In other words, we have no right to put a thing in the constitution which is definite and certain and will remain definite and certain as long as the constitution is in effect, where we know no more about it than we know about the tax rate and limit. Judge Winn put in one amendment, Mr. Lampson put in another, and then Mr. Winn another, and all were different in amount. That indicates that no one has any certainty as to what ought to be done. If that is evident it has no place in the constitution, because it is worthless and worse than worthless, because in what you do you offer a premium to the next legislature to repeal the one per cent Smith law. Put that limitation in the constitution, and you give the next legislature a good argument to do away with the present limitation and to say, "We will have the limitation that the Constitutional Convention fixed." You put it in bad shape. You really cannot calculate the harm you have done. Of course, if it is adjusted right, all right, but how can you determine that? What is the basis of figuring? I will guarantee if you take fifty men and let each one go at it separately, and figure the maximum amount that should be placed in the constitution, no two of them will agree exactly.

Mr. LAMPSON: Haven't we already limitations upon bonded indebtedness for municipalities in Ohio, and if the legislature does not proceed to go up to the full limit of bonded indebtedness, won't those limitations remain?

Mr. ANDERSON: That may be, but is that an argument against the legislature taking out the one per cent limit?

Mr. LAMPSON: I think the legislature knows that we are making a constitution for twenty or twenty-five years, and that the limitation in the constitution ought not to be held down to bare living necessities of the present time.

Mr. ANDERSON: Do you want to put a maximum limit in the constitution when you nor any other living man has any basis upon which to figure in determining that amount?

Mr. LAMPSON: Personally I am not anxious about it, but I don't think the argument is good that the legislature will proceed to go up to the limit fixed.

Mr. ANDERSON: Then your question is merely academic on your part.

Mr. LAMPSON: We have a limit of the bonded indebtedness now.

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Mr. ANDERSON: Yes; in a statute.

Mr. LAMPSON: And the municipalities and the various taxing districts do not proceed to go up to those limitations because they can do it, and neither will the legislature.

Mr. ANDERSON: The legislature will be influenced greatly by this to do away with the present one per cent law.

Mr. LAMPSON: We have had a limitation in the constitution about state bonds since 1851.

Mr. ANDERSON: How do you arrive at the maximum amount your amendment provides?

Mr. LAMPSON: It has been said that we have triple assessment even in Ohio, and I put the limitation so that we would not get much if any in the amount of taxes that would be raised above the amount obtained under the old tax rate by the next assessment. What I apprehend is this, that if there is no limitation it will not be five years until the tax rate is right up to where it was before the increase was put on, and then we shall be paying double taxes.

Mr. ANDERSON: Unless we put something in the constitution with reference to maximum rates, the legislature has full power to act?

Mr. LAMPSON: Yes.

Mr. ANDERSON: Should not anything that is to change in twenty years be a matter of legislative enactment and not be put in organic law?

Mr. LAMPSON: I think this whole question is a controversy between the taxpayers and the tax spenders, and unless we put some limitation in there the tax spenders are going up as high as they can.

Mr. ANDERSON: Do you know that in the large cities the tax spenders are the ones who are doing more for progress than anybody else, and do you know that in Youngstown we haven't enough money to conduct our schools?

Mr. LAMPSON: That is why I raised the limit.

Mr. ANDERSON: How do you know that will be sufficient after while? It is absolutely arbitrary, and you drew up a matter in half an hour to fix up something that is to stand for years and years to come.

Mr. LAMPSON: I drew up the limit after the one per cent limit had been laid on the table by a bare majority.

Mr. ANDERSON: And the reason you drafted this the way you did was simply because you wanted to get votes. I thought that was the way you arrived at that amendment.

Mr. PETTIT: If you are so anxious to vote, I wish you would give us a chance to vote.

Mr. ANDERSON: I move the previous question on the whole matter.

Mr. WINN: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 39, nays 61, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Kramer,
Baum,	Fess,	Lampson,
Beyer,	Fluke,	McClelland,
Cassidy,	Fox,	Miller, Crawford,
Colton,	Harris, Ashtabula,	Miller, Fairfield,
Crites,	Harter, Huron,	Peters,
Crosser,	Henderson,	Pettit,
Cunningham,	Holtz,	Pierce,
Earnhart,	Kilpatrick,	Rockel,

Roehm,
Rorick,
Shaffer,
Solether,

Stewart,
Stokes,
Tannehill,
Tetlow,

Ulmer,
Wagner,
Walker,
Woods.

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Mauck,
Beatty, Morrow,	Harter, Stark,	Moore,
Brattain,	Hoffman,	Norris,
Brown, Pike,	Hoskins,	Nye,
Cody,	Hursh,	Okey,
Collett,	Johnson, Madison,	Partington,
Cordes,	Johnson, Williams,	Peck,
Davio,	Keller,	Price,
Doty,	Kerr,	Read,
Dunlap,	King,	Redington,
Dunn,	Knight,	Riley,
Dwyer,	Kunkel,	Smith, Geauga,
Eby,	Lambert,	Stamm,
Elson,	Leete,	Stevens,
Evans,	Leslie,	Stilwell,
Farrell,	Longstreth,	Taggart,
FitzSimons,	Ludey,	Thomas,
Hahn,	Malin,	Watson,
Halenkamp,	Marriott,	Winn,
Halfhill,	Matthews,	Wise.
Harbarger,		

So the motion was not agreed to.

The president recognized the delegate from Defiance [Mr. WINN].

Mr. WINN: Gentlemen: I ask your attention as I have something to say respecting the amendment of the delegate from Cuyahoga [Mr. FACKLER].

On Thursday of last week we had two or three votes which reflected the sentiment of the Convention to some extent with respect to the clause limiting the rate of taxation. On that day the member from Franklin [Mr. KNIGHT] moved that the amendment offered by myself and the amendment offered by Mr. Fackler be laid on the table. The amendment offered by me, you will remember, was the one incorporating in the then pending amendment the one per cent limitation. That motion to table was defeated by a vote of 52 yeas to 57 nays. On the same day the amendment was offered by Mr. Lampson, the one now pending, to make the limitation twelve mills with some additional rate to be levied by a vote of the people. The question being, "Shall the amendment of Mr. Lampson be agreed to?" the yeas and nays were taken, and the result was yeas 48 and nays 36, so the amendment was agreed to. On that roll call the member from Medina [Mr. Woods] voted aye. He was in favor of the limitation. On the roll call to lay the amendment on the table the member from Medina [Mr. Woods] voted no. He was then in favor of the one per cent limitation.

Mr. WOODS: I am now.

Mr. WINN: He says he is still in favor of it, but now he has reached the conclusion that we have come to that point in our deliberations when it is necessary to compromise. He agrees with me that the limitation of one per cent is correct, but I do not agree with him that we have reached the time where it is not profitable to talk about it. I see no sense in yielding a principle that we have been contesting for, especially since a substantial majority of this Convention agree with me, and I am astonished that the member from Medina [Mr. Woods], if he has been contesting for this principle in good faith, is now ready to desert the one per cent ship when there is no possibility of its sinking. I can see very

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easily how the member from Cuyahoga [Mr. FACKLER] may be influenced to hold out this compromise. The fact of it is he offers us absolutely nothing except what is already incorporated in the minority report or in some of the amendments, except the elimination of the limitation; and that is a thing for which I think we should stand, and most firmly. I can understand how the members from Cuyahoga and the members from most of the big cities will be opposed to any limit in the constitution. They are opposed to it because they are in touch with the politicians of their respective municipalities much more than they are in touch with those who pay the taxes. They are in touch with the politicians, and they hear one song from the time they go home until they come back. Every administration has the same song. It is to obtain as much money for the administration to distribute among the different departments of the municipality as possible, and they are always opposed to any limitation.

Mr. ULMER: I simply want to say to you that I live in a city, and I am not in touch with any politicians.

Mr. WINN: Well, I have not heard the member from Lucas [Mr. ULMER] standing on the floor opposing a limitation. It may be that he is not opposed to it. I do not mean to say that all persons who reside in municipalities are opposed to it, but I think this editorial which I hold in my hand, published in the Ohio State Journal last Thursday morning, which probably most of you read, reflects the sentiment of the average taxpayer in this city and other municipalities of the state. I read it so that it may go into the record:

In the one per cent tax law we have turned our faces toward honesty, retrenchment, revenue and economy, all of which are elements of the public welfare. It is a start in the right direction. It may be inconvenient at first. It may obstruct the extravagance of administrations. It may disappoint the schemers after jobs. It may take some money out of the pockets of selfishness. But the one per cent law is right; the principle upon which it is based is right. It is the promoter of honor and fair dealing. Any legislative or constitutional body that turns against that law turns against the people.

Put us back to the three per cent law and John Smith, with \$1000 worth of property, will pay \$30 tax, and James Jones, with the same amount of taxable property, will pay \$2.75. That is the way things have been going for years. Unfairness and dishonesty have run the machine. It has abused, oppressed and poisoned the citizenship. To go back to it is treason to justice and honor.

Now, gentlemen of the Convention, I repeat, I believe this editorial reflects the sentiment of the taxpayers who are not in touch with the politicians, and I can see how this editorial can come from a paper published in Franklin county, but it would not come from any published in Cleveland.

In discussing this great question I call attention to the very great amount of money income of the counties and the small amount returned for taxation. In Cuyahoga county, there is practically \$165,000,000 of money on deposit in banks with a little more than a million and a half returned for taxation. But in Franklin county there is a much larger proportion. In Franklin county

there is \$32,250,000 in banks with more than a million and a half returned for taxation. With less than one-fifth of the amount in Franklin that there is in Cuyahoga on deposit, Franklin has nearly as much returned as Cuyahoga.

Mr. FACKLER: Would not that be largely accounted for by the fact that Cleveland is a reserve city, and that many banks of the state carry their reserves in Cleveland, very much more so than in Columbus?

Mr. WINN: I would not think so proportionately, but you may be right. This evening I have ascertained the money on deposit in four of the large counties, Cuyahoga, Hamilton, Franklin and Montgomery. It would have pleased me to have extended this, but I did not have the time.

The amount on deposit in those four counties does not include the amount in building and loan associations, which we know is a great amount. In those four counties the total amount in the banks is \$323,500,000. The grand return for taxation is \$6,000,000. Now if you will pause just a moment and think of the very great amount of taxes that the big cities are escaping, you can see their interest in this matter.

Mr. ANDERSON: The theory of the one per cent limitation is that before the limitation can be a success, that which we have failed to do for fifty years must be done. That is, all property must come out, and if you fail in that, if there is still human nature enough to keep money away from the tax duplicate, the one per cent is wrong, and the poor people shall suffer by reason of it, and not the wealthy.

Mr. WINN: I do not know which one of your questions you want answered, but I will answer the whole of them if I can. I do not expect to change human nature. I expect as long as time lasts there will be men avoiding or seeking to avoid taxation. I mean seeking to avoid the return of their property for taxation, just as there are men committing offenses against the criminal law, but I am not in favor of repealing a single criminal law because there are men who violate them, and I am not in favor of exempting any man from taxation because he violates the law.

Now I want to answer what was said about the schools. We have no trouble up where I live in getting money to carry on the schools. It is a small county and a small municipality in which I live, but we had no trouble in increasing the amount of personal property from \$3,000,000 to \$7,000,000, and we shall have no trouble in increasing it from \$7,000,000 to \$10,000,000, and when we have it at \$10,000,000 the one per cent levy upon the property, real and personal, will make more money than we need or that can be legitimately expended.

The member from Mahoning [Mr. ANDERSON] says that they are not getting enough in Mahoning county to support their schools, but they are simply putting more in other funds, where there is more political profit than in the schools. If you will cut out the amount that is put in the other funds that is not needed for legitimate purposes, and put it in the school fund you will have all that is necessary. If that does not raise enough, come to the legislature with the same earnestness that you stand here today, and ask the legislature to strengthen the law and make it so powerful that it will be impossible for men to conceal their money, and you will have more money in Youngstown and everywhere else. That is all

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we need. Now shall we, the majority of the members of the Convention, who are in favor of this limitation compromise, as proposed by the Fackler amendment? My answer is No; I will not compromise when it is on principle, and I will only yield when I find it necessary to do so.

Mr. FACKLER: The adoption of the amendment I offer would still leave the law with reference to the tax limitation as it now is, and it would leave the legislature to do just as it can now. That law prevailed for sixty years and never until two years ago did we have a legislature that put a limit on the rate of taxation. Now we have set an example. We have the papers opposing it. They have been saying it is a crime, and they are all appealing to the next general assembly to repeal the Smith law and allow a greater rate of taxation.

Mr. PECK: Where did you see that?

Mr. FACKLER: I read it everywhere. There has been so much said of it in the Cincinnati papers that it could not have escaped your attention.

Mr. PECK: I don't know about it.

Mr. WINN: It is not wrong to write in the constitution a prohibition against anything. I submit that it is in keeping with the notion of things nowadays. While this debate was going on I took from my desk the constitution of Oklahoma, because that was one of the last ones that was adopted, to see what they were doing out there, and the first thing I turned to was the limitation in the rate of taxation. After providing for a state levy of not more than three and a half mills, it goes on:

County levy, not more than eight mills: Provided, That any county may levy not exceeding two mills additional for county high school and aid to the common schools of the county, not over one mill of which shall be for such high school, and the aid to said common schools shall be apportioned as provided by law; township levy, not more than five mills; city or town levy, not more than ten mills; school district levy, not more than five mills on the dollar for school district purposes, for support of common schools.

There is the provision in the constitution of a new state with comparatively a limited amount of property for taxation, and yet those men away out in Oklahoma, in writing the organic law for that state, reading in the history of the country the mistakes that have been made by the older states, wrote in their constitution a limitation on the amount of taxes that might be levied.

Mr. KNIGHT: Will the gentleman tell the aggregate limitation? As I figure it, it was two or three per cent.

Mr. WINN: I didn't figure it out. Let me see. I will read the provision:

SEC. 9. Except as herein otherwise provided, the total taxes, on an ad valorem basis, for all purposes, state, county, township, city, or town, and school district taxes, shall not exceed in any one year thirty-one and one-half mills on the dollar.

That is a little over three per cent. But think of that, away out in Oklahoma, with no such amount of property available for taxation as we have here, they saw fit to write in their constitution a limitation that all of their tax rates should never exceed thirty-one and one-half mills!

Mr. FACKLER: As preliminary to my question, you live in the town of Defiance?

Mr. WINN: Yes.

Mr. FACKLER: That town in 1890 had a population of 7,694, and in 1900, 7,579 and in 1910, 7,327, a decreasing population. Do you mean to say that the same conditions that prevail in that town can be applied to the city of Cleveland, which is growing every year three or four times as much as your whole population?

Mr. WINN: No, but what I am trying to say, and if I have not made it clear I will repeat it, is that if the taxpayers in Cuyahoga county will pay a rate of one per cent upon their taxable property, and if the taxing officers of Cuyahoga county will bring out and put upon the tax duplicate a reasonable portion of the money that was on deposit in 1911 in the banks of Cuyahoga county and in the building and loan associations of Cuyahoga county, they will have no trouble in raising the amount they want.

Mr. FACKLER: The gentleman will admit, will he not, that the amount of deposits in a reserve city like Cleveland is no criterion from which to judge a city like Defiance?

Mr. WINN: What about Hamilton county? Is that a reserve city?

Mr. FACKLER: It is.

Mr. HARRIS, of Hamilton: Of course.

Mr. WINN: All of these funds are reserve funds?

Mr. FACKLER: I don't know, nor does the gentleman from Defiance.

Mr. WINN: Do you think they are all reserve funds except a million and a half?

Mr. FACKLER: No; I do not. But I do not think that the city of Cleveland, if it had all the bank deposits on the tax duplicate that are properly taxable, could possibly get along with a one per cent levy.

Mr. WINN: They are getting along now, and what are they levying?

Mr. FACKLER: A rate of 1.38.

Mr. WINN: To take care of the outstanding indebtedness and the sinking fund?

Mr. FACKLER: Yes.

Mr. WINN: And you are getting along?

Mr. FACKLER: Yes.

Mr. WINN: Well, the amendment restores the bonds to taxation and limits the rate of taxation to one per cent, exclusive of the amount necessary to be paid on outstanding bonded indebtedness, and provides a sinking fund for the redemption of such bonds.

Mr. DOTY: Will the gentleman allow me to make a statement about "getting along"?

Mr. WINN: Yes.

Mr. DOTY: The board of education last Saturday called the attention of the people of the city of Cleveland to the fact that under the first year's operation of the Smith law they had to borrow \$65,000 just to pay the teachers' salaries. That is the way we are "getting along".

Mr. WINN: And that is the result of poor figuring. They knew how many teachers they had, and they knew the amount they had to have to pay them, and they should have cut off \$65,000 from some other sources and put it in the school fund. They would have had enough to pay the teachers without borrowing.

Mr. FACKLER: If they knew how many children

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they were going to have to educate they could have made the calculation.

Mr. WINN: They did know it approximately.

The PRESIDENT: The gentleman from Mahoning [Mr. ANDERSON] wants to ask a question.

Mr. WINN: They are getting so numerous that it is difficult to answer them, but I will try.

Mr. ANDERSON: Say that the city administration or the politicians in the city are to blame, ought the children of the poor people suffer? Remember that the children of the wealthy do not suffer, and ought the children of the poor go uneducated to follow out this whim of yours?

Mr. WINN: Oh, no. The children of the poor should not go without education simply to provide means for the politicians to have something to expend. I am not contending for any such thing. But the city of Youngstown knew long before they began to expend any of the amount expended in this school year exactly the amount that would be necessary, and if they put enough in the school funds to take care of the schools they would be able to take the same amount out. Each department fixes the amount necessary for its use, and they have a board that comes together and apportions it among the different departments.

Mr. HOSKINS: You mentioned a moment ago something about the amount of bank deposits. You said that to that must be added deposits in building and loan associations?

Mr. WINN: Yes.

Mr. HOSKINS: Is it not a fact that the deposits of the building and loan associations in the state are part of the deposits in the banks?

Mr. WINN: No, sir.

Mr. HOSKINS: Do you mean to say that the building and loan associations keep all their cash in their own vaults?

Mr. WINN: I am taking these amounts from a table that has been prepared —

Mr. HOSKINS: But do not the building and loan associations keep their deposits in banks?

Mr. WINN: It depends on the building and loan association. If it is carrying on a legitimate business it has very little money for deposit any place. As Mr. Stokes, of Montgomery, says, many times the building and loan associations are borrowers.

Mr. HARRIS, of Hamilton: Now, to your surprise, this question is to help you out, not embarrass you.

Mr. WINN: I thank you.

Mr. HARRIS, of Hamilton: I know you didn't expect it.

Mr. WINN: If you say so, I will thank you in advance.

Mr. HARRIS, of Hamilton: Going on the idea that when economic thieves fall out honest men get their dues, I am willing to help you uniform taxers out. I call your attention to this, which is very important from your view: The higher the tax levy the more Mr. Lampson's theory is carried out. The more you increase the limitation above ten mills the greater will be the incentive for personal property to go into hiding, and the more you will keep the levy down to one per cent, the greater will be the incentive to come out of hiding.

Mr. WINN: Certainly.

Mr. HARRIS, of Hamilton: I told you I would help you out.

Mr. WINN: Yes, and I thank you. The point I tried to make a while ago was that if the limitation of the so-called Smith law is correct, as it has been demonstrated by trial to be, for that reason I am opposed to leaving it out.

Mr. DWYER: I just want to say that in Montgomery county the common schools, as in Cleveland, are crowded, and yet if you will look into the matter you will find that Montgomery county has been contributing to the schools in Cleveland.

Mr. WINN: Montgomery county has been contributing to aid in support of the schools of Cuyahoga county! I am glad of it.

Mr. PECK: I want to make a statement to help you in this argument. Are you aware that under the one per cent tax law at the end of the fiscal year there will be for the first time in many years a large surplus in the treasury of Cincinnati, and do you know that there is not anybody there who is in favor of repealing the one per cent tax law?

Mr. WINN: I want to repeat that. Judge Peck says that at the close of this fiscal year, for the first time in many years, under the one per cent Smith law they will have an excess of money in the treasury of Cincinnati, and they will have money after having paid all necessary expenses, and he adds, and I will repeat it, because some of you probably could not hear the remark, that in Hamilton county there is no one in favor of repealing the Smith one per cent law. That is good news and I am glad to hear that. It may be when we get the latest from Cuyahoga county it will not be so bad as it seems now.

Mr. FACKLER: Has the city of Defiance any considerable number of residents whose children are underfed, and for whose proper feeding the municipality is making provision when they come to school in the morning?

Mr. WINN: No; I believe not.

Mr. FACKLER: Does Defiance make provision for the inspection and looking after the eyes and teeth of the children, to see that those who are unable to pay for those things are taken care of?

Mr. WINN: We are making considerable advancement along those lines.

Mr. FACKLER: Would you deny to the city of Cleveland the right to make that kind of advancement?

Mr. WINN: I think there are no children fed at public expense. We have free school books, and we provide clothing and shoes, and everything of that sort, and food at their homes during the severe winter days for a goodly number. We do whatever is necessary and we levy one per cent for general expenses, and four-tenths of one per cent to take care of outstanding indebtedness.

Mr. KILPATRICK: I understand you to say that you had a balance in the treasury under the one per cent tax law and you hadn't had it before for many years?

Mr. PECK: That was in Hamilton county.

Mr. KILPATRICK: Would it not be a good idea then to reduce the levy to one-half of one per cent and have twice as much then?

Mr. PECK: The reduction of the levy did not increase the amount of money paid into the treasury. That

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was increased because of increased valuation. The increased valuation more than offset the decrease in levy, and take it as a whole the amount of money raised by the one per cent is somewhat greater than the amount of money raised by the previous regular rate.

Mr. WINN: I think we all understand the situation. We understand what the member from Hamilton [Mr. PECK] attempts to make plain, which is that reducing the rate of taxation in Cincinnati brought out some hidden property.

Mr. PECK: The principal increase was on the assessments levied on the great corporations. The Pennsylvania Railroad Company and the Big Four were boosted considerably and that made a large part of the difference.

Mr. WINN: The proposition is this: Shall we go before the people—having written in our statutory law this limitation, and having tried it thus far—shall we go before the people with a constitution which says to future legislatures, "You shall not permit a levy beyond this rate," or shall we simply write the constitution without any limit in it, just as we have had since 1851, and then leave it to future general assemblies to levy one mill or two mills or three mills, according to the complexion of the general assembly?

Mr. OKEY: Do you not think that if the one per cent law as we have it now had not been left in the hands of the legislature that personal property would have come out more than it has? Do you not think that if we had the limitation in the constitution we would have that much more property brought out?

Mr. WINN: That is the way I view it.

Mr. OKEY: And if we make it a certainty we will have more?

Mr. WINN: When we have made it a certainty, so that it cannot be changed by the legislature, the hidden property will come out.

Mr. HALFHILL: Do you not think as a matter of good policy, if there is to be any limit in the constitution, it should not exceed the present one per cent?

Mr. WINN: I have said already that at the first opportunity afforded I shall offer an amendment to the proposal as printed last Thursday making the limitation of one per cent, with only enough additional to take care of the outstanding indebtedness now existing, and interest upon the same, which the supreme court says is part of the Smith law.

Mr. HALFHILL: Your idea is that to write beyond a one per cent limit into the constitution is an invitation to the legislature to repeal the Smith law?

Mr. WINN: I say a limitation of twelve mills is an invitation to the general assembly to raise it to twelve mills, and a passage of a proposal without any limitation at all is an equally strong invitation to the general assembly to raise it to any amount they see fit. Now we have reached the point where, in justice to the people of the state, we should put this in our constitution that there may be no juggling with it hereafter. Some member will say, "Why not leave it to the general assembly?" I will tell you why not? Because there are too many members of the general assembly who are ready to compromise for the same reason the member from Medina [Mr. Woods] is willing to compromise here. Standing for principle as he has stood for three or four days, after voting every opportunity he had for a limitation, and voting with a substantial majority on this floor, he now

stands here and says he is ready to compromise that principle and vote for the amendment offered by the member from Cuyahoga [Mr. FACKLER] which has no limitation at all in it. There may be men like him in the next general assembly, and if we have men in the general assembly who give up the battle so quickly, how easy it will be to pass a bill through both branches of the legislature wiping the Smith law from the statute book. I am in favor of writing this into the constitution that it may become a fixity.

Mr. KRAMER: I think we are about through discussing this question, just as we were through discussing the initiative and referendum long before we quit. I do not think we are getting a great deal of good, but I want to know, since I have the floor, just two things concerning this proposition for limitation. One is with reference to placing the limitation in the constitution. I am not a member from a city, or rather from any large city. I am from Mansfield, a city of about 25,000 population, but whether I am from the city of Mansfield or from the oldest township in the state of Ohio, I would be against placing any limitation in the constitution. It is not reasonable and it is not sensible.

Now another question. Let me ask you this: Suppose the democrats within the next generation will be successful in national politics as they were in 1892. We democrats will elect a president and bring upon our republic what our republican friends said we brought upon the country in 1892. Where would we be with a limitation in the constitution?

Mr. FACKLER: In the soup house.

Mr. KRAMER: You know in 1892 every last vestige of property was worth not one-third of what it is worth today. I remember taking butter to town when I got only six cents a pound for it, and had to take sugar in exchange. Now we get twenty-five cents a pound. I remember of taking eggs to market, and I was mighty glad to get six cents a dozen for them and now I find that we get twenty cents a dozen.

Mr. NORRIS: You are arguing against yourself on that.

Mr. KRAMER: Suppose we place the limitation at ten mills in our constitution at the valuation that our property has today, and suppose that ten mills limitation remains in the constitution for twenty years, and then suppose our real estate falls in value until it is not worth one-third of what it is now, and our personal property falls in value until it is not worth one-third of what it is now, what will the limitation of ten mills mean? It would be three mills on the valuation of property that we now have.

Mr. ELSON: Are you not aware that if property falls in value money always falls with it so that the proportion is the same?

Mr. KRAMER: Salaries of school teachers and officers in cities, counties and states and expenses don't fall in proportion. It takes just as much to run a government in hard times as it does in good times, and I hope we will not place that limitation in our constitution binding us for the next twenty years when we do not know what the conditions will be in twenty years. I do not like to have Mr. Doty putting up that alternative proposition to the people. If I had as much confidence in the people as some of you in this Convention I do not know that I would not be ready to put it up to the

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people, but just as I said when we were discussing the initiative and referendum, I have confidence in the people of the state of Ohio only to the extent of their ability, and I stand here to say if we, after discussing this proposition for three or four days, are not better able to place the stamp of approval on some proposition than the people of Ohio, who will not be able to gather together for one minute and discuss this great proposition, we ought to quit. We ought to select one proposition and put it up to the people, and ask whether they want to leave the old constitution as it is or put in this proposition, and we ought not bother with alternative propositions.

Mr. DOTY: If you believed in the ultimate wisdom of the people as thoroughly as the member from Guernsey [Mr. WATSON], for instance, do you not think you would be willing to vote for an alternative proposition to go before the people to allow them to decide it?

Mr. KRAMER: I rather think I would, but I do not think I have the confidence in the people that the member from Guernsey [Mr. WATSON] seems to have.

Mr. CORDES: According to the argument of the gentleman, I want to ask him what he expects in 1913 when the democrats go in?

Mr. KRAMER: I have not been considering that at all.

Mr. CORDES: Is it your idea to keep the road clear for a democratic administration?

Mr. KRAMER: I am a democrat or I wouldn't have given you that illustration. Now these are the reasons that influence me to oppose putting an alternative proposition. I am against the classification of property, and I am willing to put my stamp of approval on the uniform rule of taxing property and submit it to the people. I am thoroughly in sympathy with the uniform rule, and I am willing to go before the people and say I am in sympathy with the uniform rule, and not do as we did on the initiative and referendum, burden the thing with some things that the people are not willing to assume. I am willing to assume it. Now in the liquor question, that is a proposition of whether the people desire license or not. If they don't want license they will just vote it down.

Mr. DOTY: But that is in the alternative?

Mr. KRAMER: This will be alternative to that extent, if we submit to the people the proposition we have here, and if the people want to choose that they can choose it, and if they don't want to choose it they can leave the constitution just as it now is. That is all that the people of Ohio can intelligently decide.

Mr. DOTY: Do you think the people of Ohio really have wisdom enough to decide whether they are in favor of the uniform rule?

Mr. KRAMER: Yes.

Mr. DOTY: Then if they have wisdom enough to do that, having that wisdom, I want to submit to them a chance to vote for classification for fear they will make a mistake and vote for classification.

Mr. KRAMER: Two propositions put up in the alternative are always confusing.

Mr. DOTY: Would it confuse their wisdom?

Mr. KRAMER: I am not talking about confusing their wisdom. Remember this: When I talk about the wisdom of the people I am willing to admit that every man in the state of Ohio has the same intelligence that

I have, but I have talked to the people of Richland county about this proposition, and today nine-tenths of the people of Richland county know nothing about nine-tenths of the propositions we have already adopted. And I talked with the most sensible people we have, too.

Mr. DOTY: Then you are not afraid they have not intelligence and that they may adopt the uniform rule?

Mr. KRAMER: I am willing to leave it as it is.

Mr. DOTY: Do you not think in justice to them we should give them a shot at the two things?

Mr. KRAMER: If we cannot do any better.

Mr. DOTY: You have confidence in the people?

Mr. KRAMER: Don't go away and say I have no confidence in the people. I have always confidence in the people in proportion to their ability to understand.

Mr. DOTY: Then you have confidence, "but"—?

Mr. KRAMER: Yes.

Mr. DOTY: Did I understand you to say that the most sensible people we have were in Richland county?

Mr. KRAMER: I didn't, but I will agree to that. As a matter of fact, I said we had just as sensible.

Mr. DOTY: I could not harmonize the things, your saying that and then criticising.

Mr. KRAMER: I have talked to some of the strong advocates of the initiative and referendum. They were wonderfully strong for it, but now it is the question as to whether the people can handle the propositions that are put up to them. There is such a thing as buncombe, talking for effect, and all that sort of thing, political effect and a great many effects, when we talk about these propositions.

Mr. DOTY: Would you not call it the meanest kind of buncombe for a man to be tremendously in favor of the initiative and referendum because of his confidence in the people, and then be afraid to allow the people to decide the most important thing that we have, taxation?

Mr. KRAMER: The members see the point. I don't have to answer.

Mr. WATSON: Do you not also think it is buncombe for a man who has fought against the question of single tax now to unite with singletaxers on this question?

Mr. KRAMER: I don't know what you are talking about. Now I want to notice one or two of the main arguments. One was as to mortgages. The argument is that a man who buys property and owes a certain amount of money on the property ought to be exempt to the amount of the mortgage. That appeals to me. It is a hard proposition to get away from, but let me say this, that there is not so much to this argument after all. We have heard the members in favor of classification time after time talk about incidence of taxation. That theory works out excellently with mortgages. Let me give you an illustration. If I were to buy property in the city of Mansfield for \$2,500, and having \$1,000 to pay on it and giving a mortgage for \$1,500 on the property, do you know how I would figure that? I would sit down and figure out what the taxes are upon that property every year and how much interest I had to pay every year on the \$1,500, and after I had done some figuring I would go to the man who owned the property and say, "Mr. Jones, I can afford to give you just so much for this property because I will have to pay so much interest on the money I have to borrow and so much taxes every year on the property." So, after all, take the strongest argument they have to advance, and there is not so much

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in it, because it would work out with the incidence that go along with taxation. Every man who buys property makes his calculation with reference to the amount of interest he has to pay on the money he borrows, upon the income he may get from the property, and upon the taxes he has to pay out on that property, so that I simply offer that as a reason why I am in favor of stamping my approval, at least as one member of this Convention, upon the uniform taxation rule, and put that up to the people against what they now have with the amendment allowing them to choose between that and what we already have.

Mr. FLUKE: This taxation question reminds me very much of the woman who started to make the pair of breeches for her boy, and she took so long about it that he had outgrown them. I have had this speech of mine written for two or three days, and I find that the tax question has outgrown my speech, so that my remarks will not be exactly apropos on this particular amendment.

I think we will all agree that civilization brings certain advantages to the human race, and, generally speaking, the higher the degree of civilization the greater are the advantages. Protection of life and security of property are two of the things that result from civilization and they are secured through government. These advantages are worth something and it very naturally follows that we must pay for them. There can be no controversy over the facts enumerated so far, but when we attempt to apportion the cost of government among those governed our opinions begin to diverge. It may be true that all individuals are not benefited, and it certainly is true that all are not equally able to pay, and it naturally follows that in our effort to equitably apportion the cost of government we encounter some difficulties. These difficulties are increased by the fact that some individuals have a disposition and are in a position to evade a portion or all of their obligations to the government. The greater the number of such ingrates, the greater is the injustice to those who make a full return of their property, who, for this reason, are compelled to pay taxes out of proportion to the benefits they enjoy.

It is well to remember that the tax proposition we have under discussion applies to the state and its subdivisions, and whatever form we adopt, the revenue derived therefrom is to be expended for the benefit of the people of the state of Ohio. While we are remembering this we must not forget that the people of Ohio are paying taxes for the support of the general government, because this fact must be taken into consideration if we expect to arrive at any equitable solution of the local tax problem. There are inequalities and injustices in the taxes raised by the general government, and the plan we adopt locally should take these inequalities into account in order that justice may be done to all. The expenses of the general government are raised by an indirect tax that takes but little account of the wealth of the individual. It is a system that gets you on what you must have instead of what you have; a tax on the necessity of the individual rather than on his ability to pay. Under this system the poor man and his family pay as much to the support of the general government as does the millionaire and his family, and neither can dodge this form of taxes. No one will have the hardihood to say that this is just. True, both are under obligations to government for protection of life and for liberty, and if that were all there was to

it, it would not be so unjust, for both ought to pay for whatever measure of protection government affords. But the millionaire owes something to government because of the security it affords him for his wealth, for which he pays nothing to the general government.

To attempt to correct this injustice is probably the reason for the several states levying a tax on wealth to produce revenue for local needs.

This Convention owes it to the people of the state to determine what is, in its judgment, the best system of taxation for the state of Ohio as a whole. It doesn't matter what the name of the system is, just so it works right. If the single tax is a good thing for Cuyahoga county we want it in Ashland county. If classification is an equitable and just way of raising revenues for state and local purposes, every county in the state ought to have classification. If a rate of one per cent on my real estate and a rate of one-half of one per cent on my neighbor's notes and mortgages is just and equitable, then the same thing is true in every other county in the state. If classification is right, it follows that the single tax and the uniform rule are wrong, and if they are wrong and unjust, this Convention deserves the contempt of those who sent us here if we recommend their adoption.

I contend that classification in itself is unfair, unjust and unbusinesslike. A number of able gentlemen came before the committee on Taxation and argued in favor of classification of property for taxation purposes. It is a significant fact that none of them claimed that this method was morally right or just, and the best they could do was to justify it on the score of expediency. I submit to you, gentlemen, that this argument of expediency is not on a very high plane. If the state of Ohio is to go into the business of compromising with the men who perjure themselves when the assessor calls on them, it ought to give me the right to settle with the chicken thief I catch in my hen house. The state proposes to justify and dignify the taxdodger for a small consideration. If he owes the state \$10 let him off with \$2, and mark him up A1 for honesty. On the other hand if I catch some ambitious financier with ten of my plymouth rocks in his possession I don't compromise with him on the basis of a couple of hens returned. No; not on your life! I don't propose to let the state get me for compounding a felony.

We hear the contention frequently that the tax rate is confiscatory on notes, mortgages and other interest-bearing obligations, in that it consumes such a large portion of the income from those obligations. There was a time when this contention had some foundation in fact, but it is no longer the case. When real estate and tangible personal property were on the duplicate at about fifty per cent of their value and notes at their full value, a grave injustice was done this form of property. With real estate on the tax list at its full value and the rate more than cut in two, this form of property has no cause for complaint. A one per cent rate on a note bearing five per cent interest is no more burdensome than the same rate on the property of the average farmer as such property is now valued. The net income of the farmer is much less than the average city man imagines it is, and my observation leads me to the conclusion that the great majority of farmers are realizing less than five per cent on the capital invested. I want to remark in

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passing that if the farms of the state of Ohio were financed and managed as some railroads and other corporations are, ninety-five per cent of them would be in the hands of a receiver inside of a year. Water the farmer's capital stock from one to three hundred per cent; let him vote himself a salary of \$1,500 as president and general manager; his wife \$500 as secretary and treasurer—and please don't forget that the average farmer's wife earns that much—make two or three of the boys division superintendents at about \$500 apiece; allow for interest on capitalization, depreciation and necessary running expenses, and if you can find a farmer who is making five per cent net, I wish you would let me know. I want to get acquainted with the fellow who is doing that well, and when I find him I will stay with him long enough to learn some of his methods. No, the one per cent rate is not confiscatory and the adoption of the minority report insures you against a confiscatory rate because it compels economy of administration.

We have heard a great deal this winter about double taxation. Everybody is agreed that double taxation is a bad thing and that it ought to be remedied. When we come to consider the remedy we find a wide diversity of opinion as to what the remedy should be. Pardon me for repeating that familiar illustration of the \$10,000 farm. A man buys it, paying \$5,000 down and giving a mortgage for \$5,000. Under present laws the man who has the deed pays tax on the \$10,000, on \$5,000 more than he is worth. The man who holds the mortgage pays taxes on \$5,000, so that taxes are being paid on \$15,000 where only \$10,000 worth of property exists. Who is it in this instance that pays taxes unjustly? Truth and candor compel all of us to say that it is the man who purchases the farm and who holds the deed. Now listen to the remedy most frequently mentioned in the committee room, and which the majority report (you see this is outgrown) makes possible—let the man who holds the mortgage go tax free, except for a small filing fee! The man who lifted himself over the stile by his own boot straps was a chucklehead compared to the genius who evolved this idea. If you follow the same line of reasoning you will have to give Jake the castor oil when Joe gets sick, and then give Joe a lozenge to get the taste out of Jake's mouth.

Gentlemen, the man who invests his money in a mortgage does so because he prefers that form of investment. His money is working for him there, and if the returns were not satisfactory he would have invested in something else. A first mortgage on real estate is gilt-edged security and the laws make special provisions for the protection of this kind of property. The man who holds that mortgage owes something to the state for the security and protection afforded him, and he ought to pay what he owes. But there are some who object to this and who claim that if the man who holds the mortgage is taxed that this tax will be paid by the man who gave the mortgage in the shape of additional interest. To this I reply that there is no fixed relation between tax rates and interest rates. Tax rates may go up or down and interest rates may go up or down, but the fluctuation of either has no effect on the other. Interest rates vary in different localities, depending on the law of supply and demand. There are places in the state where you can borrow on first mortgage security at five per cent; other places where the minimum rate is seven

per cent, notwithstanding the fact that the tax rate is approximately one per cent over the entire state.

If there were anything in the argument that lower tax rates mean lower interest rates now is a splendid time to demonstrate it. Within a year the tax rate has been cut in two—a shrinkage in the rate on the average for the state of more than one per cent. If the argument of the gentlemen on the other side is sound, interest rates should be less by one per cent than they were one year ago. As a matter of fact there has been no shrinking in interest rates, but on the contrary there has been a slight advance in some localities.

I am in favor of the Fackler amendment because it makes provision for stopping the present reckless and profligate program of issuing nontaxable bonds. Every time a community sells a tax-free security it adds something to the power of special privilege and places an additional burden on the taxable property of the state.

In conclusion I move to lay the Doty amendment on the table, and on that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 60, nays 43, as follows:

Those who voted in the affirmative are:

Anderson,	Holtz,	Partington,
Baum,	Hursh,	Peters,
Beatty, Morrow,	Johnson, Madison,	Pettit,
Beyer,	Jones,	Pierce,
Brattain,	Keller,	Riley,
Brown, Pike,	Kramer,	Rockel,
Cody,	Kunkel,	Shaffer,
Collett,	Lambert,	Solether,
Colton,	Lampson,	Stevens,
Crites,	Longstreth,	Stewart,
Cunningham,	Ludey,	Stokes,
Dunn,	Mauck,	Tannehill,
Dwyer,	McClelland,	Tetlow,
Earnhart,	Miller, Crawford,	Thomas,
Eby,	Miller, Fairfield,	Wagner,
Fluke,	Miller, Ottawa,	Walker,
Fox,	Moore,	Watson,
Harbarger,	Norris,	Winn,
Harris, Ashtabula,	Nye,	Wise,
Harter, Huron,	Okey,	Woods,

Those who voted in the negative are:

Antrim,	Halfhill,	Marriott,
Cassidy,	Harris, Hamilton,	Matthews,
Cordes,	Harter, Stark,	Peck,
Crosser,	Henderson,	Price,
Davio,	Hoffman,	Read,
Doty,	Hoskins,	Redington,
Dunlap,	Johnson, Williams,	Roehm,
Elson,	Kerr,	Rorick,
Evans,	Kilpatrick,	Smith, Geauga,
Fackler,	King,	Stamm,
Farrell,	Knight,	Stilwell,
Fess,	Leete,	Taggart,
FitzSimons,	Leslie,	Ulmer,
Hahn,	Malin,	Mr. President.
Halenkamp,		

So the motion was carried.

Mr. KNIGHT: I had not intended to speak at all on this subject. I shall speak only briefly to one point. So far all that I have contributed to this discussion is to ask one or two questions and introduce an amendment which was promptly tabled. I intend to speak four or five minutes on one point simply, and that is the matter of the limitation in the constitution of the tax rate. I want to call attention to the fact that as yet in the state of Ohio it is purely an experiment, this one per cent tax rate. We haven't yet paid the second half-year taxes

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on the first levy under the one per cent law, and if any thing could be more of an experiment than that I would like to know what it is. There is absolutely no evidence that is conclusive that that rate will bring out what it is expected to bring out, although I hope it may. To put into the organic law a provision for a maximum levy when we know that the whole thing is experimental, seems to me the height of folly. The effect it will have upon the city in which we are gathered and which is part of Franklin county, which I have the honor in part to represent, may be illustrated by a statement made public since last Thursday and which I have verified by personal inquiry at the city hall today and may I say at this point that I am a republican, of what sort it does not make any difference, because we are all going to be together very shortly, and that the administration of the city of Columbus at the present time is not republican, and so far as I am informed it is a hearty supporter of the present state administration. Therefore the facts I shall state are not warped by any political consideration. The statement is published in last Friday's paper that, effective Saturday night—

Enough city employes will be laid off in the various public service departments to make a saving of \$25,000 in the next two months. This was the statement of Service Director Kinnear Saturday:

"We are short of \$25,000 of enough funds to carry the service departments through the first six months of the year on the present basis, and this amount has to be made up in some way.

"All street work except North High street, which is under contract and actually in process, will be stopped. In the engineers' department, all work on plans for future construction or street work, and the men on this work, will be dropped.

"The work of the refuse collection will be confined to the wagons actually owned by the city and the drivers of all hired wagons will be let go. There will also be a cut in the waterworks department, where considerable work will be stopped. In fact, we will just exist until July 1, doing only what is imperative to be done."

To accomplish this saving, it is estimated that it will be necessary to lay off not less than two hundred employes.

This curtailment is in fact more far-reaching than two hundred directly affected. These men have been employed in preparing and designing public work that would require the employment of more than one thousand laborers and others to carry out. It is therefore estimated that from twelve hundred to fifteen hundred men are affected by the retrenchment policy.

Now, I submit that upon this basis of a law the first year of which puts the third city in the state in that situation, where we are short in the aggregate approximately \$300,000 of what is necessary to defray the city's expenses, it is not a wise proposition nor the kind of proposition to be put in the new constitution that there shall be a limit fixed, as at present, when the experiment shows it does not enable us to meet the expenses of the city government. It seems to me that to tie up in our constitution the tax levy upon the basis of six months' experi-

ment is unwise. Had it been in existence for five or ten years, and if we knew that it had worked and would work well, the proposition would be different, but I can not think at present that it commends itself to us as a wise proposition to be placed in the constitution.

Mr. ANDERSON: What is your tax rate?

Mr. KNIGHT: Varying from two ninety to three twenty-two.

Mr. ANDERSON: And your population?

Mr. KNIGHT: One hundred eighty-one thousand in 1910, one hundred twenty-five thousand in 1900. There was an increase of fifty-six thousand.

Mr. ANDERSON: Now in Youngstown, although we have only eighty thousand now, our increase was forty-five thousand and our tax rate was 4.10 before the Smith law; Youngstown had more than doubled in population, so Youngstown would be in worse shape than Columbus. And is not this true, that in case there is not enough to properly provide it is the poorer people who suffer first under those conditions?

Mr. KNIGHT: It seems so to me.

Mr. HARRIS, of Hamilton: I move to recess until 9:30 in the morning.

Mr. FESS: I move that further consideration of the pending matter be deferred until tomorrow and that it be placed at the head of the calendar.

The motion was carried.

Mr. FESS: Now I ask unanimous consent to have the report of a committee come in.

Consent was given and Mr. Stewart submitted the following report:

The standing committee on Education, to which was referred Proposal No. 96—Mr. Fess, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out everything after the word "Proposal" and insert the following:

To submit an amendment by adding section 4 to article VI, of the constitution.—Relative to the office of superintendent of public instruction.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VI.

SEC. 4. A superintendent of public instruction shall be included as one of the officers of the executive departments to be appointed by the governor, for the term of four years, with such powers as may be prescribed by law.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Fess the proposal as amended was ordered printed.

Indefinite leave of absence was granted to Mr. Smith, of Hamilton.

On motion of Mr. Harris, of Ashtabula, the Convention adjourned until 9:30 o'clock a. m. tomorrow.

SEVENTIETH DAY

MORNING SESSION.

TUESDAY, May 7, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Mr. Dunn, delegate from Clermont county.

The journal of yesterday was read and approved.

Consideration of Proposal No. 170—Mr. Worthington, was resumed.

Mr. ANDERSON: I offer the following amendment. The amendment was read as follows:

In line 10 insert the word "outstanding" between the words "all" and "bonds" and strike out the words "at present outstanding."

In line 13, strike out the words "at present" and after the word "outstanding" insert the words "at the time when this section takes effect."

Mr. ANDERSON: Mr. President and Gentlemen: The amendment corrects a mistake in the original draft. You will notice the words "at present." That means the bonds outstanding at the present shall not be taxable. "At present" has been interpreted by the supreme court to mean at the time we adopt the constitution, whereas what was meant by Mr. Cassidy and myself in the original draft was at the time of the ratification or enactment. This simply corrects that mistake.

Mr. LAMPSON: Does your amendment make it clear that all municipal bonds outstanding at the time of the adoption at the election shall be exempt?

Mr. ANDERSON: At the time of the ratification. That is the purpose of it. I want to call your attention just to the fact in reference to placing the rate limit in the constitution, that constitutions are not made for majorities. A constitution is made for the protection of the minority. A majority never needs a constitution because it never needs protection. If that is correct, and I believe it is, no proposal ought to be adopted that will bring hardship to any city in Ohio. Therefore, in considering whether a limitation should be placed in the constitution, if I can demonstrate that a great hardship will come to any one in Ohio, that limitation ought not to be placed in the constitution.

Youngstown in 1890 had 33,000 people, in 1900, 44,000 and in 1910, 79,000, an increase of 35,000 in ten years. We have a large foreign population, consisting of numerous children who are attending our schools. Before the Smith one per cent law went into effect the tax rate in Youngstown was four and one-tenth per cent. That rate of four and one-tenth per cent meant that sufficient money could not be raised for school purposes to properly take care of the children, for it only permitted one-half day of school for all of our pupils, and some of them, for the lack of proper buildings, were made to receive their education in cellars and basements.

Mr. CUNNINGHAM: May I ask the gentleman a question?

Mr. ANDERSON: Just wait until I finish. I very seldom refuse to answer a question, but I want to get through with this thought. When the Smith one per cent

law went into effect, in order to get the same amount of money—same conditions prevailing that prevailed under the four and one-tenth per cent rate—the taxable property had to be put on the tax duplicate at more than four times its previously estimated value. Of course, that meant an extremely high valuation. The little property I own in the city will not sell for more than its appraised value on the tax duplicate. Not only do we have to put our property on at four times what it was before, but conditions have become more aggravated, for the population has doubled. From an economic standpoint the foreign families that come to Youngstown are a loss. They own no property, and pay a rent of only a few dollars a month. We have to provide places where their children can be educated. We have to provide buildings, teachers, and books, because we have free school books in Youngstown. Therefore, from the standpoint of the city itself we have a loss on each family, and you must remember that since 1900 the population has been doubled, for it was 79,000 in 1910 as against 44,000 in 1900. These are conditions that confront us in Youngstown. It may be different in other places, but in Youngstown our schools are not in control of politicians. The politicians are made to keep their hands off and therefore, replying to the argument of the gentleman from Defiance, since our schools are not in the hands of politicians, and politicians being interested only in those things where they or their representatives handle the money, the schools are the last thing for which provision is made. Therefore, if the constitution is made for the minority, and if no proposal ought to be passed that would bring great hardship to any city, this limitation should not be placed in the organic law of Ohio.

The gentleman from Defiance can not properly understand conditions in Youngstown, as he is speaking of a place where the population is decreasing. I do not understand why it should decrease, for I noticed when I was over there that he lives in a beautiful little village.

Mr. JOHNSON, of Williams: May I ask the gentleman a question?

Mr. ANDERSON: I do not care to be interrupted.

Mr. JOHNSON, of Williams: I have not been in the habit of asking questions for buncombe and I have a fine question I would like to ask.

Mr. ANDERSON: Go ahead.

Mr. JOHNSON, of Williams: The gentleman says constitutions are made for minorities. I agree with him. Here is a proposition to limit the taxes. Before this constitutional amendment passes, will this proposal, if it passes, place on the tax duplicate the bonds issued before they were released from taxation?

Mr. ANDERSON: No, sir; the amendment that would do that was voted down.

Mr. JOHNSON, of Williams: Do you put any bonds back?

Mr. ANDERSON: No, sir; it was decided a moment ago that they would not be put back.

Mr. JOHNSON, of Williams: Do you believe that any of the bonds ought to be placed back that were

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issued either before or after the passage of the amendment exempting bonds?

Mr. ANDERSON: It is my individual opinion that the bonds that were made nontaxable by the constitutional amendment of 1904, that are now in existence, should be placed upon the tax duplicate.

Mr. JOHNSON, of Williams: I can demonstrate that that is absolutely wrong. If bonds that were issued fifteen years ago have been released, this Constitutional Convention has no right to put those bonds back on the tax duplicate that were bought by an innocent purchaser.

Mr. ANDERSON: I am just giving my individual opinion. The Convention decided you were right and I was wrong. That is a closed incident. This Convention has decided that only bonds issued after this constitution is ratified shall be taxpaying and all of the bonds issued before that shall not be.

Mr. WINN: It will be necessary to preface this with some figures —

Mr. ANDERSON: I would like to go into another matter before I quit.

Mr. WINN: I want to ask a question. I have some official records before me. I see that the banks of Mahoning county had on deposit last year \$18,771,191 and that there was returned for taxation money on deposit subject to check \$839,000, a little more than four per cent. Now you say the real estate in Youngstown is assessed for more than one hundred per cent?

Mr. ANDERSON: It will average one hundred per cent.

Mr. WINN: These figures show that the money is assessed at about four per cent of its value. Do you not believe it would be better to make such personal property pay more nearly a just rate of taxation and relieve the real estate than to allow things to go as they are?

Mr. ANDERSON: Certainly, but if we fail, as we have failed, who will suffer? Will it be the rich man? No. Will it be the man of ordinary means? No. The man who will commence to suffer first and will suffer the longest will be the poor man.

In view of the conditions causing the suffering existing in the city, the poor man feels it first and his family suffers longest. I agree with what you say, but I do not want the poor man's children or the poor man's family to suffer until you can change human nature so that you can obtain a proper return for personal property. Thank you for asking that question. I am in favor of helping all we can to the end that the tax rate be kept down by taxing other things that have not been taxed in the past, so that the Smith one per cent provision, as a statutory law may remain; and having that end in view, I am in favor of taxing incomes and inheritances. I am in favor of the production tax and in favor of the franchise tax and in favor of taxing all bonds that may be issued in the future. There are five different things we can tax in the future by constitutional enactment and one of them is franchises. Take, for instance, the city of Youngstown; We gave a street railway franchise a number of years ago. That franchise is now worth millions and millions of dollars, and while our children were being educated in the basements that company was growing immensely rich and not a cent was it paying for that franchise toward helping Youngstown take care of these children.

Mr. EBY: I notice in the last census that you have

five times as many people in your county as we have in Preble county; I notice you have a city of eighty thousand inhabitants while we have none over three thousand, and I notice the merchants in your town are paying taxes on but a few dollars worth of stock more than the merchants of our county. The same thing is true of the bank deposits. I find we are paying on more watches than you are. Is it not a fact that rather than fight taxes you should be in favor of bringing out the hidden property? Would not that make up the deficiency that you need to educate your children?

Mr. ANDERSON: How do you know? It is a guess on your part and you want to put your guess in the constitution. Will you come to Youngstown and undertake the task? Are you possessed of such superior knowledge, acquired while living in your little county, that you can know and appreciate the conditions in our county, without being there and seeing the conditions?

Mr. EBY: No, sir; I am reading from a statement here. It appears to me you have an organized system of taxdodging.

Mr. ANDERSON: Well, there is some taxdodging, because we have so much property that cannot be found; it is easily hidden. If we lived in your little county, where everything that everyone has is entirely evident to everybody else, there could be no dodging and the only reason your people do not dodge is because it is a physical impossibility, not because they are any more honest or better than anybody else.

Mr. HARBARGER: Will not the tendency be toward evasion?

Mr. ANDERSON: "Tendency" is a good word. All you know about it is "tendency." Do you want to put the "tendency" in the constitution where it must remain a fixture for years to come? Do you think the "tendency" will change human nature? If we can change human nature by this provision so that we could make all people list all of their property enabling the children of Youngstown to be educated, I would say, "Amen". Ought a guess, a theory or a "tendency" to be put in the constitution? If you want to put any figures in the constitution, they should be first capable of mathematical demonstration. The very fact that different rates have been suggested demonstrates that this is a guess, but we will not put a guess in the constitution.

Mr. EBY: Did we not jump all around on the liquor clause?

Mr. ANDERSON: Yes; we did the best we could to get it through and that is what you are trying to do here. In the liquor proposal I wanted to limit the saloons to one to a thousand, and I would prefer that greatly to one to five hundred. Then we attempted to get one to seven hundred and fifty. At last we got one to five hundred, and you are proceeding along the same lines in reference to the taxation that we did on the saloon question. You are trying to get enough votes to pass something. No limitation can be mathematically determined; you are trying to determine it by a majority vote.

Take Youngstown, and the bar bill is \$4,000,000 a year. Will the one per cent limitation change the drink habit in Youngstown? Those are conditions we have there. The only people I am trying to protect are the children and the poor people in Youngstown, who will be denied education and will have to suffer. I am not attempting to represent anybody else, and I am not mak-

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ing an apology for the taxdodger, but I am trying to keep the delegates from the smaller places from making a mistake, because they are not qualified to speak as to the conditions in Cleveland, Youngstown and Cincinnati, where we are trying to do our duty in educating and taking care of the poor.

Mr. BROWN, of Highland: If it is true that we have taxdodgers, and it is recognized on the floor, and if we refuse to limit the tax levy, is not it conniving at the fact that taxes are dodged?

Mr. ANDERSON: I don't know exactly what is the meaning of the word "conniving" as you use it. Do you mean because we refuse to put this absurd limitation in the constitution—not absurd as to a large majority of places, but absurd as far as Cleveland and Youngstown are concerned—that we are conniving because we will not protect the people who are otherwise protected? Is that the way you use the word "conniving"?

Mr. BROWN, of Highland: How does it come that in West Virginia they only pay seven mills?

Mr. ANDERSON: I don't know anything about West Virginia, but I do know something about Youngstown. I suppose you are speaking of the backwoods, where they only grow razor-back hogs.

Mr. ELSON: I want to say a few words on this subject. Our debate seems to have resolved itself into a contest between the rural counties and the cities. Now I come from a rural county. The largest town in our county scarcely exceeds ten thousand people. It is the most natural thing in the world that I would line up in favor of the rural county, but it seems to me if the cities in the state feel that they need more than the one per cent tax limit in order to carry on their business that the rural counties have no right to put a veto on it. I do not see how they can consistently do it. It was only a few days ago that we voted to give the cities practical home rule. We agreed that was the best possible thing that could be done for the cities. Let them have self-government in all matters that do not pertain to the state as a whole. Now shall the rural counties come in and say that the cities must confine themselves to the one per cent maximum tax limit? If Cleveland or Youngstown can not take care of their children, or if Columbus can not take care of their streets, without larger taxation than the Smith law will permit, what right have we to say you can not tax yourself more than one per cent? I do not believe we have the right to do anything of that sort. As far as politics are concerned, the cities will have to manage their own affairs in that respect too. If we intend to give them home rule, let them take care of their own affairs. If they overtax themselves in order to have a larger political fund, it does not hurt us.

Mr. BROWN, of Highland: In connection with the statement that we have no right to control or limit taxation in the cities, I ask if we are not all exercising that right under the Rose law when we compel cities and towns to regulate their saloons in accordance with the dictates of the surrounding country?

Mr. ELSON: The taxation feature in the Rose law is incidental and not the main thing at all. This is a pure matter of taxation. If the cities want to tax more than one per cent why should we of Brown or Adams county come in and say to the people of Cleveland, "You can not do it."

I believe the Smith one per cent tax law should be

tried thoroughly and well for several years, and I believe it will work. Cleveland, Columbus, Cincinnati and other large cities may not come to it in the first two years, but I believe they will be able to get to it. I do not believe we should put it into the organic law, and I do not think we should fix it so there will not be any possibility of change. If we do that it will be changed within a few years through the initiative and referendum.

Now a word on classification, although it seems we have practically settled that in our preceding debate. From a scientific standpoint I can not help favoring the classification of property, but from various evidences we have had in this Convention I am led to believe—indeed, I am convinced—that it will be impossible to get classification through this Convention, so that Ohio will have to remain one of the very few states of the civilized world where classification is forbidden in the organic law. In almost all countries and political divisions having the power of taxation, the uniform system has been abandoned long ago. We are one of the very few states in this Union that still clings to uniform taxation. It is the rural vote, and the farmers are perfectly sincere, but I believe they are in error in their judgment. I believe the farmers have paid more taxes in the past sixty years because of the fact that classification was not permitted than they would have had to pay otherwise. I believe the same thing will be true in the future and I do not believe it will be many years before we have classification by means of the initiative and referendum. I am reminded that classification is forbidden in the initiative and referendum proposal. I was thinking of the single tax only. That will make it more difficult to bring about.

Mr. KELLER: I believe you said this is one of the few states that has uniform rule?

Mr. ELSON: There are not many.

Mr. KELLER: According to the digest of the constitutions I can give you the number of states that that digest claims have the uniform rule: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Michigan, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Mr. WINN: Thirty-two.

Mr. ELSON: The great states of New York, Pennsylvania and Massachusetts have abandoned that old-time method and I had hoped that Ohio would. If we go into Canada we find they are miles in advance of us in the matter of taxation. They have not got the uniform system anywhere. Go to Europe and you will not find any uniform system. It is all classification. I believe that classification is the best possible thing and that our eyes will sooner or later open to it. I have nothing further to say except that I think it would be absolutely wrong for the rural counties of the state to force upon the cities a tax limit when the cities tell us in plain language that they can not get along with it. I believe we could give the cities home rule in that respect and I hope the counties will all stand for it.

Mr. LAMPSON: I demand the previous question on the pending amendment, simply that one amendment.

The PRESIDENT: The question will be on the amendment offered by the delegate from Mahoning.

The amendment was agreed to.

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Mr. WINN: I offer an amendment.
The amendment was read as follows:

At the end of the amendment of Mr. Fackler add the following: Sec. 2.—“The maximum rate of taxes that may be levied for all purposes, exclusive of such rate as may be necessary to pay any bonds now outstanding and the interest on such bonds, shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school district, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all such purposes, on each dollar of the total value of all the property therein, listed and assessed for taxation, in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose; but in no case shall the combined maximum rate of taxes for all purposes, levied in any year in any township, city, village, school district, or other taxing district, exclusive of the rate necessary to pay said existing bonded indebtedness and the interest thereon, exceed fifteen mills on each dollar of the total value of all the property, as listed and assessed for taxation, in such district.”

Mr. WINN: I apprehend we have reached the point where we are ready to determine whether or not we will vote into this proposed amendment the limitations. I just want to explain this; I am not going to make a speech about it. I think I have said as much as I care to. This is the original amendment which I offered a few days ago, excepting that it provides that the maximum rate of ten mills shall be exclusive of the amount necessary to provide a sinking fund for the redemption of the bonds now outstanding and to pay the interest on such bonded indebtedness. In other words, this amendment is the Smith law with the decision of the supreme court written into it, allowing the further increase of five mills by referendum to the electors of a taxing district. I offer this as an amendment to the Fackler amendment and I do that for this reason: The Fackler amendment is better than the original Anderson amendment as it has been modified by the present amendment. It is better because it contains all that the Anderson amendment contains and in addition to that it contains a provision respecting the tax on coal and other mineral land. It contains the inheritance tax and the provision that the inheritance tax may be graduated. It contains the income provision and perhaps one or two other measures upon which we all agree. My notion is if we can have this limitation in the Fackler amendment and then adopt the Fackler amendment we have an ideal taxing proposition.

I do not care to speak on its merits at all. I can scarcely avoid the temptation, however, to reply to some of the things that have been said this morning by the member from Mahoning. When I examine the records I find that a few little banks down in the county of Preble, one of the smallest counties in the state, one of the poorest counties because it is small, poor only because it is small in population, but rich in everything else—when I see that in the little county of Preble there is more money

returned for taxation by one hundred thousand dollars than is returned in the great county of Mahoning and when I find that the merchants of the little county of Preble returned more goods for taxation than were returned by all those mammoth stores in Youngstown and all of Mahoning county, then I feel like saying something about it, but I have taken too long and I will desist.

Mr. FACKLER: I move that the amendment of the delegate from Defiance be laid on the table.

Mr. EBY: I wish to say that in twenty years, from 1890 to 1910, Preble county had a larger duplicate per capita than any county in the state except one and that was Lake.

Mr. DOTY: Where is Preble?

Mr. EBY: Nobody but a gentleman from Cuyahoga would ask that. I want to say further that Preble county produced more agricultural products per capita than any county in the state of Ohio.

Mr. WINN: I demand the yeas and nays on the motion of the gentleman from Cleveland [Mr. FACKLER].

The yeas and nays were taken, and resulted—yeas 40, nays 67, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Malin,
Bowdle,	Harris, Ashtabula	Matthews,
Cassidy,	Harter, Huron,	Mauck,
Cordes,	Henderson,	Read,
Crosser,	Hoskins,	Roehm,
Davio,	Hursh,	Shaffer,
Doty,	Johnson, Madison,	Stamm,
Elson,	Johnson, Williams,	Stevens,
Evans,	Kilpatrick,	Stilwell,
Fackler,	Knight,	Taggart,
Farrell,	Kramer,	Thomas,
Fess,	Leete,	Ulmer,
FitSimons,	Leslie,	Weybrecht.
Fox,		

Those who voted in the negative are:

Antrim,	Harter, Stark,	Peters,
Baum,	Hoffman,	Pettit,
Beatty, Morrow,	Holtz,	Pierce,
Beyer,	Jones,	Price,
Brattain,	Keller,	Redington,
Brown, Highland,	Kunkel,	Riley,
Brown, Pike,	Lambert,	Rockel,
Campbell,	Lampson,	Rorick,
Cody,	Longstreth,	Shaw,
Collett,	Ludey,	Smith, Geauga,
Colton,	Marriott,	Solether,
Crites,	Marshall,	Stalter,
Cunningham,	McClelland,	Stewart,
Dunlap,	Miller, Crawford,	Stokes,
Dunn,	Miller, Fairfield,	Tannehill,
Dwyer,	Miller, Ottawa,	Tetlow,
Earnhart,	Moore,	Wagner,
Eby,	Norris,	Walker,
Fluke,	Nye,	Watson,
Halenkamp,	Okey,	Winn,
Halfhill,	Partington,	Woods,
Harbarger,	Peck,	Mr. President.
Harris, Hamilton,		

So the motion to table was lost.

Mr. COLTON: I now move the previous question on the Winn amendment.

Mr. DOTY: I second it. Before that is taken I demand the yeas and nays.

The main question was ordered.

The delegate from Ashtabula [Mr. LAMPSON] here assumed the chair as president pro tem.

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The PRESIDENT PRO TEM: The question is on the amendment of the delegate from Defiance.

The yeas and nays were regularly demanded, taken, and resulted—yeas 66, nays 41, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Okey,
Baum,	Harbarger,	Partington,
Beatty, Morrow,	Harris, Hamilton,	Peck,
Beyer,	Hoffman,	Peters,
Brattain,	Holtz,	Pettit,
Brown, Highland,	Johnson, Madison,	Pierce,
Brown, Pike,	Jones,	Price,
Campbell,	Keller,	Redington,
Cody,	Kunkel,	Riley,
Collett,	Lambert,	Rockel,
Colton,	Lampson,	Rorick,
Cordes,	Longstreth,	Shaw,
Crites,	Ludey,	Solether,
Cunningham,	Marriott,	Stalter,
Dunlap,	Marshall,	Stewart,
Dunn,	McClelland,	Stokes,
Dwyer,	Miller, Crawford,	Tannehill,
Earnhart,	Miller, Fairfield,	Tetlow,
Eby,	Miller, Ottawa,	Wagner,
Elson,	Moore,	Walker,
Fess,	Norris,	Watson,
Fluke,	Nye,	Woods.

Those who voted in the negative are:

Anderson,	Harter, Huron,	Read,
Bowdle,	Harter, Stark,	Roehm,
Cassidy,	Hoskins,	Shaffer,
Crosser,	Hursh,	Smith, Geauga,
Davio,	Johnson, Williams,	Stamm,
Doty,	Kilpatrick,	Stevens,
Evans,	King,	Stilwell,
Fackler,	Knigh,	Taggart,
Farrell,	Kramer,	Thomas,
FitzSimons,	Leete,	Ulmer,
Fox,	Leslie,	Weybrecht,
Hahn,	Malin,	Winn,
Halenkamp,	Matthews,	Mr. President.
Harris, Ashtabula,	Mauck,	

So the amendment was agreed to.

Mr. HALFHILL: I desire to explain my vote. I voted in the affirmative upon this question because I believe we have no right to interfere with the experiment of the Smith one per cent law, which is an experiment. This Convention ought to have been big enough to leave experiments out of the constitution and I believe we shall regret the day that it is there. We have no means of knowing what the future has in store for us, and within ten years the purchasing power of a dollar has decreased by one-half. I want to explain my vote.

Mr. ANDERSON: I want to explain my vote. I am firmly of the belief and have been for some time that there are a number of delegates, and their names will come to mind of other delegates, that are opposed to the income tax and inheritance tax, the production tax, the franchise tax, and the taxing of bonds, and that they are trying to do that which was stated by some delegate on the other side of the house yesterday—prolong the debate and mix it up for the purpose, and the sole purpose—not because they are in favor of the one per cent tax law, because they would be voting the other way if that were so—but for the sole purpose of dividing the Convention upon the question of those taxes. Therefore, I voted against the Winn amendment, and I firmly believe if all the delegates had voted their true sentiments on this amendment it would have failed of adoption.

Mr. DOTY: I offered an amendment and I haven't had a chance to explain it or talk about it at all. Through a misunderstanding or inadvertence a motion was made to lay this amendment on the table and the amendment was not discussed. It had not at that time been printed. I have changed it somewhat and I state frankly that the amendment I offer is the same in principle but different in form and I offer it so we can have a discussion of it.

The amendment was read as follows:

At the end of the proposal add:

That, at the same time and upon the same ballot, which ballot shall be separate from all other ballots upon which amendments may be submitted, the following alternative proposed amendment be submitted to the electors of the state:

ARTICLE XII.

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money, or other thing of value.

SECTION 2. The general assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It may classify the subjects of taxation so far as their differences justify the same in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended or contracted away. Bonds of the state of Ohio, bonds of any city, village, hamlet, county or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, burying grounds, public school houses, houses used exclusively for public worship, institutions for purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing

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for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income, not exceeding three thousand dollars in any one year, may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Resolved further, When these competing amendments to the constitution are submitted to the electors, the ballot shall be printed as follows:

	For uniform rule in taxation.
	For classification in taxation.
	Against both amendments.

so that each elector may express separately by making one cross-mark (X) his preference for either of the two amendments or against both amendments. If the majority of votes are cast "Against both amendments" as compared with the total of those cast for either amendment, there shall be no amendment to the constitution; if not, the amendment which has the larger number of votes shall be adopted as the amendment to article XII, sections 1, 2 and 6 of the constitution.

Mr. DOTY: In 1891 three hundred and three thousand people in the state of Ohio, over forty per cent of the electors that year, voted to insert in the constitution section 2 of this amendment. At that time there was no Longworth act, so it was voted on under the adverse conditions of the ballot with which you are all familiar. It was not adopted because all of those who did not vote were counted as being in the negative.

Three years later three hundred and twenty-two thousand voted for the same amendment. In 1903 three hundred and twenty-six thousand voted for the same amendment. In 1908 three hundred and thirty-nine thousand—nearly three hundred and forty thousand—of the electors voted for this identical amendment, and at none of those elections was the Longworth act responsible for the vote. They were voted on under the adverse conditions of submitting an amendment under the old constitution. Now, from three hundred and three thousand to three hundred and forty thousand having voted for this particular amendment, that makes a very respectable number of the people of the state of Ohio who have already indicated their wish to change the constitution in this particular.

There may not be a majority of all the people in the state of Ohio in favor of it, but there is certainly a very much larger percentage of the total number of voters in the state than we have called for in the highest percentage of the initiative and referendum, which was twelve per cent.

Mr. DWYER: Does your proposition provide for a limitation of the tax rates?

Mr. DOTY: That has been voted in and my proposition does not disturb it.

Mr. DWYER: The Winn proposal goes in.

Mr. DOTY: Yes, and mine does not affect that. Mine is an alternative proposition to be voted for, so that if you are for the Winn proposal you would be for both of these and if you were against it you would be against both.

Mr. DWYER: If yours is out and the Winn amendment is in, it would be in good shape.

Mr. DOTY: All this amendment seeks to do is to do what evidently it is impossible for this Convention to do with any certainty. I do not care what the member from Defiance says, none of us feels sure the thing we are ready to vote for is really the solution of this tax question. Why should not the people of Ohio have a chance to vote for, or against one of these options, and why should we select only these options? I think the reason why we should select only these options at this time is because for sixty years we have had one in effect and four times in the last twenty years over three hundred thousand people have voted for the other. Since 1851 the uniform rule, as so called, has never been submitted to a vote of the people of the state of Ohio. You gentlemen who are in favor of the uniform rule, as you have a perfect right to be, may be representing the opinion of your constituents and you may not; you do not know and I do not know. The nearest I know about my own county is that the last time this amendment was submitted it received thirty-seven thousand votes to sixty-seven thousand votes against it; but when you count the voters who did not vote the majority against it vanished. Cuyahoga county nor any other county has never had a chance to express itself on the uniform rule. Are you gentlemen so sure that you are absolutely capable of diagnosing the people of your county on this subject, and yet are afraid or unwilling to submit the question to the people of your county? Why do you set yourselves up as being the only ones capable to say?

Mr. WATSON: In regard to my county I can say this is one of the planks on which I ran, and it was discussed all over the county.

Mr. DOTY: You didn't ask a question, but made a statement. I suppose that is all right. You also ran on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: Did not the principle of the initiative and referendum provide that we should leave these questions to the people?

Mr. WATSON: Yes.

Mr. DOTY: Why are we afraid to leave the question of uniform taxation to the people?

Mr. WATSON: I discussed the taxation question with these people and they seem to be in accord with it.

Mr. DOTY: How many votes did you receive?

Mr. WATSON: Sixteen hundred and twenty.

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Mr. DOTY: What was the combined vote of all the other candidates?

Mr. WATSON: About four times that.

Mr. DOTY: So we find in Guernsey county the vote taken upon the taxation question specifically on a campaign for uniform taxation was four to one against the uniform rule.

Mr. WATSON: That was also the plank of the other candidates.

Mr. DOTY: Were they defeated on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: You were elected on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: Do you suppose that if you had told your people that you were for the initiative and referendum on everything except the most important question that you would have gotten sixteen hundred votes?

Mr. WATSON: Yes.

Mr. DOTY: Then it must be your personal popularity.

Mr. HARRIS, of Ashtabula: You have quoted some figures at the outset of your remarks in which you undertook to argue that there is increased interest in the classification of property?

Mr. DOTY: I didn't say anything about that. I do not think there has been any increased interest so far as the vote goes.

Mr. HARRIS, of Ashtabula: It has been submitted three times since 1891?

Mr. DOTY: Four times, I think.

Mr. HARRIS, of Ashtabula: You have quoted those figures?

Mr. DOTY: Not for you; not for the benefit of the member from Ashtabula. The member from Ashtabula [Mr. HARRIS] is perfectly consistent in being afraid of the people. I do not care anything about trying to convert him. He is unconvertible, but I hate to see a gentleman wrong who started out right.

Mr. HARRIS, of Ashtabula: May I read a few figures now?

Mr. DOTY: I do not care, only it is pretty difficult to carry in your mind figures read from a sheet.

Mr. HARRIS, of Ashtabula: The sheet I have before me contains in several columns the vote on constitutional amendments, under the headings "for the amendment," "against the amendment," "failed by," "carried by," and finally, the percentage of all those who voted on the amendment at all.

Mr. DOTY: The main thing with everybody trying to do anything is the percentage.

Mr. HARRIS, of Ashtabula: You have used some figures yourself, and whether they are correct or not I do not know. But it appears that 303,000 and 340,000 voted for classification.

Mr. DOTY: That would make a pretty enormous petition for a change in our tax system from the uniform rule to the so-called classification rule.

Mr. HARRIS, of Ashtabula: The classification is the question under consideration. May I make another suggestion?

Mr. DOTY: You can make a suggestion. I did not know that you had made any yet.

Mr. HARRIS, of Ashtabula: That is a matter of

opinion. You and the member from Allen [Mr. HALF-HILL] seem to indicate this is not an alternative. Suppose we do not adopt the constitutional provision that we are framing; we retain the old constitutional provision. Now what you want is two alternatives—the main question and two alternatives.

Mr. DOTY: I had my mind all made up for a suggestion, and you have run it into a question.

Mr. HARRIS, of Ashtabula: I cannot take note of the limitations of your mind.

Mr. DOTY: I have this consoling fact, there are others. I have not got the question or suggestion yet, but be that as it may, as they say in the story books, all I am trying to show is that here in fairness is the method of putting up to the people the uniform rule that we have been talking so much about as against the classification rule. I am opposed to the uniform rule, but I am not afraid to put it up to the people, and if they are for it, that is an end of the matter—at least for another generation—but for sixty-one years the people of Ohio have never voted directly upon the uniform rule, and the member from Ashtabula [Mr. HARRIS] knows it.

Mr. HARRIS, of Ashtabula: We have it now.

Mr. DOTY: But you are afraid to put the uniform rule on a ballot and let the people vote on it.

Mr. BROWN, of Highland: In case we can agree on some form of provision along the line of the subjects now discussed and debated—the uniform rule and the classification proposal—would you be willing to make a reasonable restriction upon the levy upon real estate?

Mr. DOTY: Of-course not; you know I would not, and you would not do it unless you were interested in some things down in the sixth district. What you ask is perfectly unscientific and unfair, and the gentleman knows it.

Now I have taken up more time than I intended. This is a simple plan to put up for the first time in words the uniform rule against the so-called classification plan, which has been voted for and, in fact, petitioned for by a larger number of the people of the state of Ohio than has ever petitioned any legislature of any constitutional convention for any one thing—two and half to three times as large as the percentage we have provided for in the highest percentage in our initiative and referendum proposal. It is presented in the alternative plan, and I call attention to the fact that the voter under this provision need only make one mark to indicate his choice. In other words, if he is in favor of the uniform rule, one mark will indicate that, and adopt the Anderson-Winn proposal if that is adopted. If he is in favor of classification of property he would vote for the amendment I am proposing, and if he is against both of them and wants the constitution to remain exactly as it has been for sixty-one years, he can vote against both of them with one mark. It is a simple proposition for the voters. It is a fair proposition for the voters and unless you are afraid to allow them to tell you whether they are for the uniform rule or not it ought to be adopted.

Mr. EBY: You told us about 303,000 and 340,000 that voted, but you forgot to say how many voted against it.

Mr. DOTY: Actually voted against it? When it got 303,000 there were 65,000 actually voted against it, and at the last election, when it got 340,000 about 96,000 voted against it. In other words, at any one of those elec-

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tions, with the provision that this Convention has voted for submission of amendments, classification would have been adopted. We do not ask you to put up classification by itself. We asked it, but the Convention said no. Now all we ask is that you put up what you are in favor of in these words, and put up classification in these words, and let the people take their choice. Who is there in this Convention who says he is larger and greater than the people?

Mr. ANTRIM: Is not your amendment a little different from what you intend? You provide for classification and the Fackler amendment provides for the uniform rule.

Mr. DOTY: Yes.

Mr. ANTRIM: You omit the Winn amendment and the Fackler amendment contains the Winn amendment.

Mr. DOTY: Yes.

Mr. ANTRIM: All the other features are the same?

Mr. DOTY: Yes; perhaps there has been an amendment or two put in that I may not have gotten in mine, but the plan was to have the amendment I offer exactly like the other one, except that theirs provides the uniform rule and mine classification.

Mr. ANTRIM: Do you want the Winn amendment in?

Mr. DOTY: Yes; the Winn or the Antrim, or whatever the members in favor of uniform rule desire to write into that amendment. I want to submit everything in my amendment except what is in section 2, and then I want to submit it in the alternative, the alternative being the two propositions, bringing a direct issue between uniform rule and classification. Section 2, as I have submitted it, is exactly, word for word, without the change of a comma or a letter, like the amendment submitted to the people of Ohio in 1908, which amendment received 340,000 votes.

Mr. HARRIS, of Hamilton: The gentlemen of the Convention ought to have arrived at the conclusion that the time is ripe for statesmanship and not for peanut politics. This Convention on the taxation question has fluctuated, swinging from side to side, dictated by personal prejudices. The extremists were in evidence on both sides, and now no matter who is successful, it will illustrate that well-known saying, "Another such victory and we are lost." What boots it what temporary victory you gain in this Convention? Do you not know that this Convention, split as we are on taxation, when we leave here and go to our counties to take an active part, as most of us will do, in explaining the constitution, will find that we are facing certain defeat? Those things which we prize most will go down in defeat with those things we abhor most. So I say to you, the time is ripe for broadness of view, to take the place of narrowness, bigotry and the partisanship which have developed in the discussion of this tax problem. In my judgment an opportunity is now offered by this alternative proposition submitted by the member from Cuyahoga [Mr. Doty], a proposition which the general assembly three times submitted to the people of Ohio, the last time in 1908. The general assembly, owing to the demand from the people of Ohio, offered them the privilege to determine whether they would accept classification or reject it. And will this Convention refuse to do once that which the representatives of the people have seen fit to do three times?

How can you defend your position if you are both inconsistent and arbitrary?

When was a fairer proposition offered than this alternative proposition, bearing in mind, as the member from Cuyahoga [Mr. Doty] stated, that it is identically the same proposition submitted in 1908, when something like 340,000 people in the state voted in favor of it, and only 80,000 or 90,000 voted against it? What does that mean to any person familiar with figures? It means that there were only 80,000 or 90,000 in the state of Ohio who felt it such a serious encroachment on their economical liberties as to cause them to go up to the polls and register their protest against it. It means that of the remaining eleven hundred thousand people in the state of Ohio three hundred and forty thousand were so enthusiastic over it that they registered their votes in favor of it, while the remaining 780,000 said, "We are perfectly willing to try the experiment; we will not vote against it." The time for statesmanship has now arrived. Let us not jeopardize those things so dear to our hearts, the question of home rule, the initiative and referendum, the liquor license and those other big problems, by permitting this Convention to be split in two on this proposition, with the feeling on the part of the people of the state that if the Convention itself was unable to reach a conclusion or arrive at common ground of agreement on the most vital question before it, then it was safe to assume that all the other work before it was also unworthy of being considered. The wise thing to do, therefore, is to submit to the people of the state the alternative propositions. If those who advocate the uniform rule believe that certain things in the present uniform rule proposal as now before us ought to have been left out, or that certain things that have been left out ought to have been put in, let them make the strongest case possible from their point of view on the uniform rule, and we shall, if they will adopt the alternative proposition, vote with them to incorporate anything they desire in their uniform rule, or to strike out anything that is offensive to them.

Mr. HARRIS, of Ashtabula: More in the nature of a suggestion than a question: I think the figures of Mr. Harris, of Hamilton, are a little misleading. This proposition has been submitted to the people three times, in 1891, 1903 and 1908. The gentleman just had the sheet, and I thought he had refreshed his memory. In 1891, forty-six per cent of all who voted voted one way or the other on the proposition, and the other fifty-four per cent did not vote on it at all.

Mr. HARRIS, of Hamilton: I said 760,000 were so well satisfied with what the rest of the state did that they were willing not to vote. Had they been opposed to it they would have registered a protest against it.

Mr. HARRIS, of Ashtabula: In 1908 only thirty-eight per cent of 1,136,000 of the people who voted at the election voted either way.

Mr. HARRIS, of Hamilton: Then there were sixty-two per cent of the people who were so well satisfied that the proposition should go through that they did not register a protest against it. There are those who have eyes that cannot see, ears that cannot hear and brains that will not brain.

Mr. HARRIS, of Ashtabula: Don't you think this constitution will need a little interpreting if such interpretations as you give here are put on it?

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Mr. HARRIS, of Hamilton: If it does, you are the last man in the Convention I shall call upon to interpret it.

Mr. HARRIS, of Ashtabula: That is a matter of opinion, like all the rest you say.

Mr. ANDERSON: Are you in favor of an income tax?

Mr. HARRIS, of Hamilton: Very much in favor of it.

Mr. ANDERSON: Inheritance tax?

Mr. HARRIS, of Hamilton: Very much so.

Mr. ANDERSON: Production tax?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. ANDERSON: Tax on franchise?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. ANDERSON: Against the tax on bonds?

Mr. HARRIS, of Hamilton: I am unalterably opposed to a tax on the bonds of the state of Ohio or of any political subdivision thereof.

Mr. ANDERSON: Would you be in favor, as an abstract proposition, of any per cent limitation?

Mr. HARRIS, of Hamilton: Only if accompanied by that which to me is abhorrent, the uniform rule. With the present tax assessment of one hundred and one hundred and twenty-five per cent on our farms and homes, with the knowledge that that assessment will never go down, we know that the rate of taxation must go up. Now I am willing to hold on to the Smith one per cent law if the people are sincere about it, with fifteen mills as the maximum, and if that doesn't produce sufficient revenue, then the people, under the eight per cent initiative, will have a chance to change it. I am willing to make that concession.

Mr. ANDERSON: Do you not believe that the retaining of the Winn amendment in the proposal will cause thousands and thousands of votes to be cast against the uniform rule, and therefore against the inheritance, income, production, franchise and bond tax?

Mr. HARRIS, of Hamilton: No, sir; I believe that the advocates of the uniform rule to be consistent must demand the limitations of the so-called Smith bill—they are bound to do it if they are logical.

Mr. ANDERSON: Did you vote in favor of the Winn amendment because you are in favor of it or because you wanted the uniform rule killed?

Mr. HARRIS, of Hamilton: I voted for the Winn amendment because it was my constitutional right to do so, but I claim to be logical before I am sentimental, and I therefore again insist that limitation of the total tax levy ought to accompany the uniform rule of taxation, unless you wish the latter to develop into a colossal failure.

The delegate from Auglaize [Mr. HOSKINS] was recognized.

Mr. PETTIT: I have been trying to get an opportunity to address the Convention for days, and I demand recognition. I was first on my feet and the chair, under the rules, is required to recognize me, and I am going to remain here, too.

Mr. HOSKINS: I have been trying to get recognition for a good while myself. Mr. President and Gentlemen—

Mr. PETTIT: I demand recognition.

The PRESIDENT: The member from Adams [Mr. PETTIT] is out of order.

Mr. PETTIT: I am not out of order. The rule says the man who addresses the chair first shall be recognized.

The PRESIDENT: The gentleman is out of order.

Mr. PETTIT: You have a list up there and you are trying to go by that regardless —

The PRESIDENT: The gentleman is out of order.

Mr. HOSKINS: I have been trying to get recognition from the chair for two days, and I finally got it.

Mr. PETTIT: You finally got it because your name was up there.

Mr. HOSKINS: My name was not up there.

Mr. PETTIT: Then I don't know how on earth you got recognized.

Mr. HOSKINS: I think I addressed the chair before you did.

Mr. PETTIT: You didn't do anything of the kind. I was up here before you were on your feet at all. I want to know, Mr. President, if you are going to sit up there as an autocrat. I want to know that right now, for I want to test your power.

The PRESIDENT: The member is out of order.

Mr. PETTIT: Why am I out of order? Tell me.

Mr. HOSKINS: May I ask you a question?

Mr. PETTIT: I am talking to the chair now. Why am I out of order?

The PRESIDENT: If I may be permitted to make a few remarks, the rules give the president a right to recognize any member who he thinks is on his feet and demanding recognition first. The president exercised that discretion under the rules, and recognized the gentleman from Auglaize [Mr. HOSKINS]. The president rules that the member from Auglaize [Mr. HOSKINS] has the floor and that the member from Adams [Mr. PETTIT] is out of order. The remedy of the member from Adams is to appeal from the decision of the chair. Does the member wish to appeal?

Mr. PETTIT: Will the gentleman tell me what rule that is?

The PRESIDENT: The member can find the rule easily.

Mr. PETTIT: I know you have been overriding Rule 19 right along.

Mr. HARRIS, of Hamilton: I call the gentleman to order. His conduct is unseemly and casts discredit on the Convention.

Mr. PETTIT: This gentleman has been hearing his own voice almost incessantly, but when I get up I am not allowed to speak.

The PRESIDENT: Does the member from Adams [Mr. PETTIT] wish to appeal from the decision of the president?

Mr. PETTIT: I wish to be recognized as a member of this Convention.

The PRESIDENT: The member from Adams is out of order and will kindly take his seat.

Mr. PETTIT: I decline to take my seat. I will stand as long as I want to.

The PRESIDENT: The president has no other recourse than to call upon the sergeant-at-arms to assist him in maintaining order. The president would be glad to have the gentleman from Adams [Mr. PETTIT], or any other gentleman, appeal from the ruling of the chair in order that the ruling can be tested.

Mr. MILLER, of Crawford: In order to test the matter I appeal from the decision of the chair.

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Mr. DOTY: And I move that the appeal be laid on the table.

The PRESIDENT: The member from Crawford [Mr. MILLER] appeals from the chair, the yeas and nays have been demanded and the secretary will call the roll. The question is, Shall the decision of the president be sustained?

Mr. HOSKINS: We are on an important question and there is unlimited debate. How much time do you want, Mr. Pettit?

DELEGATES: Vote! Vote!

Mr. HOSKINS: I have not said a word yet.

The PRESIDENT: The question is, Shall the appeal be laid on the table? Those in favor of the motion will answer aye as their names are called, and those contrary no.

Mr. FESS: I wish the gentleman would withdraw that motion. I sat here and I saw Mr. Hoskins trying to get the floor when Mr. Harris tried to get the floor, and while Mr. Pettit may have been up a little earlier than Mr. Hoskins, Mr. Hoskins had been trying to get the floor for some time, and it was easy for anyone to decide that Mr. Hoskins was up first.

Mr. PETTIT: If that is your statement, I have no reason to doubt it.

Mr. DOTY: I withdraw my motion.

Mr. HOSKINS: I think everybody will be given a fair show.

Mr. PETTIT: Well, they have not had a fair show.

Mr. MILLER, of Crawford: I withdraw the appeal. My only object in making it was that I knew there were not more than three men in this Convention who would not sustain the decision of the chair. I saw Mr. Hoskins up five seconds before Mr. Pettit was up. I just made the motion to bring the matter to a test.

Mr. PETTIT: If this is correct, I am all right.

Mr. HOSKINS: I surely think it is, for I have been trying to get recognition each time when the last three speakers got up.

Mr. FESS: That is so, Mr. Pettit.

Mr. PETTIT: Then I will take your word.

Mr. ANDERSON: I make the point of order that we are not in order.

The PRESIDENT: The point of order is well taken, the member from Auglaize [Mr. Hoskins] will proceed.

Mr. HOSKINS: I am very sorry to have this occur, because we have lost so much time in parliamentary wrangling, with which I am not very familiar. I have not said a word on the question of taxation down to the present moment, and I would like to suggest to the membership that there is a large number of delegates who would at least like to say a few words on this proposition, and who before the debate closes ought to be permitted to say those words, and if certain members occupy too much of the time in their discussion, I want to suggest in all kindness that it is a little bit unfair to the other delegates. Our votes are not always understood, and we have at least a right to explain our positions before the Convention. That is practically all I wish to do.

I came to this Convention believing that it was right and proper that authority might exist for classification of property for taxation purposes. I am not a tax expert. I do not pretend to be a tax expert. Only as I observed the rules and methods of taxation in my own every-day business and in my own every-day experience

did I come to the conclusion that to permit the legislature to classify property for the purpose of taxation would be the proper thing to do. I have not seen anything since I came here to materially change my mind on that proposition, and yet it seems that a majority of the Convention are adherents of the uniform rule. I think it is only fair to say that I have no criticism to make of those members who desire to maintain the present uniform rule, but I do have a criticism of their attempt to tax bonds under the uniform rule. I want to say here that I am and have been at all times in thorough sympathy with the so-called one per cent law. I believe it did a great deal of good in the state of Ohio, but that one per cent law is a statutory matter pure and simple, and is not a matter which ought to be written into the constitution; and I want to appeal to the membership here not to be foolish, not to do a radical thing. We all admit this much, that the one per cent law is the minimum. Nobody has made any provision to write in one-half or three-quarters of one per cent. Nobody has undertaken to write that into the constitution, but you have undertaken to put in what all of us say is the actual minimum on which the government of our cities can be maintained. We may get along out in the country, although we have one or two school districts that have been unable to maintain themselves and pay their expenses this year, but possibly that is not so much the fault of the one per cent rule as of the method of assessment, all of which will correct itself in time. But we admit this, that in writing in one per cent you have written the minimum under which the government can be maintained. How does that appeal to you as a constitutional matter, to write in the very lowest thing under which the government of municipalities can be maintained? Is it good constitution making to take the extreme and radical view of the proposition and attempt to write it in the constitution?

Now, I am opposed to including the Smith one per cent law in the constitution, and I am perfectly consistent. Being an ardent supporter of the Smith one per cent law, I do not want to be misunderstood, but I look upon it as purely a statutory matter with which the constitution should not be concerned.

From my point of view the adoption of the initiative and referendum is one of the big things we have thus far accomplished, and if we do not get foolish before we get through and discredit our work the people of the state of Ohio will approve the work we have done on the initiative and referendum. If they do that, what is the status? Have you not a perfect safeguard if the future contingencies do not call for the repeal of the one per cent law? Haven't you ample safeguards in the hands of the people themselves to prevent the so-called reckless and arbitrary and unreasonable and mercenary legislature from repealing that one per cent law? You can refer it to the people and prevent the repeal and hold the Smith one per cent law in the present statute. If conditions that may develop in five or ten or fifteen years from now do not demand its repeal, and the law works well, the people have it in their power to fix that law on the statute books.

It is almost certain that the initiative and referendum proposition will be adopted, and the people in the state of Ohio will have it within their own power to keep this one per cent tax law as long as it subserves the interests of the state and its municipalities, and as long

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as they can live under it. I fully believe that with proper administration of public affairs you will fully be able in your townships and municipalities to get along on the maximum, the one and a half per cent rate.

Now I think too that it is much more important that there be adopted in this constitution a provision that would provide for a production tax, for an income tax, for an inheritance tax and for a franchise tax. I am not sure just how many of those are already permitted. I do not think the inheritance tax is prohibited under our present constitution. I do not think the income tax is, but in providing for a working tax law in this Convention I believe we should provide for those four taxes. As I understand it they are provided for both in the direct and in the alternative proposition.

I do not care to go into any extensive argument of the proposition, but it seems to me if those who want to maintain the uniform rule in Ohio, want to be fair with the voters of the state and want to put up the principle of taxation to the people, that the people may pass on that proposition, they should put up both alternatives, and let the people pass on both. I do not know of any reason why those who support the initiative and referendum should not be willing to let the people pass on both of these propositions, and let us accept the verdict of the people at the polls.

I come from a rural county. It is one of those poor counties that were mentioned by the gentleman from Defiance [Mr. WINN], poor, because it is not as large as Hamilton or Cuyahoga, but I think we are as rich as any county in the state. I think we can get along under the one per cent rate, and I want to say this further, as a farmer: Appeals seem to have been made to farmers, as if the proposition not to write a limitation were a conspiracy against the farmer. I do not look upon it that way. I have more of my little earthly possessions in farm lands than anything else. I am more interested in the productiveness and in taxes on farms than in any other business proposition outside of my own profession, and I do not sympathize with these appeals that have been made as if the proposition to not write a limitation in the constitution were liable to result in a higher tax on farm lands.

Now I want to appeal to the fairness of men from the rural counties. While you may be with me supporters of the one per cent tax law, believing it should be kept on the books until thoroughly tried, I feel that it is unfair for us, over the protest of the men living in the large municipalities, to write this minimum limitation in the constitution; and I am tempted to question the sincerity of the gentleman from Defiance [Mr. WINN] when he made his appeal last night to the men of this Convention to write that extreme limitation in the constitution. I do not believe he means it. I believe that the many votes cast on that proposition in favor of writing that limitation in the constitution were for the purpose of loading it down and defeating it at the polls, and I do not believe we should do that. I think we should vote our sentiments. I do not think we should load anything down so as to defeat it at the polls, and if you insist on writing into the constitution this matter which is legislative and which the people and their representatives have a right to pass upon, you will load it down with something that will defeat it at the polls. If you believe in the intelligence of the people, give the alternative propositions

to the people, so that the people can pass upon their system of taxation in an intelligent way, and if they retain the uniform rule all well and good. If a majority of them vote for classification you ought not to complain, because it will be an intelligent verdict of the people of the state of Ohio.

Now I want to say again, and then I shall have no more to say on the taxation question from beginning to end, I favor writing a production tax in the constitution; I favor writing an income tax in the constitution; I favor writing an inheritance tax and a franchise tax in the constitution, and I want the provision so drawn that when the voters pass upon it this fall they will approve those propositions and not defeat the constitution because it is loaded down with statutory matters that ought not to be in it.

What will we do if you furnish all the arguments against the proposition that are furnished in the Winn amendment? It means defeat of all of the constitutional amendments. It will mean the defeat of the franchise, the income, the inheritance and the production taxes, and all the other things we are seeking to arrive at, and I want to warn you if you attempt to put through this arbitrary method of taxation, and give the people no choice between the two methods, you are loading it down, and you who are pretending to want these other methods of taxation, the franchise, the inheritance, the production and the income taxes, are simply going to defeat the proposition yourselves, and the blame will be upon your heads when the polls close at the time this matter is submitted. I appeal to you in common honesty and fairness, give us these alternative propositions, and if you want the uniform rule, you had better cut out the Winn amendment.

Mr. HOLTZ: If we incorporate this limitation in the constitution, can we not under the initiative and referendum by a vote of the people increase the limitation if we find the limitation is too low?

Mr. HOSKINS: Increase the limitation?

Mr. HOLTZ: Yes?

Mr. HOSKINS: Yes, you could; but you would have to change the constitution to do it.

Mr. HOLTZ: But under the initiative and referendum we have a provision for that, as I understand it.

Mr. HOSKINS: Yes. I would ask you, are you satisfied with the present Smith law?

Mr. HOLTZ: Yes.

Mr. HOSKINS: If we adopt the constitution without any limit whatever, under the initiative and referendum can you not prevent the legislature from repealing the Smith law by the referendum?

Mr. HOLTZ: Yes.

Mr. HOSKINS: Then it is all right.

Mr. BIGELOW: Mr. President: Next to the initiative and referendum, which seek to get government back as close as possible to the people, the measure before the Convention now is the one to which I have given most thought, and in which I have the most concern. In view of this, I trust it will not be thought out of place for me to have a few words on the floor, and to give my reasons for urging the adoption of the amendment now pending.

The issue before the Convention is this: The Convention has gone on record so that there is no question that a majority of the members believe in the position taken

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by the member from Defiance [Mr. WINN]. They believe in the uniform rule. There is no dispute about that. Now there is one other question before us. There is some reasonable doubt as to whether the people of the state of Ohio agree with the position taken by the member from Defiance [Mr. WINN]. I think every man here will admit that there is some reasonable doubt as to that. Now, in opposition to the member from Defiance and his friends, there are those in this Convention who feel very strongly upon this subject. They take issue with him. They know the Convention is with him, but they honestly believe that the people are with them. They come here with this single request, that this Convention will not prejudge the question as to where the people stand, but that this Convention will permit a clear, clean issue to be drawn before the people themselves, as between one side and the other of this dispute. Wendell Phillips once made a beautiful use of that story in the Bible about the healing of the cripple at the pool of Bethesda. The cripples sat about hopeless until the angel came and stirred the waters. It was only when the waters were agitated that there was healing in their flow. We feel thus about this question of taxation and public opinion. Who can oppose the agitation of this question before the people? Who can deny our right to go out before the people at the polls the latter part of August or the first of September, when this question is to be submitted, and try to educate them, and talk to them as we are talking to each other about this question?

Now this is the issue, members of the Convention. Our fellow members—and I say this to the member from Defiance [Mr. WINN] and to the member from Mahoning [Mr. ANDERSON], and I say it to every one of you, though you may differ with us. Will you give us that chance? Will you give us the right to carry this question directly to the people? I remember the saying of the great abolitionist orator of Boston that "He does not really believe his own opinions who dares not give free scope to his opponent." Are you going to take that position today that you are so sure you are right and so sure the people are with you that you will not allow a referendum on this question, or give us a chance to take the matter to the people and let them say what their opinion about it is?

We have heard a great deal about the farmers and bonds and property. I want to say a word about something about which not much has been said. I want to say a word about humanity, and the relation of this question of taxation to it. The two greatest problems that affect the material welfare of mankind are the problems of wages and prices.

Now I look upon the power of taxation as the most effective instrument that the state has to reduce prices and to increase wages, to swell the volume of business and create prosperity. It is because I think I see the social result of a righteous system of taxation, and the social evils of a wrong system of taxation, that I am anxious that at no time in the future shall the power of the state be thwarted or the hands of the people be tied, but that we may be forever free to use this power as at any given time our judgment dictates, in order that we may work with this power to reduce prices and increase wages and bring prosperity and justice to man. Now a word about that.

First about prices: There can be no dispute among

thoughtful men that every time you put a tax upon the product of labor you increase the cost of that thing to the consumer. Take an old cow in a farmer's barnyard. The assessor comes around and taxes the cow. He taxes the cow as a going concern. He taxes the hide on the back of the cow. The cow is killed, and it is skinned and the hide is sent to a tannery. The assessor comes around and puts another tax on that hide. The hide is made up into a piece of leather and it goes to the warehouse of a leather manufacturer and while there the assessor comes around. He is supposed to put everything the man has on the duplicate. If he does, he puts another tax on that hide. The leather is made into a harness and sold to a jobber, a friend of mine. He has it in his store, and the assessor comes and is supposed to put everything the man has on the duplicate. If he does, he puts another tax on that hide. The jobber sells the harness to a retail merchant down in Kentucky or Tennessee some place, and the merchant hangs the harness up in his front window. He is sitting in the rear of his store and a man comes in not to buy harnesses but to tax them. The assessor is supposed to put on the duplicate everything the man has. If he does, he puts another tax on that hide. At last the merchant sells that harness to a farmer and the farmer takes it home. Then the farmer receives a visit from the tax assessor. The theory is that if the farmer has made any improvement he has to be penalized. If he has built a fence, or dug a ditch or built a barn, or bought a piano for his daughter, or purchased any machinery, if he has done anything useful that in any way contributes to the employment of labor and the general prosperity, his taxes are increased that much. The assessor looks for some evidence of prosperity and is about discouraged when his eyes light on that new harness. If he carries out the theory under which he is working, he puts that down; so the old hide gets another tax. It is a harness in the hands of the farmer, and perhaps the same farmer who owned the cow with which we started.

You will say the hide will go through quickly enough to escape some of those taxes, and I grant it, but it certainly will get some of them, and every tax adds to the price of the harness to the consumer.

Talk about high prices. There is your greatest cost. For every time you lay a tax on the product of labor you increase the price to the consumer, and when you increase the price to the consumer you to that extent reduce his purchasing power, and when you reduce his purchasing power he cannot buy as much as he needs of the retail merchant, who cannot order as much from the wholesaler, who cannot buy of the factory. Then the men in the factory are not employed steadily at good wages, and the result of that system of loading all the burdens of taxation on the products of labor is to start an endless chain of depression, a lowering of wages, and an increase of prices to make poverty in the cities, and hard times for many. You ask me if there is any way to raise taxes without that? Most assuredly. In Cincinnati we have a street car company that is operating under a grant that I regard as nothing short of legalized robbery. Under that franchise that street car company takes five cents every time a man or a woman rides. You can get the same ride for three cents in Columbus, and you can get the same ride for three cents in Cleveland. If we were able to have some latitude in this matter of

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taxation, so that Cincinnati could do a little as she pleases in a matter of this kind, if this Constitutional Convention and the people and then the legislature would say that the people of Cincinnati might have some latitude in this matter, what could we do? Why, we could put a tax on that franchise, and by every criterion of justice we should put a tax on that franchise, and take part of that two cents that that company steals every time it collects a fare. Every penny of that would be a clear gain to the public and would not increase by a mill the expense to the people riding on the street cars.

There are other ways in which the power of taxation, if properly used, could be used for the benefit of the people, and without any discouragement to industry or any reduction of price or employment of wages.

Take the tenement house problem in Cincinnati. There is not an expert who ever studied the problem who has not seen the relation between that problem and the problem of taxation. What did the tenement house commission in New York say after investigating this question? What is the view of all the students who have studied the subject? Why, I can hardly find words fitly to describe the murder pens where the little children of my city pant for breath in the summer time, where they are denied playgrounds and spend their lives between brick walls, with hardly a blade of grass or a ray of God's sunshine. Give a bonus in the way of exemption upon model tenement houses, and let us in Cincinnati, if we please, use the power of taxation to fight this evil of the tenement house, where conditions are such that people perish in body and perish in mind and perish in soul. Do you mean to say that the members of this Convention will not even allow us to go to the people with this question in order to try to get the problem of taxation so fixed that in the cities, when we desire and when we understand that there is a way by which we can use this power to oppose social evils that we have confronting us, we cannot use it to increase the opportunity of men to help them make a better living for themselves? Do you mean to say that when we see how this power may be so used that you in the Constitutional Convention will not grant us the right to use it that way? You are fixing it now so that we may not even receive it from the legislature. You bind our hands for all time in our efforts to solve this problem in the cities.

But our motives have been impugned. It is so easy to accuse somebody of working for some special interest, just because he differs with you. I remember the gentleman from Hamilton county [Mr. PECK] the other day standing on this floor, and I saw his gray hairs. I remember the magnificent service he has rendered in this Convention and what an honor his record here will be, and how much it will be appreciated back in Hamilton county where the people love him; and, knowing him as I do—I saw him standing there with his gray hairs, giving his opinion on this matter of taxation, and then I saw the member from Guernsey [Mr. WATSON] stand up and dare to put to that man the question, "Do you own any bonds, or do you represent any bond brokers in Cincinnati?" Nothing like it has happened on the floor of this Convention. Nothing like it should ever happen again. Oh, my friends, it is easy to accuse some people of sinister motives, though I should think it would be hard to suspect unworthy motives of my noble colleague from Hamilton county, Judge Peck.

But our motives are impugned. I was accused last night of tearing up a piece of paper containing a list of names of members in the order they had asked for recognition, presumably to give some one an advantage in this debate. That paper was torn up last week because I took it for granted that we were going to start anew when we gathered here this week. Now, my friends, you may impugn my motives. Some people may say that I am a singletaxer, and I frankly admit, I proudly acknowledge, that I am a singletaxer, but when a man says I want this because I think it will bring single tax, he accuses me of dishonesty and deceit. I leave it to him whether he can in good conscience impugn my motives in this matter. I want the power because I know that it is a tremendous power that may be used to the detriment of the poor people of my city or to their great blessing. My people probably do not know enough about this question of taxation. They may not have given enough thought to use it in the way that I would think the most intelligent, but we are not sure, are we, that we have all the wisdom upon this subject? We are not sure that we have already said the last word upon it, that we are not only not willing to learn more about it, but that we are actually willing to tie the hands of this great state and say by constitutional amendment, "You shall not learn anything more." Everybody knows that there is only one possible condition of progress, and that is the right of men to experiment with their problems. Untie the hands of the people of this state, allow the legislature some latitude in the matter of taxation, so that at some time in the future, if it wishes to, it may say to the city of Cleveland or Cincinnati or to this, that or the other county, "You may have some latitude on this question, you may experiment within certain restrictions laid down by the state law in this matter of taxation." Then each community as it desires may by experimenting learn a little something. Possibly they will make mistakes, but they will learn from those mistakes. The only possible condition of progress is that men shall be free to experiment. I have not enough wisdom to settle this question. I do not believe that any other member of the Convention has enough wisdom to settle the question for a generation, and I think the wisest statesmanship and the highest wisdom now is for us to leave this great state with as much freedom as possible, in the confidence that the people in their freedom will learn more than we in our wisdom know now.

I know the members from the country do not appreciate these problems. Members of the Convention, have not the cities of the state suffered enough by this disposition of the farmers to attempt not only to run their own affairs, which they have a right to without let or hindrance from the city, but also to run our affairs too? Why, some of the members discussed this question as though they were endowed with that wisdom which enables them with a single pair of eyes to encompass the globe. I remember that the fifty-year franchise, by which they are robbing the people of my city, was put through this legislature by the votes of farmers who came from counties where they didn't have a street car in the county.

I spoke on this question once in Shelby county and a man came up after the meeting. It was a Chautauqua up there. He had been a senator from that district when the fifty-year franchise was granted, and that afternoon

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he defended his vote. He said, "Why, you have so much political corruption in Cincinnati I thought it best to give that fifty-year franchise away. You could never have any more boodle about it then." He wanted to save us from ourselves. Gentlemen of the Convention, cities of Ohio are well able to take care of themselves. They only want the privilege of looking out for their own salvation. They do not want to be run by men who do not know their problems.

I have been for fifteen years and more a minister of a church in the midst of the tenement house district of my city. I have seen two kinds of poverty. I have seen the kind of poverty that is the result of shiftlessness or dissipation or laziness. That kind of poverty should never be interfered with by law. When a man brings that kind of poverty upon himself it is his natural punishment, and it ought to be the aim of all legislatures to let the man bear that kind of poverty as long as he chooses to bring it upon himself.

But I think I have seen a different kind of poverty in my city, a poverty that has been due to what I conceive to be bad laws, which increase prices and restrict the volume of trade, curtail the chance of employment, reduce wages and crowd many out on the very verge of starvation. I remember one case of that kind. It was on the last night of the old year that I received a letter from a man in our city infirmary. This man was about to die. He had dictated a letter to me. He wanted me to come out to see him once more before he died. I had known the man. He was a switchman in the C., H. & D. yards in Cincinnati when I first knew him. He and his wife were consumptives. They struggled along until he injured himself at his work. He was not able to continue that work. They opened a candy store and he went out on the street to sell papers while his wife stood in the store. His arm was injured so that he could not hold his crutch, and they strapped his crutch to him, and he went out on the street to sell papers, and his little wife took care of the store and their one child. She washed and she cooked, and she worked and she wasted away day by day. Oh, the heroism of that struggle against poverty! But the battle went against them. At last the mother broke down under the load and died. I went out into Indiana to the old grandmother's to bury her, and they gave the child to that grandmother, who was wretchedly poor and very old. The father was anxious to do something to help her care for the child. So he moved into a tenement house within a stone's throw of my church. There he continued selling papers. The inmates of that tenement may have begged or stolen down on the street. But they were good to this cripple. They helped him on and off with his clothes. They went on errands for him and steadied his palsied feet up and down the rickety stairs. I remember one night near Christmas time groping my way through the dark halls to see this man. I knocked at the wrong door. A voice called to me to come in. I opened the door. In the middle of the room stood a woman bending over a wash-tub. Washing all day long somewhere else, she was washing her own clothes there. I asked her where my man lived, giving his name. "You mean the cripple," she asked, "the one who sells papers?" Taking the lamp she went out with her steaming arms into the cold hall to show me where the man lived.

Now I am pleading with you to allow the cities by

taxation to destroy these tenement houses, and I would like to show you the picture I saw there. An old dry goods box for a table. On it a few dirty dishes. A stove, but no fuel. The walls reeking with filth. The floor bare, and in one corner of the room a bed, and on it lay this shadow of a man who recognized me and put his arm up to me. I took his hand. With tears in his eyes he said, "Friend Bigelow, there is only one place for me now. I have seen it coming for a long time, and I have been fighting against it, but I have to go to the poor house." I saw how he hated to say the name of the place. No man begins life with the expectation of ending it in the poor house. A few days afterward he went to the poor house. I was there the last night that he was on earth. I received a letter from him calling me there, and the last line of the letter showed where the man's heart was, "I shall never see my boy again." I went out that night. He was still able to talk in a whisper, and he told me the name of the doctor to whom he wanted me to send his dead body. The doctor had served him and his family, and as many an heroic doctor does in the slums of my city, he had served without pay, and now on his deathbed, this man was grateful, and if the doctor wanted his old body, he desired that he should have it. After giving me this strange direction, there came a sinking spell and I thought the man was going down into the Valley of the Shadow, but at last his lips moved, and leaning I caught these words, "Death, that is not hard; that is only a change of cars, but, my boy, my boy!" Do they tell you the poor do not mind their poverty, that they get used to it?

The toad beneath the harrow knows
Exactly where the tooth point goes;
The butterfly upon the road,
Preaches contentment to that toad.

Ah, my friends, in the name of those broken hearts, in the name of those blighted hopes, in the name of those ruined lives, we plead for justice of laws, laws that shall give men greater freedom to labor while it is day, and more of sweetness to remember in the night that cometh when the day is done. I am not here to erect any sign posts warning men not to venture into untried ways of government. I think it is my highest function in this Constitutional Convention to leave to the people of the state of Ohio the largest possible freedom in dealing with this greatest of all problems, and I appeal to you, my friends, if you do not agree with us, at any rate, let us go to the people themselves, and let them decide as between you and us. I thank you.

Mr. COLTON: At the beginning of the discussion when it seemed that a majority of this Convention were in favor of the minority report, it was thought that discussion would be throttled and we would not be fair with our opponents and allow a free expression of opinion; but there was no such disposition on part of the majority. We wanted to allow a free and full discussion and I believe that has been thoroughly accomplished.

Mr. DOTY: Agreed.

Mr. COLTON: Now, with the understanding that we would not take an unfair advantage of those evidently in the minority, we kept faith with them and we have listened to every phase of the matter and have had an eloquent appeal for the submission of an alternative proposition to the people. The very eloquent picture of the

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condition of the tenements of Cincinnati appeals to us and touches our sympathy, but we should not forget the tenement problem is an ever-present problem in the city of New York under classification and we do not see how classification of property for taxation is going to be a solution of that problem. The evils of taxation have been very eloquently pictured to us. We are living under a civilized government in a civilized world and such government can not be continued and maintained without taxation. I wish it could. Our system of taxation is based upon the uniform rule. We believe so long as we have a property tax the uniform rule is a just method of applying taxation. Believing that, gentlemen, I appeal to you to stand together, shoulder to shoulder, in the votes that are to come and express your convictions squarely and guard yourselves against being swept away from the position which you have come here to defend by eloquence which I confess is very enticing. Stand together upon the votes that are to come and vote your conviction. There is no reason why we should submit this alternative proposition to the people. We believe uniform taxation is right, that the main proposition of the minority report is right, and let us vote our convictions and submit this to the people in practically the form that it is before the Convention. Mr. President, I move the previous question.

Mr. DOTY: Before that is put I demand the yeas and nay vote on the amendment.

The main question was ordered.

The PRESIDENT: The question now is, Shall the amendment offered by the delegate from Cuyahoga [Mr. Doty] be agreed to?

The yeas and nays were taken, and resulted — yeas 57, nays 53, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Mauck,
Antrim,	Hahn,	Nye,
Beyer,	Halenkamp,	Peck,
Bowdle,	Halfhill,	Read,
Brown, Lucas	Harris, Hamilton,	Redington,
Campbell,	Harter, Huron,	Rockel,
Cassidy,	Harter, Stark,	Roehm,
Cordes,	Henderson,	Rorick,
Crosser,	Hoffman,	Shaffer,
Davio,	Johnson, Williams,	Smith, Geauga,
Doty,	Kilpatrick,	Stamm,
Dunlap,	King,	Stevens,
Dwyer,	Knight,	Stilwell,
Elson,	Leete,	Stokes,
Evans,	Leslie,	Taggart,
Fackler,	Malin,	Thomas,
Farrell,	Marriott,	Ulmer,
Fess,	Marshall,	Weybrecht,
FitzSimons,	Matthews,	Mr. President.

Those who voted in the negative are:

Baum,	Harbarger,	McClelland,
Beatty, Morrow	Harris, Ashtabula,	Miller, Crawford,
Brattain,	Holtz,	Miller, Fairfield,
Brown, Highland,	Hoskins,	Miller, Ottawa,
Brown, Pike,	Hursh,	Moore,
Cody,	Johnson, Madison	Norris,
Collett,	Jones,	Okey,
Colton,	Keller,	Partington,
Crites,	Kramer,	Peters,
Cunningham,	Kunkel,	Pettit,
Dunn,	Lambert,	Pierce,
Earnhart,	Lampson,	Price,
Eby,	Longstreth,	Riley,
Fluke,	Ludey,	Shaw,

Solether,
Stalter,
Stewart,
Tannehill,

Tetlow,
Wagner,
Walker,
Watson,

Winn,
Wise,
Woods.

So the amendment was agreed to.

Mr. MARSHALL [during roll call] Gentlemen of the Convention: I hardly know what to do, but I am going to rest this with the people. I want the matter settled right and we will let the people settle it. I vote aye.

Mr. LAMPSON: A point of order. There is nothing in order except the finishing of the roll call.

The roll call was then finished.

Mr. ANDERSON: I want to explain my vote too.

Mr. LAMPSON: The previous question has been ordered on all of these amendments.

Mr. DOTY: I withdraw my demand for the yeas and nays and I am willing to have a division.

The PRESIDENT: The next amendment in order is the amendment offered by the delegate from Guernsey [Mr. WATSON.]

The amendment was agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Cuyahoga [Mr. FACKLER].

Mr. PIERCE: I desire to offer an amendment to that.

Mr. DOTY: A point of order. The main question has been ordered and no amendments are in order.

Mr. WOODS: Is a motion to lay on the table in order? If so, I move to lay the Fackler amendment on the table.

Mr. DOTY: A point of order.

The PRESIDENT: The motion is not in order.

Mr. WOODS: I want it on the table. I want everything on the table. I want to kill everything.

Mr. DOTY: Everything?

Mr. WOODS: Yes; everything.

The PRESIDENT: The question before the Convention is the adoption of the amendment of the delegate from Cuyahoga [Mr. FACKLER]. The motion to lay on the table is not in order.

Mr. WOODS: I demand the yeas and nays on that.

Mr. WINN: If the motion to table the Fackler amendment prevails there will be nothing before the Convention.

The PRESIDENT: There is no motion to table before the Convention. The question is on the adoption of the Fackler amendment. When that is disposed of the Anderson amendment will be left.

Mr. WOODS: Do I understand this Doty amendment has been adopted as an amendment to the proposal and to be submitted separately?

The PRESIDENT: Yes.

Mr. WOODS: Then how can that be submitted by less than sixty-one votes.

Mr. DOTY: It is an amendment to the proposal itself. It comes at the end of whatever proposal is adopted.

Mr. WOODS: If that is the way, we had better adopt the Fackler amendment and then kill the whole thing.

The PRESIDENT: The member is out of order.

Mr. CUNNINGHAM: I would like some information about the proposal. Is the Doty amendment to the Fackler amendment?

The PRESIDENT: The amendment offered by the

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member from Cuyahoga [Mr. Doty], which was adopted, becomes attached to whatever proposal is finally adopted by the Convention.

Mr. CUNNINGHAM: Does it become a tax—

The PRESIDENT: I said attached — “a-t-t-a-c-h-e-d”.

Mr. HARRIS, of Ashtabula: In an alternative sense.

Mr. BROWN, of Highland: Is it not understood that the Doty amendment will be submitted not as a part of the one now attempted to be adopted, but as an alternative?

The PRESIDENT: That is right, detached.

Mr. LAMPSON: It is an independent proposition, and has not received a proper number of votes.

Mr. DOTY: It is not an independent proposition.

Mr. KING: Do I understand that the amendment of the gentleman from Mahoning changing the phraseology in line 10 and line 13, was adopted or made a part of the amendment?

The PRESIDENT: That was an amendment to the original proposition and not an amendment to the substitute offered by the member from Cuyahoga [Mr. Fackler]. The question is on the adoption of the substitute offered by Mr. Fackler, and on that the yeas and nays are demanded.

The yeas and nays were regularly demanded; taken, and resulted—yeas 93, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Okey,
Antrim,	Harbarger,	Peters,
Baum,	Harris, Ashtabula,	Pettit,
Beatty Morrow	Harris, Hamilton,	Pierce,
Beyer,	Harter, Huron,	Price,
Bowdle,	Harter, Stark,	Read,
Brattain,	Hoffman,	Redington,
Brown, Highland	Holtz,	Rockel,
Brown, Lucas,	Hursh,	Roehm,
Brown, Pike,	Jones,	Rorick,
Campbell,	Kilpatrick,	Shaffer,
Collett,	King,	Shaw,
Colton,	Knight,	Smith, Geauga,
Cordes,	Kramer,	Selechter,
Crites,	Lambert,	Stamm,
Crosser,	Lampson,	Stevens,
Davio,	Leete,	Stewart,
Doty,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Taggart,
Earnhart,	Marriott,	Tannehill,
Eby,	Marshall,	Thomas,
Elson,	Matthews,	Ulmer,
Fackler,	Mauck,	Wagner,
Farrell,	McClelland,	Walker,
Fess,	Miller, Crawford,	Watson,
FitzSimons,	Miller, Fairfield,	Weybrecht,
Fluke,	Miller, Ottawa,	Winn,
Fox,	Moore,	Wise,
Hahn,	Norris,	Woods,
Halenkamp,	Nye,	Mr. President.

Those who voted in the negative are:

Cassidy,	Henderson,	Malin,
Cody,	Johnson, Madison,	Partington,
Cunningham,	Johnson, Williams,	Peck,
Dunlap,	Keller,	Riley,
Evans,	Kunkel,	Stalter.

The amendment of Mr. Fackler was agreed to.

Mr. LAMPSON: I rise to a question of order, and to know just exactly where we are, I would like to have the first part of the amendment adopted read to see what it means.

The PRESIDENT: The secretary will read what the member desires.

The SECRETARY [reading]: “Substitute Proposal No. 170—Mr. Worthington. To submit an amendment to article XII, sections 1, 2 and 6 of the constitution, and by adding thereto sections 7 and 8, relative to taxation.”

Mr. LAMPSON: That was all stricken out and the Anderson amendment adopted several days ago.

The SECRETARY: This is the Anderson amendment I am reading.

Mr. LAMPSON: Which was adopted several days ago. Now I want to hear the first part of the Fackler amendment.

The SECRETARY [reading]: “Strike out all after the resolving clause—

Mr. LAMPSON: We have stricken out every thing after the resolving clause of the substitute Anderson amendment.

The SECRETARY: Yes.

Mr. LAMPSON: I would like to know where the Doty amendment comes in then.

The PRESIDENT: The amendment comes in as an addition to the proposal as amended.

Mr. LAMPSON: Now I would like to have the first part of that read.

The PRESIDENT: The secretary will read it.

The SECRETARY [reading]: “Mr. Doty moves to amend Proposal No. 170 as follows: At the end of the proposal add”—

Mr. LAMPSON: I make the point that by the adoption of the Fackler amendment we have stricken out the Doty amendment, and I call for a vote upon the original as amended by the adoption of the Fackler amendment.

Mr. DOTY: The time for making that point of order has long since passed. We are under the previous question, and that point of order will not lie at this time.

Mr. LAMPSON: It does not need to be a point of order. I have taken pains to show you what we have done and I only want the members of the Convention to understand what they are voting upon, as shown by the record, which is to adopt the original Worthington proposal as amended, and the Doty amendment has been stricken out by the adoption of the Fackler amendment.

Mr. DWYER: I rise to a question of information. Before the vote was taken I inquired of Mr. Doty whether there was any contradiction between his amendment and the Fackler amendment and he assured me there was not. If there was then my vote was given through a mistake. Mr. Doty can explain whether that is a fact. I asked him the question because I wanted to support his amendment.

Mr. DOTY: The member is right. He did ask me that and I said it did not conflict with the Fackler amendment and it does not. The member did get that information from me in good faith.

Mr. LAMPSON: I simply want the Convention to understand that by the adoption of the Fackler amendment they struck out everything that had been adopted prior to that except what was included in the Fackler amendment; they struck out all after the resolving clause.

Mr. MARRIOTT: On the contrary, have we not adopted the Fackler substitute with all the amendments that have been added to it, one of which was the Doty amendment?

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Mr. LAMPSON: The Doty amendment was not added to the Fackler amendment. It does not pretend to have been added to the Fackler amendment, and I again call for the reading of the first part of the Doty amendment so that every member may understand it. That Doty amendment preceded the Fackler amendment.

Mr. MARRIOTT: No, sir; it followed it.

Mr. DWYER: I move to recess until two o'clock to enable the president and secretary to get things straight. I want to know where we stand.

Mr. LAMPSON: I want to have the first part of the Doty amendment read again.

The SECRETARY [reading]: "Mr. Doty moved to amend Proposal No. 170 as follows: At the end of the proposal add."

Mr. LAMPSON: It was at the end of Proposal No. 170 that it was added. Subsequently thereto the Fackler amendment was adopted which struck out everything after the resolving clause.

Mr. HARRIS, of Ashtabula: It has been accepted without controversy that a number of amendments have been directed to the original proposition and they had no force as applicable to the Fackler amendment. Is not the same thing true about the Doty amendment?

Mr. ANDERSON: So that we may not have mental confusion concerning this, I move that we recess until two o'clock.

Mr. LAMPSON: I make the point of order that the previous question has been ordered and the motion to recess now can not be entertained.

The PRESIDENT: The point is well taken.

Mr. DWYER: We ought to know where we are and a recess will let us find out.

The PRESIDENT: The president would say to the member from Mahoning [Mr. ANDERSON] and the member from Montgomery [Mr. DWYER] that that motion is not in order until the previous question has been exhausted.

Mr. KING: The Fackler amendment offered when it was offered was to do nothing more than to strike out the Anderson amendment. Long after that the Doty amendment was offered and carried and made a part of Proposal No. 170. Now by adopting the substitute offered by the gentleman from Cuyahoga [Mr. FACKLER] it only amends that part of Proposal No. 170 that it described in the condition in which it was when it was offered, and the amendment by Mr. Doty is an addition to whatever may be adopted as a substitute for the proposal as it read at the time of the offering of the amendment by Mr. Fackler.

Mr. LAMPSON: Whatever was added by the Doty amendment is stricken out by the Fackler amendment.

The PRESIDENT: The president will have to rule otherwise.

Mr. WOODS: We ought to understand each other. Before we voted on the Fackler amendment I made a motion. I supposed at that time the Doty amendment was to the Fackler amendment, because I could not see how it could be otherwise. The Fackler amendment struck out everything. That is the reason I made the motion to lay the Fackler amendment on the table, and would have voted against the Fackler amendment if I had not been informed by the chair that the Doty amendment was no part of the Fackler amendment. Certainly, under no circumstances would I have voted for the Doty amend-

ment. I would not do it in its original place and I would not have voted for the Fackler amendment if that had been a part of it.

Mr. DOTY: Did you not vote for the Fackler amendment with the distinct understanding that my amendment was not a part of it?

Mr. WOODS: I voted for it because I was informed that your amendment was not part of it at all.

Mr. ANDERSON: Is not this the situation: First the Anderson substitute, by being adopted yesterday, became the basis for all other amendments. Then next in order was the Fackler substitute. So that was the substitute in the so-called Anderson proposal. Then, after that, there was a correction of phraseology offered in the way of amendments and it was ruled that that attached not only to the Fackler amendment but to the Anderson proposal. Now by this last vote upon the Fackler amendment has not that entirely taken the place of the Anderson amendment or proposal? Now to what was the Doty amendment directed, toward the Anderson proposal or toward the Fackler amendment? To which is it attached?

The PRESIDENT: The amendment is attached to either one automatically.

Mr. ANDERSON: Then it was out of order?

Mr. LAMPSON: And it required sixty votes to pass.

Mr. HALFHILL: The amendment of the member from Cuyahoga [Mr. Doty] was to the proposal, was it not? I do not see anything else to it, and the proposal is the proposal of Mr. Worthington; it was the minority report bearing that name. This is all a mere matter of parliamentary hairsplitting. Do you suppose I would have voted for the Fackler amendment without a full understanding, as the other members generally understood it, that we were going to have that alternative submitted?

Mr. ANDERSON: What was your understanding with reference to the Doty amendment? It had to attach to something or it was out of order.

Mr. HALFHILL: It attached to the proposal that was before the Convention.

Mr. ANDERSON: To what did it attach? Did it attach to the Anderson proposal that took place of the minority report?

Mr. HALFHILL: To the proposal before the Convention. It was offered to and made a part of the proposal under consideration.

Mr. ANDERSON: It had to attach to something. To what did the Doty amendment attach? Did it attach to the Fackler amendment or to the Anderson substitute?

Mr. HALFHILL: You are splitting hairs.

Mr. DWYER: Mr. President: You very beautifully appealed to the Convention for fair play in your speech and I trust we shall have perfectly fair play and a full understanding of the different amendments before we dispose of this question. I want to know where we are. I would rather suspend business for ten or fifteen minutes and enable you to present the matter fully before us.

The PRESIDENT: The president thinks he can rule on the matter. The question is on the adoption of Proposal No. 170 as amended, and when adopted it stands amended with the amendment of the delegate from Cuyahoga [Mr. Doty].

Mr. LAMPSON: Did not the amendment of Mr.

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Fackler strike everything out after the resolving clause and so did it not take with it the Doty amendment?

The PRESIDENT: The president does not so understand.

Mr. FESS: I would just like one word. Our confusion is due perhaps to a little carelessness in the wording of the amendment. I don't think there is any doubt that it was understood that the Doty amendment when carried would apply to whatever we finally adopted, but it does not seem to be so worded. It specifically says "amend the Worthington proposal" and we are in confusion that will not be settled in any other way than by a vote to interpret its meaning. That is the only possible way. Here is one set of men saying it means one thing and here is another set saying it means another, and the president will rule upon the matter. Then I will appeal from his decision and the vote of the Convention will decide what is the interpretation. Let the Convention decide it. That is the only way it can be done.

Mr. HARRIS, of Ashtabula: That is not altogether fair. Suppose it goes to an appeal, it takes two-thirds to overrule the president.

Mr. FESS: It takes only a majority. That is the only way to get out of it, to let the Convention interpret.

Mr. BROWN, of Highland: That I think will get at it, but I think it might be well to take time to settle the matter, and I move that we suspend the rules and take a recess until 2:30.

DELEGATES: No.

Mr. ULMER: It seems kind of funny to me that this body of learned men do not understand what we have voted on. I am a simple citizen and not a lawyer, but I know what we voted on and it was not the proposal. It was the Doty amendment, which, as it was stated fairly and frankly, would be submitted as a separate proposal to the people. It was not to the amendment of Mr. Fackler. It was a separate proposition. Was it not so stated? It was stated that it should be an alternative.

The PRESIDENT: Of course, debate on this is out of order, but limited discussion seems to be perfectly proper.

Mr. HARRIS, of Hamilton: It seems to me that the member from Greene [Mr. Fess], with his usual good sense, has offered a solution. The Convention clearly expressed a wish that the alternative proposition should be submitted to the people. Now by some parliamentary tangle it seems that that may or may not be done in the regular order of procedure at this moment. Doctor Fess has offered a solution. Let the president make his decision, which will be appealed from, and the common sense and justice of this Convention will decide that question in a minute, and we can dispose of it without a whole lot of parliamentary maneuvering.

Mr. BROWN, of Pike: Mr. President: If I understood you correctly in your remarks, you pleaded with us to give the people an opportunity to have the alternative proposition. Was I correct in so understanding you?

The PRESIDENT: The president does not feel that he has a right to engage in the discussion from the chair, but is willing to rule.

Mr. LAMPSON: Just a word. I do not want to be captious about the matter. I am simply calling attention to the record. I am not appealing. I want it understood that the record is as it has been read, and will have to

be made up that way unless the Convention changes it, and an appeal would not settle it. I will not sit here and vote against my judgment on a question of order for the purpose of correcting the record. The way to correct the record is to do it properly and not go on record on a point of order, exactly the opposite of what is parliamentary.

Mr. FESS: I would ask the member from Ashtabula [Mr. LAMPSON] if there is any possible way of stopping this confusion other than the way I suggest?

Mr. LAMPSON: There is a way when it is all about correcting the record.

Mr. FESS: What is there in the record that needs correcting?

Mr. LAMPSON: If this is adopted the record will not show that the Doty amendment is adopted.

Mr. FESS: It does show.

Mr. LAMPSON: It will not, and if you will take the record and read it after it is all over you will see the point.

Mr. FESS: Oh, I understand your position.

Mr. LAMPSON: Everything after the resolving clause is stricken out in the proposal as amended in the adoption of the Fackler amendment. With that statement I am perfectly willing to vote.

Mr. FESS: I would like to know from Mr. Lampson whether if this appeal goes before the Convention he means he would not abide by it?

Mr. LAMPSON: I mean if I vote to sustain the chair, as I should like to do, to be accommodating, and correct the record, I would vote exactly opposite to what my inclination and knowledge of parliamentary law tells me is right, and I do not like to be put in that position.

Mr. PECK: Suppose the president decides, as he probably will, that you are all wrong in your implication and that the record does not lead to the conclusion that you say it does. Will not an appeal settle that?

Mr. LAMPSON: An appeal will not change the record.

Mr. PECK: There is nothing in the record to change, except by implication.

Mr. LAMPSON: I am not objecting to a vote.

Mr. PECK: You people are trying to make all the trouble you can.

Mr. KNIGHT: I doubt if there is any member of the Convention who has a particle of doubt in his own mind as to what he thought we were doing when we voted for or against the so-called Doty alternative proposition. Those of us who are not sharks on the subject of parliamentary law knew perfectly well what we were voting for, and when it was adopted it was adopted to be attached to whatever should be finally the form of Proposal No. 170. It seems to me that the Convention having voted that way should adopt the best way possible of making our record conform with the facts. We know what the facts were, and every one of us knows what we really did, although it may or may not have been in strict parliamentary order. The only question before us is how to get the record in shape to show exactly what we thought we were doing and what we did do.

The PRESIDENT: The president would like to rule on this matter. There may have been some irregularity, to which the member from Ashtabula [Mr. LAMPSON] has called attention, yet the question that presents itself is what is the will of the Convention as expressed by the

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vote taken. The president understands that the situation was this: The question now before the Convention is the adoption of Proposal No. 170 with the amendments that have been agreed to, including the amendment offered by the member from Cuyahoga [Mr. Doty]. I would so rule, and if an appeal is taken the president would be glad to entertain it with the understanding that if the president is sustained—and this is the ruling—that the secretary is instructed and understands it is his duty to make the record correspond to this ruling.

Mr. WOODS: Do I understand from what the chair has said that the secretary will deliberately change this written amendment to correspond with the ruling of the chair, or will he make the record just as it should be made in accordance with what we have done?

The PRESIDENT: This Convention understands the matter. The case has been plainly stated. If there is an irregularity such as the member from Ashtabula [Mr. LAMPSON] has called attention to, the secretary is instructed to make the necessary correction in the record in order that the record may show what, according to the ruling of the president, the real situation is. If the Convention does not choose to authorize that, the remedy is to appeal from the decision of the president.

Mr. WOODS: I want to object to any change being made in the Doty amendment or Fackler amendment and I want my objection to show on the record.

The PRESIDENT: The record will so show.

Mr. WINN: Are we to understand now that the president will give the secretary of this Convention instructions to alter the record as it now appears?

The PRESIDENT: The president thinks that is not quite the situation, but that the Convention by its acquiescence in this ruling does so instruct the secretary.

Mr. WINN: I should like to know very much whether the secretary of the Convention will make up a false record by direction from anybody.

Mr. JOHNSON, of Williams: I would like to say how I understand the situation.

Mr. TAGGART: I rise to a point of order.

Mr. JOHNSON, of Williams: I understand that when we voted on this, it would be an amendment to the proposal when carried.

Mr. TAGGART: There is no question what any member of the Convention understood. When the record is completed and when it is read it will have to be approved by this Convention and then is the time to correct it. The time for correction and for this discussion is when the secretary reads the record of this day's proceedings.

Mr. JOHNSON, of Williams: I reserve the right to talk.

The PRESIDENT: Just a moment. The president wishes to say to the member from Wayne [Mr. TAGGART], as others have been exercising the privilege of talking he does not think the rule should now be enforced.

Mr. JOHNSON, of Williams: I thank the president for his fairness. He is fair now as he always is. As I understand it, if the president is sustained, he does not change the record, but we authorize the record to be made up according to what a majority of the Convention thought they were doing, and no sort of juggling will make anything else. Now I appeal from the decision of the chair, and if he is not sustained then you make up

the record; if he is sustained it has been clearly stated how the majority desire to have the record made up. The question is, Shall the majority of the Convention rule the Convention?

Mr. CROSSER: I take the same view, that this was intended to be a part of whatever was adopted. I do not believe that the gentleman from Greene with his parliamentary procedure will correct it, for the reason that the record is made of the original proposal and also of the amendment. We may have intended one thing, but the mere fact that the chair may rule that that was intended to be other than what the language of the amendment says it is, can not change the fact that the amendment was in the very language it was. If it should go before the people and become a part of the constitution, the court would have to construe it on the language that it contains and not on the rulings of the chair. Now I ask unanimous consent to change the language of the Doty amendment to read that it was to the Fackler amendment rather than to the proposal.

Mr. ANDERSON: You can not change the record by a collateral attack or by inference. The only way you can change a record is to designate just what you want to strike out and just what you want to insert. It has to be definitely inserted. It can not be inserted by inference.

Mr. CROSSER: That is exactly my point.

The PRESIDENT: The president holds to the ruling. The question before the Convention is the adoption of Proposal No. 170 as amended, and this includes the amendment offered by the gentleman from Cuyahoga [Mr. Doty].

Mr. BROWN, of Highland: Provided that the ruling of the president is sustained, what are the changes in the record as now made up? Are there to be any changes?

The PRESIDENT: The situation will be that the secretary will be instructed to so engross the proposal that it will show that the proposal as adopted included the Doty amendment. It is impossible for the president to say what the intention of the Convention is except in the presence of the Convention.

Mr. BROWN, of Highland: If the ruling of the president is sustained it does not change any subject matter of the proposal?

The PRESIDENT: The president understands merely that the secretary will be instructed to so engross the proposal and then it will be before the Convention on third reading, and then any change can be made by the Convention that a majority of the Convention may desire should be made.

The question being "Shall the proposal as amended pass?"

The yeas and nays were taken, and resulted—yeas 53, nays 54, as follows:

Those who voted in the affirmative are:

Antrim,	Elson,	Harter, Star ¹
Beyer,	Evans,	Hoffman,
Bowdle,	Fackler,	Kilpatrick,
Brown, Highland	Farrell,	King,
Brown, Lucas,	FitzSimons,	Leete,
Campbell,	Fox,	Leslie,
Cordes,	Hahn,	Malin,
Crosser,	Halenkamp,	Marriott,
Davio,	Halfhill,	Marshall,
Doty,	Harris, Hamilton,	Matthews,
Dunlap,	Harter, Huron,	Mauck,

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McClelland,	Roehm,	Taggart,
Moore,	Rorick,	Thomas,
Nye,	Shaffer,	Ulmer,
Peck,	Smith, Geauga,	Weybrecht,
Read,	Stamm,	Winn,
Redington,	Stevens,	Mr. President.
Rockel,	Stilwell,	

Those who voted in the negative are:

Baum,	Henderson,	Okey,
Beatty, Morrow,	Holtz,	Partington,
Brattain,	Hursh,	Peters,
Brown, Pike,	Johnson, Madison,	Pettit,
Cassidy,	Johnson, Williams,	Pierce,
Cody,	Jones,	Price,
Collett,	Keller,	Riley,
Colton,	Knight,	Shaw,
Crites,	Kramer,	Solether,
Cunningham,	Kunkel,	Stalter,
Dunn,	Lambert,	Stewart,
Dwyer,	Lampson,	Tannehill,
Earnhart,	Longstreth,	Tetlow,
Eby,	Ludey,	Wagner,
Fess,	Miller, Crawford,	Walker,
Fluke,	Miller, Fairfield,	Watson,
Harbarger,	Miller, Ottawa,	Wise,
Harris, Ashtabula,	Norris,	Woods.

So the proposal, not having received the required majority, was lost.

On motion the Convention recessed until 3 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. DOTY: I desire unanimous consent to introduce a resolution in relation to the trip to Chillicothe, which ought to be adopted so that we can properly conduct our business there.

The resolution was read as follows:

Resolution No. 120:

Resolved, That when the Convention adjourns on Wednesday, May 8, 1912, it be to meet in the court house at Chillicothe, Ohio, at 1:30 o'clock p. m., Thursday, May 9, 1912.

The rules were suspended and the resolution considered at once.

Mr. DWYER: What is the meaning of this?

Mr. DOTY: This is a formal matter to make our meeting there legal.

Mr. MARSHALL: I would like to ask whether the one hundred and nineteen members and all the servants and attaches of the Convention are to go along? I mean the stenographers, the doorkeepers and everybody are all to go along?

Mr. DOTY: So far as we are informed, anybody can go who has the price to pay his own fare.

Mr. MARSHALL: I thought we were to go free.

Mr. DOTY: I didn't know anything about that, but if anybody knows a way to bring it about I am with him.

Mr. MARSHALL: I understood we were to have free transportation over and back, and I want to know whether the one hundred and nineteen members and stenographers and doorkeepers and pages are going.

Mr. DOTY: We are all going that want to.

The resolution was adopted.

Mr. FESS: I ask unanimous consent to offer an

invitation that comes from the chairman of the meeting which will be addressed tomorrow evening by President Taft. The chairman states if the invitation is accepted by the president and members of the Convention there will be a reservation in the hall and that all courtesies will be extended, so I move that the Convention accept the invitation to attend the meeting at Memorial Hall on Wednesday evening, May 8, 1912.

Mr. DOTY: Is this to interfere with the meeting of the Convention tomorrow night?

Mr. FESS: Not necessarily.

The motion of the delegate from Greene [Mr. Fess] was carried.

Mr. TAGGART: I desire unanimous consent to submit a report from a standing committee.

Consent was given and Mr. Taggart submitted the following report:

The standing committee on Schedule, to which was referred Proposal No. 229—Mr. Rockel, having had the same under consideration, reports it back with the following recommendation:

That the same be referred to the standing committee on Legislative and Executive Departments.

The report was agreed to.

Mr. FESS: I move a reconsideration of the vote that was taken on the matter of taxation this morning.

The motion was seconded.

Mr. DOTY: I move that further consideration of this motion be placed on the calendar for tomorrow.

The motion to postpone further consideration was lost.

The PRESIDENT: The question is on the reconsideration.

Mr. DOTY: This starts the taxation fight over again?

Mr. FESS: Yes.

Mr. DOTY: I think the member from Greene ought to state his reason for making the motion.

Mr. FESS: The reason I make the motion is that I do not believe the Convention desires to adjourn without doing something on the taxation question. We got into confusion this morning and much was done that we didn't know the result of and I do not believe it is the wish of this body to let this matter go over so near to the point of adjournment that we may adjourn without anything being done. There are so many things that we can agree upon that it seems strange to me we can not eliminate the things we differ upon and pass the others. I think we should bring this matter up again and I think we can settle it this afternoon very easily and very satisfactorily.

Mr. WOODS: Do you think we can settle it?

Mr. FESS: I think so.

Mr. WOODS: Is it your object to pass the proposal as it came to a vote?

Mr. FESS: With some modification.

Mr. WOODS: With a classification modification?

Mr. FESS: I think not. It is a concession from both sides trying to unite on things that we can agree on.

Mr. WOODS: I am willing to vote to reconsider this matter if it is understood that a classification modification is not to be included in the proposal and that there is to be no alternative. If that is the understanding I am willing to vote to reconsider, but I am not willing to do

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that if it is proposed to offer any classification or alternative proposition.

Mr. ELSON: Does not the gentleman from Medina [Mr. Woods] believe the people of Ohio have enough intelligence to vote on this subject of classification themselves?

Mr. WOODS: Yes; I think they have, but I don't think the matter ought to be submitted to them. There are only thirty-five votes in this Convention in favor of classification, and if this Convention submits to that idea there are thirty-five members of the Convention who are controlling the one hundred and nineteen.

Mr. ELSON: If the people line up as the Convention did, we could have an alternative proposition carried.

Mr. WOODS: If some one man can line up the people of Ohio as they lined up this Convention this afternoon it can be done.

Mr. ANDERSON: Do you not think this Convention is not ready to adopt the uniform rule with all the frills that those who believe in the uniform rule want to go into it? Do you think you can make them take just what the uniform people want without dotting an i or crossing a t?

Mr. WOODS: I happen to know what this Convention was called for. I know who called this Convention. I know that it was the Ohio State Board of Commerce. I helped to get the resolution before the general assembly. I was for the Constitutional Convention, but I was not for it for the same purpose that those fellows were for it. Now we have had this Convention called for the purpose of getting amendments through classifying property for taxation. I know what that is done for. Now this Convention is supposed to be controlled by people here in the interest of the people and not in the interest solely of the members of the State Board of Commerce. Here on this taxation proposition we have the State Board of Commerce and those supposed to be friends of the people working hand in hand and undertaking to do the bidding of the State Board of Commerce. I do not think our taxation laws should be fixed solely for the State Board of Commerce. The State Board of Commerce wants property classified. Why? Because they expect to get rid of taxes that now they have to pay. Nobody who expects if property is classified they will have to pay more money is asking for classification of property. Now, are they? This whole question of taxation is simply the question of making the other fellow pay the tax. I believe in making everybody pay his share of the taxes. I think the only way to do that is by the uniform rule and I am not willing, just because the State Board of Commerce asks for classification of property to have property classified. I do not know much about classification, but I do not need to know much about classification in order to know which way to vote. The people who are asking for classification are enough to tell me how to vote on it, because it is the people who have the most money and property and who can best afford to bear their just share of the burdens of government.

Mr. HARRIS, of Hamilton: Do you suppose for one minute that the fifty-seven members of this Convention who went on record this morning in favor of the alternative proposition of classification are going to stultify themselves this afternoon by not voting in the alternative of the proposition? If you think that I suggest that you defeat reconsideration.

Mr. DWYER: I would like to suggest to the gentleman that this morning we intended to have it presented in both forms to the people. We were all willing for that. I am willing for it still. I am willing that the Doty amendment and the Winn amendment be submitted to the people and let the people settle it. Let the classification question go to the people as intended this morning.

Mr. PIERCE: Do you not know it is the intention of this Convention to call a special election to pass upon the work of this Constitutional Convention?

Mr. DWYER: Yes.

Mr. PIERCE: Are you in favor of submitting this question at a special election when there will not be one-half of the voters of the state who will cast their votes?

Mr. DWYER: I think we will have a full vote. The people are better qualified to settle it than we are.

Mr. PIERCE: Do you not know the vote probably will be taken within ninety days?

Mr. DWYER: That may be.

Mr. PIERCE: Are you still willing to risk this important question?

Mr. DWYER: Yes.

Mr. WOODS: Gentlemen of the Convention and Judge Dwyer: I can not see any reason why the alternative proposition should be submitted upon this matter of classification any more than upon all the other forty matters that this Convention is going to submit to the people. I can not see any reason for it at all. A minority, about one-fourth of the Convention, is in favor of classification. The other three-fourths of the Convention are against classification. Certainly at least two-thirds are against it. Now, suppose the classification members submit a proposal of this kind without the uniform rule proposition. You could not expect to pass it, could you? You would not have any show of passing it. You could not muster the sixty votes that are necessary to pass it. So why should the thirty-five men here who are in favor of classification be able to submit that proposition to the people when no other thirty-five members can submit any other proposition?

Now take this taxation matter with reference to what Judge Dwyer says. You take this Convention and take the people in the state of Ohio. At least they know as little about the question of taxation as they do upon any other subject. They are not posted. It is a deep, intricate question, and it takes a whole lot of study. I do not know much about it.

Mr. PECK: Agreed.

Mr. WOODS: And I do not think the people in the state of Ohio, if you submit to them the question of classification or uniform rule, are going to understand it. I do not believe you can vote intelligently on it. Some of you may, but the large majority can not. Now there are some things that I am willing to do and if the vote by which the measure was defeated is reconsidered and there is not to be submitted an alternative proposition I think I would vote for the reconsideration. I will stand for almost anything except that alternative proposition. If I understand that is going to be offered I am against any reconsideration.

Mr. HARRIS, of Hamilton: It will be.

Mr. WOODS: Will that be included?

Mr. FESS: I will answer to this effect, that a few of the members who would like to have the Convention do something definitely thought there were some points

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that could be agreed upon and that the question of classification could be entirely eliminated. I think the question of limitation will be entirely eliminated, but I could not promise anything here because when it comes back here it is open for anybody to offer any amendment of any sort and it would be unfair for me to say it is going to be thus or so, because the Convention will decide what is to be done. So far as I know the matter you are concerned in will not be offered at the outset. Later on it may be put in the amendment.

Mr. WOODS: Is not there the understanding if this vote is reconsidered the vote on the Fackler amendment will be reconsidered and the vote on the Doty amendment be reconsidered and clear on back to the votes of the previous question?

Mr. FESS: I understand the whole matter is to be opened up in this Convention?

Mr. WOODS: Then there is an understanding that it is to go back to and include the previous question?

Mr. FESS: Certainly.

Mr. HARRIS, of Hamilton: Will Doctor Fess name the advocates of classification by whose authority he makes that statement?

Mr. FESS: The authority is mine. The source of information is that the people who voted ninety-three votes, I think this morning, adopted the Fackler amendment. It is something like what was introduced by the member from Cuyahoga [Mr. FACKLER] that is to be introduced with a little modification.

Mr. DOTY: As far as the agreement is concerned we haven't yet had any tangible evidence of any kind of an agreement. Doctor Fess states that he hopes there will be an agreement and gives himself as authority. He could not give any better authority so far as authority goes, and after all, with all due deference to the member from Greene [Mr. FESS], it does not reach very far. This morning I had as clear an agreement as you could have with those in opposition to me on this taxation question that the amendment I had proposed should be adopted with all of the so-called classification ideas and the uniform rulers should put up anything that their members desired. Now there was nothing official about that agreement, and I am holding nobody particularly responsible for the breaking of that agreement, but I had a right to have that kind of an understanding; and what happened? After the amendment I proposed was adopted we turned around and by a vote of ninety-three, which must necessarily take in both sides, a large number of whom were not in favor of the Fackler amendment on account of the uniform rule, voted for that Fackler amendment, carrying out our understanding. Then what happened? The whole thing was voted down. The uniform rulers in this Convention voted it down. So much for the agreement. If we are going to vote for this reconsideration upon the understanding that there is any agreement, let us have the agreement first, and if we are going to have a gentleman's agreement, let it be carried out, but let us not try to carry it out until we know what it is. There seems to be a tremendous amount of mystery about this so-called compromise.

Mr. ANDERSON: I understood you to say there was an agreement among the classification delegates and the uniform rule delegates by which the uniform rulers were to put up their proposition in any form they pleased, with the understanding that an alternative proposition was to

be submitted with that. Is that the reason a lot of men who last night were against putting in the one per cent limitation in the constitution as a limitation, now vote as they do?

Mr. DOTY: I am not one of those and can not answer. I am not saying there is an agreement such as now hinted of here. I did not say to the member from Defiance that the amendment I offered was to be voted in. I said to the member from Defiance that the Fackler amendment was to be voted in and I said to the member from Defiance, "Does the Fackler amendment include what you want?" and he said it did. I am not holding him responsible now. We are not having any trouble, and so far as I know there is no agreement. I know that I have none and I never heard of one until the member from Greene [Mr. FESS] mentioned it. I presume in some casual conversation there may have been some hint, but it made no impression upon my mind, because, as I understood the member then, he hadn't made up his mind whether to move a reconsideration or not.

Mr. ELSON: Would you be willing to make any private arrangement —

Mr. DOTY: No private arrangement. If there is any arrangement it has got to be open and public.

Mr. ELSON: Just secretly between you and me, to leave in the old constitution the provision for nonclassification and leave out all further thought of classification on one side and of maximum limitations on the other side, and put in the provision authorizing the tax on franchises, production, incomes, and inheritances?

Mr. DOTY: When I get into such a frame of mind that I think I know more about taxation than all the other people of the state, then I may be willing to put it up to the people and say, "Take this or nothing." I do not believe in that on so controverted a question as this. Now the subject of taxation has been somewhat exhaustively argued and considered. There has been no disposition so far on either side to prevent discussion. We have threshed this over and you could take the vote upon the various phases of this question and prove that this Convention is in favor of anything you want, and you can take the same votes and prove it is against anything you want. Does not that indicate to you that this Convention, so far as this body of men are concerned, are thoroughly divided on the question of what we ought to do on the subject of taxation, and that it might be a pretty good thing to leave the matter to the people and let them have a fair square vote, and then if there is any mistake let them make it? Now if we are going to have an agreement, I for one, before I vote upon the question for reconsideration, claim that I have a right to know what the agreement is and what the proposed compromise is. There seems to be an effort to compromise on principles, from start to finish, and I for one am tired. If we are going to vote up or down some compromise let us know something about the compromise before we start to voting.

Mr. DWYER: Suppose we fix five o'clock to vote on the reconsideration, and in the meantime let the gentlemen get together and try to get something in shape.

Mr. DOTY: I made one motion to postpone. I have no objection to the motion of postponement, and I yield the floor to the gentleman to make the motion if he so desires.

Mr. DWYER: I move that we postpone the con-

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sideration of this until five o'clock, and in the meantime let the gentlemen get together and see if they can not frame something that we can agree on. I think it would be a shame to adjourn this Convention without something on the tax question. We came very close to agreeing this morning, but some confusion occurred. I believe we can agree now and I move that we take a reconsideration at five o'clock and give these gentlemen a chance to do something.

Mr. FESS: There has been so much said about agreement that it embarrasses me just a little bit and I do not want to be misunderstood. I have taken absolutely no part in the discussion of this question, simply because it is so complicated. While I have been a student of it, I see such a variety of opinion that I am in the situation Mr. Doty referred to. You can find objections to almost every proposition offered and yet you will find support for it. I have avoided participating in this discussion from that standpoint, but there are things we can agree upon and I think it would be absolutely fatal for us to adjourn this Convention without doing anything upon the biggest question that has come before us. I wrote to the president of this Convention and said to him before we came into session that I thought the taxation question was the biggest thing to come before the Convention. I still believe it, but we are so hopelessly divided and so near the point of adjournment that we are just in the attitude of being ready to adjourn without doing anything, and I am getting somewhat anxious about it. It is really serious. We can agree upon the income tax and upon the inheritance tax and upon one or two other things, and I simply made this motion for reconsideration without consultation with a single person as to what would be the final compromise, but thinking we could certainly agree upon a few things. There was no other agreement. I am willing, if you wish to have more time, to support a motion to postpone this matter until five o'clock, if it is understood that we are to act upon it at that time.

Mr. HARTER, of Stark: Some of the members of this Convention are not old enough to remember the very serious time we had after the Civil War with the national debts. Nobody thought we could pay off \$2,600,000,000. There were all kinds of people and all kinds of views. Some were for scaling, some were for paying it in greenbacks, others were readjusters and some were repudiators. Finally the opinion of a very famous man in the state of Ohio was asked. It was J. N. Free, sometimes called "the Immortal J. N." He said, "Let the Indians assume the debt." This is the way with taxation. One side believes in one thing and the other side believes in the other, but the trouble is there are no Indians to turn to. They are civilized and they are not assuming our taxes right now. I think right here there should be a conference and we should agree on something and return that agreement to the Convention.

Mr. ANDERSON: Gentleman of the Convention: I do not believe we can have any so-called agreement on this much mooted question. If you take Mr. Harris, of Hamilton, and Mr. Doty, of Cuyahoga, Judge Winn, of Defiance, and Mr. Jones, of Fayette, and send them out what chance of an agreement would there be? The only way we could arrive at anything is to fight it out in the Convention right here and now.

Mr. DWYER: My idea is to formulate what we did

this morning in presentable shape. We had the Anderson amendment and the Doty amendment and the Fackler amendment, and we could put them in shape so we could understand them, and we can submit that and see if we can not agree to it.

Mr. ANDERSON: I do not think you would want the task of choosing the committee to draft something to suit both sides. It would be impossible. We can agree on a taxation measure that will be a great improvement over anything we have now. I do not believe that classification as such should be submitted to the voters, but let us have a fair, square and honest vote upon the things that a large number of us here favor, to wit, the Fackler amendment, before the Doty amendment was passed.

Mr. LAMPSON: I simply want to call attention to this situation: This taxation proposition, with the Doty amendment, will divide the state of Ohio into the most bitter factions that have been in existence for many years.

Now what is the proposition? To go to the people with that sort of a question in the months of June, July and August, when all the farmers from one end of the state to another are busy in their fields and when the weather is hot. It is no time for public meetings, when the people in the country have no time to attend. To undertake to fight out this kind of a proposition during those months, in my mind, is very unwise in view of the differences which have developed here. I think we had better just drop the whole subject.

Mr. FACKLER: Now, gentlemen of the Convention, let us not do a foolish thing by dropping this taxation proposition because the Convention is unalterably divided on classification and uniform rule. I hope you will vote to reconsider the vote of this morning, and if we can not do anything else on the subject of taxation, let us adopt sections 7, 8, 9 and 10, which provide for the income tax, the inheritance tax, the franchise tax, the excise tax, the production tax and the provision whereby the municipalities shall make arrangements for the liquidation of their debts. We can do that much.

Mr. DOTY: Is the member now attempting to get an agreement to do that and nothing else?

Mr. FACKLER: No, sir; I am not attempting to get an agreement, but I am simply appealing to the sober, good sense of the Convention not to throw down an opportunity to make progressive legislation on the taxation question because we are divided on the features of it. Let us do something that will be regarded by everybody as a step forward in the matter, and let us not throw away an opportunity because of rancor that may have been injected in this debate because of the uniform rule and classification.

Mr. HOSKINS: You included section 9?

Mr. FACKLER: Sections 7, 8, 9 and 10.

Mr. HOSKINS: Section 9 is the limitation.

Mr. FACKLER: No, sir; it is the excise tax, the production tax on coal, gas, oil and minerals. Let us do something in favor of progressive taxation.

Mr. HOSKINS: What about the limitation?

Mr. FACKLER: Let us leave that where it is. Let us get these things we are in favor of adopted.

Mr. ANDERSON: Do you not believe a large number of delegates are in favor of putting bonds on the duplicate?

Mr. FACKLER: They have so voted, but let us get these things that I firmly believe a majority of the

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people of the state are in favor of. Let us at least do that. I appeal to you not to throw away this opportunity.

Mr. FESS: If we consider —

Mr. FACKLER: I have an amendment prepared to accomplish what I have been suggesting.

Mr. FESS: Would there be any legal or parliamentary objection for any member to introduce an amendment on the bond proposition?

Mr. FACKLER: Let the Convention be a rule unto itself. This is a question of reconsidering and not a question of what we are going to do.

Mr. JONES: Gentlemen of the Convention: I do not suppose there is a man in this Convention who does not understand thoroughly what the reason and cause of the defeat of all these propositions with reference to the reform of our tax laws was. It is perfectly apparent to everyone that that measure which came to a vote just before we took our recess was defeated solely by reason of the division of this Convention with reference to the submission of this alternative proposition, which in fact is not an alternative proposition. But I do not want to discuss that matter. That is the rock upon which this Convention splits, and it is the only one upon which it splits. The vote taken heretofore indicated as clearly as it is possible to have anything indicated that a great majority of the Convention upon the question of classification, for instance, was opposed to it; that the majority of this Convention was in favor of the removal of the exemption from taxation of the bonds; that a majority of the Convention was in favor of taxing inheritances and providing for a graduated tax upon inheritances; that a majority was also in favor of the income tax and in favor of taxing coal, oil and other natural resources. It also developed that there was at least a small majority in favor of writing into the constitution some limitations. Now, if this one rock upon which this Convention split, this alternative proposition, were eliminated, and this question of tax rate could be eliminated, it does occur to me, as a sober, sensible man, that we ought to have no trouble, by at least a substantial majority in putting this thing in shape to submit it to the people. With the overwhelming judgment of the Convention in favor of certain features it occurs to me that, if this motion is reconsidered, we could offer something that will be acceptable to a majority of the Convention. Put in the proposition to remove the bonds from taxation and to have our inheritance provision and income provision and the other provisions upon which there has been no substantial division. I do hope that we shall not act on this motion to reconsider under the same unfortunate circumstances—to say the least of it—under which we voted just before recess, and that we shall reconsider this matter, and then, as has been suggested by the gentleman from Cuyahoga [Mr. DOTY], that we will do at least what we all agree should be done along the line of progress in the reform of our tax laws.

Mr. WINN: Mr President and Gentlemen: Having sat here for several days—at least for three or four days—and urging with all the power I could a constitutional limitation on the amount of taxes that might be levied, I feel that I might say something along the line of compromise. It was on May 2 that Mr. Anderson offered an amendment, the purpose of which was to strike out all after the word "proposal" in Proposal No. 170, and insert the language employed in his proposed amend-

ment that embodies the proposition that there shall be no poll tax levied, that laws shall be passed taxing by uniform rate all money, securities, etc., that outstanding bonds shall continue to be exempt from taxation, but that bonds shall be taxed hereafter, that no debts shall be contracted except as provided in the constitution, and section 7 provides that laws may be enacted providing for taxes on the right to succeed to estates. Section 8 provides for taxes on income. Afterwards another amendment was offered by the gentleman from Cleveland [Mr. FACKLER] which you will find on page 6. That contains all that was embodied in the Anderson amendment. I speak of that for this purpose. We know Mr. Anderson is in favor of everything he embodied in his amendment, otherwise he would not have offered it. Also the member from Cuyahoga [Mr. FACKLER] was in favor of everything in his amendment. The amendment by the member from Cuyahoga [Mr. FACKLER] was practically the same as the one offered by the member from Mahoning, except that it goes a little farther. It embraces a proposition for a tax on inheritances, also a tax on incomes of a certain amount, and then in section 9 it provides, and this is a very important provision, "Laws may be passed providing for excise and franchise taxes and the imposition of taxes upon the production of coal, oil, gas and minerals." Section 10 provides that no bonded indebtedness of the state or any political subdivision of the state shall be incurred or renewed unless under the legislation in which the indebtedness is incurred or renewed provision is made for the payment of not less than 2 per cent annually until the indebtedness is paid. Now I think we were all agreed upon that—practically all agreed. I think all of those who were wedded to the classification notion were opposed to it, but all of the others were agreed that that was a splendid proposition. But there were some others of us who believed that a limitation should be incorporated in it, and that is the reason I offered my amendment. I believe now that it would be an ideal provision in the constitution if we could have that limitation incorporated. But we cannot do it. I feel that we would be derelict if we were to go home without doing something on these lines. It seems to me it would be so easy for us to simply put it upon its passage without any limitation at all. For me to vote upon a proposition of that sort will be as distasteful as it can be to any other member of the Convention, but when I know the limitation is impossible, I stand for the best I can get, and I believe we may all agree and agree at once on the Fackler amendment practically as it was offered.

The PRESIDENT: The question is on postponing the further consideration of this matter.

The motion was lost.

The PRESIDENT: The question now is, Shall the motion by which Proposal No. 170 failed of passage be reconsidered?

Mr. LAMPSON: I move to lay that motion on the table.

Mr. WINN: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 45, nays 60, as follows:

Those who voted in the affirmative are:

Antrim,	Brown, Pike,	Cody,
Bowdle,	Campbell,	Collett,
Brattain,	Cassidy,	Colton,

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Crites,	Holtz,	Peck,
Doty,	Hoskins,	Price,
Evans,	Johnson, Williams,	Redington,
Farrell,	Lampson,	Riley,
FitzSimons,	Leete,	Rorick,
Fluke,	Leslie,	Shaffer,
Halenkamp,	Malin,	Smith, Geauga,
Halfhill,	Matthews,	Taggart,
Harris, Ashtabula,	McClelland,	Tannehill,
Harris, Hamilton,	Miller, Crawford,	Walker,
Henderson,	Miller, Fairfield,	Woods,
Hoffman,	Norris,	Mr. President.

Those who voted in the negative are:

Anderson,	Harter, Huron,	Partington,
Baum,	Harter, Stark,	Peters,
Beatty, Morrow,	Hursh,	Pettit,
Beyer,	Johnson, Madison,	Pierce,
Brown, Highland,	Jones,	Read,
Cordes,	Keller,	Rockel,
Crosser,	Kilpatrick,	Roehm,
Cunningham,	King,	Shaw,
Davio,	Knight,	Solether,
Donahey,	Kramer,	Stamm,
Dunlap,	Kunkel,	Stevens,
Dunn,	Lambert,	Stewart,
Dwyer,	Longstreth,	Stilwell,
Earnhart,	Ludey,	Stokes,
Elson,	Marshall,	Tetlow,
Fackler,	Mauck,	Thomas,
Fess,	Miller, Ottawa,	Ulmer,
Fox,	Moore,	Watson,
Hahn,	Nye,	Winn,
Harbarger,	Okey,	Wise.

So the motion to lay on the table was lost.

Mr. HARTER, of Stark [during roll call]: I cannot go home and say that I voted to dodge this question.

The PRESIDENT: The question is now on the motion to reconsider.

The motion was carried.

The PRESIDENT: The question is now on the adoption of the proposal.

Mr. FACKLER: Are amendments in order?

The PRESIDENT: The president will rule that amendments are in order.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out all after the word "Proposal" and insert the following:

"To submit an amendment to article XII, by adding sections 7, 8, 9 and 10 relating to taxation.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated

by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Mr. FACKLER: This amendment as proposed will leave the constitution just as it is in the first six sections of article XII, but it adds sections 7, 8, 9, and 10, providing for the inheritance taxes, income taxes, production taxes on coal, oil, gas and minerals, and a provision relative to the liquidation of bonded indebtedness.

There are some here who are in favor of tacking on a provision that will make municipal bonds hereafter subject to taxation. Let those offer an amendment to this amendment, and let it be adopted if they have sufficient votes, although I am frank to say I shall vote against it. I hope this amendment will not be voted down, and thus precipitate the whole fight on uniform rule and classification and limitation of bonds, etc. Let us adopt this at any rate, if we cannot do anything else.

Mr. HOSKINS: I would like to know something about that section 10.

Mr. FACKLER: That is simply to prevent the piling up of bonded indebtedness without making any provision for the payment of it. I believe it is unjust to the people that come after us for us to issue bonds and take the benefit of them and then say that the burden shall be put on the coming generation.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

Strike out the amendment of Mr. Fackler and substitute therefor the following:

To submit an amendment to article XII, sections 1, 2 and 6, of the constitution, and to add thereto sections to be known as sections 7, 8, 9 and 10.—Relative to taxation.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of in-

Taxation.

struction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvements.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Mr. LAMPSON: A lot of the members have voted to reconsider this matter on the theory that all that was to be attempted was the Fackler amendment, and I now move to lay the Anderson amendment on the table.

Mr. ANDERSON: I have the floor. You can't make that motion. You will find this proposed amendment on page 9 of your journal. It is the Fackler amendment in its purity and completeness. It is the amendment that Mr. Fackler was in favor of, and the only difference between the Fackler amendment, as I carry it in my mind, and this other, is that bonds are taxed or put back upon the tax duplicate. Something has been said to the effect that it was not the agreement that we should introduce the question of bonds before the Convention. Where was any agreement made and by whom? Let us analyze that just a moment.

Mr. PIERCE: You probably unintentionally mis-

lead. You say the bonds are put back. You mean bonds issued from this time on.

Mr. ANDERSON: Yes; bonds issued after the constitution is adopted by us and ratified by the people. All bonds issued after that will have to pay taxes, if this amendment carries, but none other, and I find that the men who are opposed all the time to taxing bonds are the men now claiming and insisting that it was an agreement that we should not inject the question of bonds into the Convention now.

Mr. FACKLER: Who raised that question?

Mr. ANDERSON: Mr. Lampson.

Mr. FACKLER: Is he one of the class you describe?

Mr. ANDERSON: I would think so.

Mr. LAMPSON: I would like to have it understood just what my position is. Mr. Fackler came around here with the prepared amendment. At first I did not know what it included. I was opposed to reconsideration, but I found out what it included, that it was supposed to include the subjects not seriously controverted, and I said if that were all of it, all right, that I would be willing to have it adopted, if there were to be no controversies on it.

Mr. ANDERSON: And after that you moved to table it?

Mr. LAMPSON: No; I did not move to table the Fackler amendment.

Mr. ANDERSON: Well, you tried to avoid reconsideration?

Mr. LAMPSON: That was before the agreement. That was before I found out what the Fackler amendment included, and when I did find out I said I would support it.

Mr. ANDERSON: We find that the men who are opposed to placing bonds back upon the tax duplicate are men who do not want any changes made in the present constitution. In other words, they are willing to forego the benefit that will come to the community by reason of the inheritance tax, the income tax, the production tax and the franchise tax to escape putting bonds back on the duplicate. That is the situation exactly. They are willing to leave the constitution just as it is, and are willing to adjourn without our work being completed, and go before the people and acknowledge that we could not do anything upon the question of taxation, just simply to escape putting bonds back on the tax duplicate.

Mr. PECK: All of those powers exist under the constitution now, and the legislature has had this power since 1851.

Mr. ANDERSON: No; since 1905.

Mr. PECK: I do not know anything about that. I am talking of the constitution of 1851. You have simply gone insane on that subject. You simply go back to that one subject always.

Mr. ANDERSON: I go back to it because that is the one thing I am trying to do away with.

Mr. PECK: We may ask you about anything else, but you slip back to that.

Mr. ANDERSON: You object to placing bonds on the tax duplicate, and you are with the rest opposing it. I insist that you are wrong there and that we should retain the Smith one per cent law if you are in favor of bringing property out of hiding, as you say you are, and in favor of taking taxation off of land and placing

Taxation.

it somewhere else. Let us have the income, inheritance, production and franchise taxes, and the tax upon bonds, but let us adhere to that law.

Mr. LAMPSON: I move that that amendment be laid upon the table.

Mr. WINN: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 48, nays 58, as follows:

Those who voted in the affirmative are:

Antrim	Hahn,	Nye,
Bowdle,	Halenkamp,	Peck,
Brattain,	Halfhill,	Price,
Brown, Pike,	Harris, Hamilton,	Read,
Campbell,	Harter, Huron,	Redington,
Cassidy,	Harter, Stark,	Roehm,
Cordes,	Hoffman,	Rorick,
Crosser,	Johnson, Williams,	Shaffer,
Davio,	King,	Smith, Geauga,
Doty,	Knight,	Stamm,
Evans,	Lampson,	Stilwell,
Fackler,	Leete,	Taggart,
Farrell,	Leslie,	Ulmer,
Fess,	Malin,	Walker,
FitzSimons,	Matthews,	Weybrecht,
Fox,	Norris,	Mr. President.

Those who voted in the negative are:

Anderson,	Hoskins,	Partington,
Baum,	Hursh,	Peters,
Beatty, Morrow,	Johnson, Madison,	Pettit,
Beyer,	Jones,	Pierce,
Brown, Highland,	Keller,	Riley,
Cody,	Kilpatrick,	Rockel,
Collett,	Kramer,	Shaw,
Colton,	Kunkel,	Solether,
Crites,	Lambert,	Stevens,
Cunningham,	Longstreth,	Stewart,
Donahey,	Ludey,	Stokes,
Dunlap,	Marshall,	Tannehill,
Dunn,	Mauck,	Tetlow,
Dwyer,	McClelland,	Thomas,
Earnhart,	Miller, Crawford,	Wagner,
Elson,	Miller, Fairfield,	Watson,
Fluke,	Miller, Ottawa,	Winn,
Harbarger,	Moore,	Wise,
Harris, Ashtabula,	Okey,	Woods.
Holtz,		

So the motion was lost.

Mr. RILEY: I offer an amendment.

The amendment was read as follows:

"To amend the Anderson substitute to Proposal No. 170 as follows: After the words "for each individual" in section 2, insert the words "and also an amount equal to the bona fide indebtedness of such individual,".

Mr. RILEY: A number of delegates on this floor have expressed a great deal of sympathy with the poor man and regret at the high rate of taxation. A proposition was offered sometime ago seeking to prevent double taxation. From time almost immemorial the rule has been that in listing property debts could be deducted from credits. There was a time—the delegate from Scioto [Mr. EVANS] referred to it—when they, in 1846, passed a law that provided that debts might be deducted from moneys or credits. Just how long that law existed I am not advised, but for a long time it has been a rule that debts could be deducted from credits. Why not deduct this from other property than credits? If a man happens to have notes or mortgages outstanding why should he pay taxes on property that in effect he does not own? I think this is a fair proposition and

should meet with general approval. There should not be any double taxation.

Mr. TAGGART: What section does that amendment connect with?

Mr. RILEY: Section 2. It is on page 9, line 12, down after the word "individual". It will then read, "An amount not exceeding in value two hundred dollars for each individual, and an amount equal to the bona fide debts of such individual, whether notes, mortgages or bonds."

Mr. CRITES: I offer an amendment.

Mr. DOTY: A point of order.

The PRESIDENT: The point is well taken. We have already three amendments pending.

Mr. COLTON: The amendment that has been suggested by Mr. Fackler embodies the essential features of the report of the minority of the Taxation committee. I believe they meet the approval of nearly all the members of this Convention. They certainly are worthy the consideration of the Convention. We ought to have an income tax, and we ought to have it fixed so that the legislature can impose it. We ought to have an inheritance tax, and a production tax, and a franchise tax, and we ought also to have the provision about the bonds, and we should have a separation of state and local taxation, but that may come later. I believe too we ought to have bonds on the tax list. I go further than the amendment of Mr. Fackler. I can see no reason for exempting bonds from taxation that will not apply to the note of an individual, and let us have it clearly in mind that the bond of a municipality is nothing more than another name for a note. It is a note of a village or city, and why should we say that the one particular kind of intangible property shall be exempt from taxation, while on every other kind of the same intangible property we put a tax? I say that is class legislation of the worst possible sort, and there is no excuse for it. I admit that it is of advantage to the municipality to have its bonds free from taxation, but you will admit equally freely that it will be an advantage to the individual to have his notes exempt from taxation. Now, if all the municipalities were issuing bonds of the same relative proportion, and all individuals in this state owned bonds in the same relative proportion, there would be no injustice. It would be a giving on one thing and a taking on the other, but it is a well-known fact that the great borrowers in this state, and the great issuers of bonds are the large cities, and there are hundreds and hundreds of townships in this state that have no bonds whatever and are not in debt. These people have to bear the burden of the cities issuing the bonds. The bonds are bought more or less by our own people, and the people holding the bonds are exempt from paying their share of the state and local taxation. They do contribute something in the cities by submitting or accepting a lower rate of interest, but they are exempt from local taxation, and they are exempt from bearing their share of the burden of local government. It is unjust, and I shall cast my vote and give my influence toward restoring bonds issued hereafter to the tax duplicate, and I move the previous question.

Mr. FESS: On what?

Mr. COLTON: On the whole thing.

Mr. FESS: Before the previous question is put I move to table the last amendment.

Taxation.

The PRESIDENT: The question is, Shall the amendment lie on the table?

The motion to table was carried.

The PRESIDENT: Now the question is, Shall debate close?

The yeas and nays were regularly demanded, taken, and resulted — yeas 76, nays 28, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Peters,
Baum,	Harter, Huron,	Pettit,
Beatty, Morrow,	Henderson,	Price,
Bowdle,	Holtz,	Rockel,
Brattain,	Hursh,	Roehm,
Brown, Highland,	Johnson, Madison,	Rorick,
Cassidy,	Jones,	Shaw,
Cody,	Kilpatrick,	Stalter,
Collett,	King,	Stamm,
Colton,	Knight,	Stevens,
Cordes,	Kramer,	Stewart,
Crites,	Kunkel,	Stilwell,
Crosser,	Lambert,	Stokes,
Davio,	Lampson,	Taggart,
Donahey,	Longstreth,	Tannehill,
Dunlap,	Ludey,	Tetlow,
Dwyer,	Mauck,	Thomas,
Earnhart,	McClelland,	Ulmer,
Elson,	Miller, Crawford,	Wagner,
Fackler,	Miller, Fairfield,	Walker,
Farrell,	Miller, Ottawa,	Watson,
Fess,	Moore,	Weybrecht,
Fluke,	Nye,	Winn,
Fox,	Okey,	Wise,
Hahn,	Partington,	Woods.
Harbarger,		

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Marshall,
Brown, Pike,	Harter, Stark,	Matthews,
Campbell,	Hoffman,	Pierce,
Cunningham,	Hoskins,	Read,
Doty,	Johnson, Williams,	Redington,
Dunn,	Keller,	Riley,
Evans,	Leete,	Shaffer,
FitzSimons,	Leslie,	Solether,
Halenkamp,	Malin,	Mr. President.
Halfhill,		

The motion was carried and the main question ordered.

The PRESIDENT: The question is now on the amendment of the delegate from Mahoning [Mr. ANDERSON].

Mr. DOTY: An inquiry, so that we can understand exactly what we are voting for. If a member votes aye on the pending question it strikes out all of the Worthington proposal and substitutes this in place of it?

The SECRETARY: Yes.

Mr. DOTY: And if we vote the Anderson amendment down the proposal is in exactly the same shape as when we voted at noon?

The SECRETARY: No; there is the Fackler amendment and the Anderson amendment.

Mr. DOTY: Then all we are voting on is the Anderson amendment to the Fackler amendment?

Mr. WINN: Yes.

The question being "Shall the amendment of Mr. Anderson be agreed to?"

The yeas and nays were regularly demanded, taken, and resulted — yeas 67, nays 41, as follows:

Those who voted in the affirmative are:

Anderson,	Rever,	Cassidy,
Baum,	Brown, Highland,	Cody,
Beatty, Morrow,	Brown, Pike,	Collett,

Colton,	Kilpatrick,	Riley,
Cordes,	Kramer,	Rockel,
Crites,	Kunkel,	Shaw,
Cunningham,	Lambert,	Smith, Geauga,
Donahey,	Lampson,	Solether,
Dunn,	Longstreth,	Stalter,
Dwyer,	Ludey,	Stevens,
Earnhart,	Marshall,	Stewart,
Elson,	Mauck,	Stokes,
Fess,	McClelland,	Taggart,
Fluke,	Miller, Crawford,	Tannehill,
Harbarger,	Miller, Fairfield,	Tetlow,
Harris, Ashtabula,	Miller, Ottawa,	Thomas,
Henderson,	Moore,	Wagner,
Holtz,	Okey,	Walker,
Hoskins,	Partington,	Watson,
Hursh,	Peters,	Winn,
Johnson, Madison,	Pettit,	Wise,
Jones,	Pierce,	Woods.
Keller,		

Those who voted in the negative are:

Antrim,	Halenkamp,	Nye,
Bowdle,	Halfhill,	Peck,
Brattain,	Harris, Hamilton,	Price,
Campbell,	Harter, Huron,	Read,
Crosser,	Harter, Stark,	Redington,
Davio,	Hoffman,	Roehm,
Doty,	Johnson, Williams,	Rorick,
Dunlap,	King,	Shaffer,
Evans,	Knight,	Stamm,
Fackler,	Leete,	Stilwell,
Farrell,	Leslie,	Ulmer,
FitzSimons,	Malin,	Weybrecht,
Fox,	Matthews,	Mr. President.
Hahn,	Norris,	

So the amendment was agreed to.

The PRESIDENT: The question is now upon the amendment of the delegate from Cuyahoga [Mr. FACKLER] as amended.

Mr. DOTY: An inquiry, before we vote so that we may understand what we are voting upon. Do I understand if we vote aye upon the pending question we now substitute for the whole proposal the Anderson-Fackler amendment, and if the Fackler amendment is voted down, then the proposal is exactly the same as when we voted this noon, which is the Winn amendment, and the amendment I proposed as an alternative proposition?

The SECRETARY: Yes.

The PRESIDENT: The question now is, "Shall the proposal as amended pass?"

The yeas and nays were taken, and resulted — yeas 77, nays 31, as follows:

Those who voted in the affirmative are:

Anderson,	Farrell,	Longstreth,
Baum,	Fess,	Ludey,
Beatty, Morrow,	FitzSimons,	Marshall,
Beyer,	Fluke,	Mauck,
Brown, Highland,	Fox,	McClelland,
Brown, Pike,	Hahn,	Miller, Crawford,
Cassidy,	Harbarger,	Miller, Fairfield,
Cody,	Harris, Ashtabula,	Miller, Ottawa,
Collett,	Harter, Huron,	Moore,
Colton,	Henderson,	Okey,
Cordes,	Holtz,	Partington,
Crites,	Hoskins,	Peters,
Crosser,	Hursh,	Pettit,
Cunningham,	Johnson, Madison,	Pierce,
Donahey,	Jones,	Rockel,
Dunlap,	Keller,	Roehm,
Dunn,	Kilpatrick,	Shaw,
Dwyer,	Kramer,	Smith, Geauga,
Earnhart,	Kunkel,	Solether,
Elson,	Lambert,	Stalter,
Fackler,	Lampson,	Stamm,

Taxation.

Stevens,
Stewart,
Stilwell,
Stokes,
Tannehill,

Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,

Watson,
Winn,
Wise,
Woods.

Those who voted in the negative are:

Antrim,
Bowdle,
Brattain,
Campbell,
Davio,
Doty,
Evans,
Halenkamp,
Halfhill,
Harris, Hamilton,
Harter, Stark,

Hoffman,
Johnson, Williams,
King,
Knight,
Leete,
Leslie,
Malin,
Matthews,
Norris,
Nye,

Peck,
Price,
Read,
Redington,
Riley,
Rorick,
Shaffer,
Taggart,
Weybrecht,
Mr. President.

So the proposal passed as follows:

Proposal No. 170 — Mr. Worthington. To submit an amendment to article XII, sections 1, 2 and 6, of the constitution, and to add thereto sections to be known as sections 7, 8, 9 and 10. — Relative to taxation.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not ex-

ceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. LAMPSON: I move to reconsider the vote by which the proposal was adopted, and I move to lay that motion upon the table.

The motion was carried.

Mr. BROWN, of Highland: I rise to ask for leave of absence for Judge Kerr, and also to demand that Proposal No. 308 be taken from the Taxation committee for immediate action by this Convention, and I demand the yeas and nays on that.

Mr. DOTY: It does not take the yeas and nays. The proposal is before the Convention and I move that the proposal be laid on the table.

Mr. BROWN, of Highland: I demand the yeas and nays on that.

Mr. KNIGHT: I think we should have the proposal read.

The PRESIDENT: The secretary will read Proposal No. 308.

The proposal was read.

The PRESIDENT: The question is, Shall the proposal be laid on the table?

The yeas and nays were regularly demanded, taken, and resulted — yeas 68, nays 33, as follows:

Those who voted in the affirmative are:

Anderson,
Baum,
Beatty, Morrow,
Beyer,
Bowdle,
Cassidy,
Cordes,
Crosser,
Davio,
Doty,
Hurlap,
Elson,
Evans,
Fackler,
Farrell,
Fess,
FitzSimons,
Fluke,
Fox,

Hahn,
Halenkamp,
Halfhill,
Harbarger,
Harris, Ashtabula,
Harter, Huron,
Harter, Stark,
Henderson,
Hoffman,
Hoskins,
Hursh,
Johnson, Madison,
Johnson, Williams,
Kilpatrick,
King,
Knight,
Kramer,
Leete,
Leslie,

Ludey,
Malin,
Marshall,
Matthews,
Mauk,
McClelland,
Miller, Crawford,
Miller, Fairfield,
Miller, Ottawa,
Moore,
Nye,
Okey,
Peters,
Read,
Roehm,
Shaffer,
Shaw,
Smith, Geauga,
Stamm,

Taxation—Contempt Proceedings and Injunctions.

Stevens,	Thomas,	Weybrecht,
Stilwell,	Ulmer,	Wise,
Taggart,	Wagner,	Mr. President.
Tetlow,	Walker,	

Those who voted in the negative are:

Antrim,	Dunn,	Pettit,
Brattain,	Dwyer,	Pierce,
Brown, Highland,	Earnhart,	Price,
Brown, Pike,	Keller,	Rockel,
Campbell,	Kunkel,	Rorick,
Cody,	Lambert,	Solether,
Collett,	Lampson,	Stalter,
Colton,	Longstreth,	Stokes,
Crites,	Marriott,	Tannehill,
Cunningham,	Norris,	Watson,
Donahey,	Partington,	Woods.

So the motion to table was carried.

Mr. DOTY: I now demand the regular order.

Mr. ANDERSON: I move that 2,000 copies of the Worthington proposal, No. 170, be printed.

The motion was carried.

The PRESIDENT: The next business in order is Proposal No. 134.

Mr. FACKLER: I move that the Convention recess until seven o'clock p. m.

The motion to recess was lost.

The president recognized the delegate from Hamilton [Mr. HALENKAMP].

Mr. HALENKAMP: Gentlemen: Since Thursday afternoon, April 25, when this proposal was voted upon, there have been several changes suggested, and while I am reluctant personally to depart from the original draft, I nevertheless have agreed to the amendments which have been suggested, and which I will submit before I take my seat. Some of the pages have copies and are passing them around. The amendment simply guarantees a jury trial for contempt committed elsewhere than before the court.

The end sought by this proposed amendment to the constitution is to guarantee a jury trial in cases of contempt committed elsewhere than in the presence of the court and to restore the writ of injunction to its proper function.

The Hon. Henry Clay Caldwell, presiding judge of the United States court of appeals for the eighth district, has said:

Reduced to its last analysis the intelligent and impartial administration of justice is all there is to free government. It is to the courts that all must look for the protection of their liberty, person, property and reputation. It is public justice that holds the community together.

So, therefore, when the courts fail to protect the liberty, person, property and reputation of an individual or a class of individuals, it is no more than natural that they should protest and avail themselves of every opportunity to secure redress. Men in the usual walks of life outside of the ranks of labor can little realize the depth of the feeling and resentment felt by the working people of our state and nation in regard to the interpretation given to laws which discriminate against the working people as such. The working class are suffering from gross injustice by the judicial interpretation of the laws and the assumption of the jurisdiction in the issuance of injunctions and conduct of contempt

proceedings. Hence, we come to this Convention, pleading that, in so far as this state is concerned, we be given equality before the law; the right to exercise our natural, normal constitutional activities, the activities and rights accorded to the people of nearly every civilized country on the face of the globe, but which are denied to us through the use of the writ of injunction.

Right of association, the right to demand a normal work day, the right to demand sanitary surroundings, the safeguarding of machinery, the proper safeguarding of mines, factories and workshops, a decent living wage, and associate efforts to accomplish these things may be denied and have been by injunctions which carry with them the threat of contempt proceedings and imprisonment without a trial by jury.

We do not contend that judges are corrupt in our criticism of the courts; we are reluctant to believe that their motives in the issuance of injunctions are otherwise than honest motives. We realize that the conception of the courts as a rule is that there is on the part of the employer some sort of property or property right in either the workingman himself or in the workingman's power to produce. But since the adoption of the thirteenth amendment to the federal constitution it cannot be said that one man has a property right in another man, and when a court assumes to issue an injunction saying to me that I must not induce you to leave the employment of another man, it assumes, if it does not go beyond the rights to exercise its power where property rights alone are involved, that the other man has a property right in me, and only upon that basis can an injunction of that character be issued and contempt proceedings grow out of it.

As a matter of fact, in the perversion of the injunction, its genesis, and running through it, all the years, there is but one purpose, and that is that the industrial tories of America aim to chain and bind the American men and women of labor to their tasks and deny them the right of ownership in themselves and in their labor power. This is sought to be done through one process or another by the injunction, always over the head of the workers, threatening to decapitate them, and by denying to them fundamental rights which are essential to their well-being and protection. The policy of those industrial tories is to starve men into submission, and when the men undertake by united effort to secure relief from the tyranny and obnoxious conditions imposed, the injunction is invoked, thus placing the men and women in jeopardy of their liberty should they continue to exercise their right of refusing to hold themselves in unwilling bondage.

For a long time the black list was used as a means of defeating labor's right to organize, and the spirit which adopted the black list is now using the power of injunction to accomplish the same end, the defeat of united action by the laborers. C. C. Allen, in his article on injunctions and organized labor, has this to say:

Injunction writs have covered the sides of cars; deputy marshals and the militia have patrolled the yards of railway terminals, and chancery process has been executed by bullets and bayonets. Equity jurisdiction has passed from the theory of public rights to the domain of political prerogative. In 1888 the basis of jurisdiction

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was the protection of the private right of civil property; in 1893 it was the preservation of public rights; in 1894 it became the enforcement of political powers.

I submit it is hard to deny the proposition as to the original purpose of the beneficent writ of injunction, that purpose being to protect property rights for which there was no other adequate remedy at law; that where there is an adequate remedy at law it was never intended that the injunction process should lie; that it was never to apply, and never should apply to personal relations or even to enforce the provisions of criminal law; that anyone who is guilty of a violation of law of our state or nation may be apprehended and charged with the crime, the violator of the law placed upon his defense and if found guilty punished according to law.

The modern writ of injunction bears no more resemblance to the ancient writ of that name than the day does to night. In recent years it has been arbitrarily used and grossly abused. The restrictions formerly regarded as established have been abandoned, and our courts of equity have traveled over the whole field of human action and subjected the liberty of the citizens to restraint whenever it has seemed to the individual judge that restraint should be imposed.

It has taken the place of the police powers of the state and nation. With it the court not only restrains and punishes the commission of crimes defined by statute, but proceeds to frame a criminal code of its own as extended as it sees proper, by which various acts innocent in law and morals are made criminal, such as standing, walking or marching on the public highways, or talking, speaking or preaching, and other like acts. Men are deprived of their liberty, who do not do anything illegal, or anything for which by trial under the law they could be punished in the least. The court issues an injunction against the workers, forbidding their doing almost everything that is necessary to gain their legitimate object, and unless they obey they are sentenced to a fine or imprisonment at the discretion of the court. For what? Not for having violated any law, but for contempt. Thus the court converts a perfectly lawful act into a crime in order that it may inflict a penalty. This is what we have called "government by injunction."

It is sometimes urged in defense of government by injunction that it ought to prevail where the ordinary government has shown itself inefficient, but clearly, if our courts are to take the place of our governors, mayors, and sheriffs, why not say so outright in the constitution? If these officials are inefficient, there are ways of removing them or forcing them to do their duty. But this new injunction remedy puts the judge into the civil officer's shoes and supersedes him. The judge becomes legislator and executor of the law, and he is himself the sole judge of the validity of his actions. He makes lawful acts unlawful, tries the alleged breaker of his new-made law without jury and then fixes the punishment.

It is obvious that an injunction must enjoin acts which are either lawful or unlawful. If they are unlawful, they are already forbidden by law, and the penal code is a standing injunction against them. Why then issue another injunction? If, on the other hand, the acts are lawful why should they be forbidden? It is a dan-

gerous legislative power to put in the hands of the single judge. Let me read to you from the pen of the late Justice Harlan:

The illustrious men who laid the foundations of our institutions deemed no part of the national constitution of more consequence or more essential to the permanency of our form of government than the provision under which were distributed the powers of government, three separate, equal and co-ordinate departments: legislative, executive and judicial. This was at the time a new feature of governmental regulation among the nations of the earth * * * No department of the government can constitutionally exercise the powers committed strictly to another and separate department.

If Justice Harlan is right, and I believe he is, what right have our courts to invade the legislative field and armed with this powerful writ which has no definite boundaries or limitations, and which may be used at discretion, assume power which may be fairly characterized as imperial?

I think it was Goethe who said that the greatest element of terror is the unknown. One of the reasons why these injunctions have been so great an injury to the wageworkers, is because the injunction is a law unto itself, and it is seldom the case that the court issuing the injunction knows at the time it is issued what interpretation he will place upon it in the event contempt proceedings follow it. The workers can not determine from the injunction itself what are their rights, hence the terror that follows.

The extent of this powerful writ finds its only limitation in that unknown quantity called judicial discretion, touching which Lord Camden, one of England's greatest constitutional lawyers, said:

The discretion of the judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends upon constitution, temper, and passion to which human nature is liable.

Mr. Burke pointed out the danger of investing any sort of men with jurisdiction limited only by their discretion. He said:

The spirit of any sort of men is not a fit rule for deciding on the bounds of their jurisdiction; first because it is different in different men and even different in the same men at different times, and can never become the proper directing line of law; and next because it is not reason but feeling, and when once it is irritated it is not apt to confine itself within its proper limits.

It is, I submit, a jurisdiction that is not required to stop anywhere and will stop nowhere. I submit that the government of this state and nation is a government of law by law. The issuance of injunction interferes and invades the sphere of personal relations and personal rights; it is going back to personal government, government by discretion, government by whim, government by fancy, government by favoritism.

Some say and think (and among them not a few

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judges) that an injunction interferes in some subtle way before the act anticipated is performed. This is nonsense. An injunction does nothing before the act but to forbid it, just as a law forbids a crime. It does not and can not touch the prospective offender until he has offended. It has no miraculous antecedent power of prevention.

Injunctions of this character have violated fundamental rights. I shall assume for the sake of argument, that in every instance the workmen were engaged in acts of violation of the criminal law. What is the necessity for an injunction? I submit again that it is unnecessary and unjustifiable. If the acts are not criminal, then the theory upon which the injunctions are issued is incorrect and admittedly without justification. If the acts were criminal, the criminal law provides the punishment to be imposed and the procedure to be followed. The fact of the matter is that the only reason for issuing injunctions of this character is to dispense with the trial by jury.

When the framers of the Declaration of Independence met to draft a formal statement of the grievances of the colonists against the rule of England, one of the chief counts of the indictment was "for depriving them in many cases of the benefit of a trial by jury". Looking over our federal constitution we find that they did not stop with protesting, but meant to put the principle into practice. The fullness and completeness of the constitution in this respect is amazing. No more resolute purpose to accomplish a particular end ever found expression on paper:

The trial of all crimes, except in case of impeachment, shall be by jury.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service or in time of war or public danger.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

In suits of common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

But notwithstanding, these inherent rights and constitutional guaranties have been swept aside by what may be fairly termed an equitable invention which turns crime into contempt and confers on the courts the power to frame an extended criminal code of their own, making innocent acts punishable by fine or imprisonment without limit, at their discretion. Consider the protection with which the law, as a result of centuries of struggle and experience, safeguards the liberty of the lowliest citizen. If he is charged with crime, there must be a hearing before a grand jury that must be satisfied a crime has been committed and that reasonable grounds for believing the accused guilty exist. Upon indictment by the grand jury he is tried by a petit jury, and even their verdict, if improperly arrived at or contrary to law, may be set aside upon appeal. This protection applies even to one accused of murder.

But by the mere issuance of an injunction all these rights are cast aside. A court, upon the application of

an individual or corporation, issues an order commanding the defendants (and for fear that he may miss some one they have added at times the word "whomsoever," thus embracing the whole world) to refrain from doing certain things which are specified in the order. Those violating this injunction are summarily arrested and brought before the same judge who issued the injunction. He inflicts punishment upon them. He himself and alone acts as the judge, jury and executioner. The grand jury, the petit jury, the right of appeal, are all dispensed with. Under such circumstances, what is more natural than the conclusion that the most brutish murderer is far better than the poor toiler whose only offense is that he violated the order of a single individual. Someone has said: "After all, the human skull is but the temple of human errors; and judicial clay, if you analyze it well, will be found to be like all other human clay." Our general assembly, the representative of the people, and the people themselves, through the initiative and referendum, may make law; the governor of our state is authorized to issue certain orders, to all of which there is attached a penalty as for a crime. But the people, the general assembly or the governor may not summarily sentence anyone for a violation of their orders or decrees. No, they must refer the offense to the regular judicial criminal branch.

We contend that there has been abuse of judicial discretion in cases of this kind. Contempt is a disobedience of something impalpable and indefinite, something we may not put our hands upon. In point of fact it is the violation of the commands of a human being, although clothed in the form of law; and it is very, very difficult for that human being to try a case of contempt without personal feeling entering into it, and the difficulty is not removed when the question is sent to one of his associates, who is very likely, in a greater or less degree, to share either the individual feeling of the judge whose orders have been violated, or the general feeling of the bench that whatever proceeds from the bench is itself sanctified. So the work of a jury in breaking the force of those feelings is one of the very greatest possible importance, and of the greatest possible public advantage. The utility of a jury trial is unquestionable. Its immense superiority to any other mode of trial in criminal cases is indispensable. A jury trial is impersonal. It gives expression to the sense of justice of the people, which is the nearest approach to absolute justice attainable in earthly tribunals.

I know there are some who maintain that courts have certain inherent rights, necessary to their dignity and enforcement of their decrees, and that a jury trial in contempt proceedings is the converse of these rights; it impairs the court's efficiency and abridges its dignity. Others argue that it is transferring authority to another tribunal. But we do not propose to take any power from them, nor does this amendment propose to do it. We have no designs upon the dignity of the courts.

There are two classes of contempt in the nature of things, and so recognized by all the courts. One is contempt committed in the face of the court, and the other is contempt committed outside of the scope of the senses of the judge. Our way of dealing with the matter would be to allow courts to deal summarily with what are termed direct contempts, which are committed in their presence. In so doing they would act, to all intents

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and purposes, as the conservators of the peace. When they come to indirect contempts, however, which are committed far away from the presence of the court, we think those ought to be proceeded with as in criminal cases, with the assistance of a jury, the judge to be the exclusive judge of the law and the jury to be the exclusive judge of the facts.

As a general proposition, let the question of indirect contempt be tried by a jury, thus eliminating forever and a day the question of bias, prejudice and personal feeling, for the juries of our state as a rule can be relied upon to carry out the principles of justice and fair dealing between man and man.

With these remarks, gentlemen, I hope I have made our position plain on these questions. I have not attempted and do not pretend to be original in all that I have said, for the literature contributed to this subject is already overwhelming; the points I have raised have been covered by men in almost every walk of life. From the pulpit, the lecture platform, the political stump, the editor's desk, in our legislative halls and bar associations these principles and doctrines have been defended and enunciated time and time again. We are not alone in our position, and before yielding the floor I must call your attention to the expressions of men of high renown in the legal profession, men who stand for justice and who apprehend the danger if personal, discretionary, and arbitrary government is permitted to take the place of government by law.

Hon. W. H. Moody, justice of the United States supreme court has said:

I believe in recent years the courts of the United States, as well as the courts of our commonwealth [Massachusetts], have gone to the very verge of danger in applying the process of the writ of injunction in disputes between labor and capital.

Hon. Thomas M. Cooley, president of the American bar association, said:

Courts, with their injunctions, if they heed the fundamental law of the land, can no more hold men to involuntary servitude for even a single hour than can overseers with the whip.

Governor Pingree, of Michigan, said:

I consider government by injunction, unless stopped, the beginning of the end of liberty. Tyranny on the bench is as objectionable as is tyranny on the throne. It is even more dangerous, because judges claim immunity from criticism, and foolish people acquiesce in their claims.

Judge H. F. Tuley, of the appellate court of Illinois, used these words:

Such use of injunction by the courts is judicial tyranny, which endangers not only the right of trial by jury, but all the rights and liberties of the citizen.

Governor Sadler, of Nevada, said:

The tendency at present is to have the courts to enforce law by injunction methods, which are subversive of good government and the liberties of the people.

Hon. J. H. Benton, Jr., of Massachusetts, said:

The courts have gone too far. It is impossible for them to go on in the course they have taken and retain the confidence of the people or preserve their own power. It is idle to say that the popular complaint on this subject means nothing, or that, as one judge has said, "Nobody objects to government by injunction except those who object to any government at all." It does mean much. It means that the courts have, in the judgment of many of the most intelligent and thoughtful citizens, exceeded their just powers; that they have, by the so-called exercise of the equity power, practically assumed to create and to punish offenses upon trial by themselves without a jury, and with penalties imposed at their discretion. The people will not and they ought not to submit to decisions like those in the Northern Pacific and Ann Arbor cases.

Professor F. J. Stimson, of Harvard, one of the greatest legal authorities, in his new work on "Federal and State Constitutions," after citing many authorities, says:

These are sufficient to establish the general principle that the injunction process and contempt in chancery procedure, as well as chancery jurisdiction itself, is looked on with a logical jealousy in Anglo-Saxon countries as being in derogation of the common law; taking away the jurisdiction of the common law courts and depriving the accused of his trial by jury:

Judge John Gibbons, of the circuit court of Illinois, declared that:

In their efforts to regulate or restrain strikes by injunction they [the courts] are sowing dragon's teeth and blazing the path of revolution.

In the last edition of his great book, *High*, the leading authority on injunction, says:

Equity has no jurisdiction to restrain the commission of crimes or to enforce moral obligations in the performance of moral duties; nor will it interfere for the prevention of an illegal act merely because it is illegal, and in the absence of an injury to property rights, it will not lend its aid by injunction to restrain the violation of public or penal statutes or the commission of immoral or illegal acts.

I submit in conclusion that injunctions of this character are never issued against any other citizens of our state and never issue against workmen except when they have had some rupture with their employers. Not alone in the name of labor, but in the name of justice and liberty, in the name of humanity and for the sake of the great principles upon which our state is founded, I earnestly hope that this proposal will become part of the organic law of this state.

I offer the following amendment.

The amendment was read as follows:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the

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state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property from injury or destruction, and all persons charged in contempt proceedings with the violation of an injunction issued in such industrial controversies involving the employment of labor shall, upon demand, be granted a trial by jury as in criminal cases.

Mr. PECK: I want to call attention to the fact at first that this proposal as amended involves two or three distinct propositions. There are reasons and necessity for these. The first five lines contain a separate provision from the one we have heard so ably discussed, and it reads:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

That may strike one as a little late, as the legislature has always been passing codes of civil and criminal procedure, and other rules and regulations governing the courts, but there are certain matters in which the supreme court has denied the general assembly the right to direct them, and have said that they are above the legislative department of the government and are exempt from operation of its laws. I am informed they have recently disregarded an act of the general assembly requiring them to report their decisions on the ground that they were not subject to regulations in that way, that it was within their discretion and could not be regulated by the general assembly; that as they were a court they had inherent power to regulate their own business. That seemed to be the theory on which they proceeded; and there is another case, a case in which Mr. Thatcher was restored to his position as a member of the bar by the vote of the general assembly; and I understand they have denied the right of the general assembly to pass such an act, and have refused to recognize his right to practice law, claiming that the question of admission in substance was their prerogative as a court. Again insisting that they were not subject to limitation by the general assembly, in the case of Hale, which is reported in 55 O. S., they clearly and emphatically asserted that they could not be limited by the general assembly in their power to punish for contempt, that that power was inherent in the court, to punish for contempt, and that the general assembly had no constitutional authority to interfere with them in those matters, and they sustained a very extreme punishment. The case is fully reported, and that is the ground upon which they placed it.

Now I myself do not believe that anybody or any institution or any official in the state of Ohio ought to be above the law. I do not believe that any set of men should have the right to say that everybody else in the state of Ohio must bow to the will of the general assembly, but we will not. We make laws for our own gov-

ernment in these matters. That matter of contempt is one that is particularly in need of regulation, and they drew the line. They admitted they were trying that case, proceeding in accordance with the regulations of the general assembly, but they said it was all right as long as the general assembly merely passed regulations, but the moment they put a limit on their power, the general assembly had no right. Now that is a power I want to confer on the general assembly under this proposal. When it comes on to its passage, I notified the chairman of the committee last week that I would demand a separation of the question embraced in the first five lines and the next part, relating to the matter of injunctions, which is a distinct and separate matter. I do not propose to have the first matter imperilled by the injunction matter.

Mr. HOSKINS: In the second clause it reads: "No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property," etc. Is the expression "industrial controversy" a definite, certain statement that would have certain boundaries?

Mr. PECK: It seems to me it is. I am not the author of this proposal as it stands. I had something to do with the first five lines, but not with this last part. You will find it is very difficult to frame that in words which will include what you want, but it seems to me, taking the two together, that it makes it definite.

Mr. HALFHILL: Admitting the force of your argument on the first five lines, could there be any reason in the world to say that the last part of it is not directly statutory and that abundant power exists now for the legislature to provide as to the latter portion?

Mr. PECK: I am not so sure of that.

Mr. HALFHILL: In other words, does not the constitution confer simply on the common pleas court such jurisdiction as provided by law—that is, the court that issues the injunction?

Mr. PECK: Yes; I think likely that the general assembly might pass something that would do a good deal of good in this line, but I am not sure the courts would not claim inherent jurisdiction in those cases and that they have a constitutional right to issue those injunctions.

At any rate, this is a matter of such great importance, and since we haven't heretofore stuck strictly to the line, we might do a little legislating here. We did something on the abolition of capital punishment, and that was purely statutory. But that was deemed of such importance that it should be passed upon in the constitution. So here are things in the bill of rights prohibiting cruel and inhuman punishment and exorbitant bail—those matters might be handled through statutory provisions, and yet they are in the bill of rights, and they are even in the constitution of the United States. It is important at times to protect fundamental rights by constitutional provision, though they might be protected by statutory provision also. It is unquestionably true that certain jurisdiction is created in the constitution for the supreme court and the circuit court, but does not the constitution itself provide that the common pleas court has no jurisdiction except as provided by law? It has jurisdiction, civil and criminal.

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Mr. HALFHILL: It is "as created by law," and is not that plainly statutory?

Mr. PECK: I am not sure it is not, but I think it is important enough to be passed upon by this body.

Mr. KING: If there is any doubt as to whether under the constitution as it now is the provision of this second paragraph might be adopted, would not that doubt be done away with if the provisions of the first part were written in the constitution, and would not the legislature have all the power?

Mr. PECK: I think the first clause would give the general assembly the power.

Mr. HALFHILL: I agree with that too.

Mr. PECK: I want to prevent those injunctions. I have not gotten through with this discussion on my part yet. I remember distinctly how these injunctions came to be used. It is a modern discovery entirely. The use of the writ of injunction to apply to a whole body of workmen in strikes was discovered by some bright lawyer in the early nineties and the scheme spread. I have never known much good to come of a writ of injunction. I have seen many issued and they invariably bring about strife, especially on the part of the men against whom they are directed. It calls out the militia and the police, and it does very little good, except sometimes it has intimidated the poor workmen. But it has really accomplished very little good and has done a great deal more harm by disturbing the peace of the community. Very often strikes have been presided over by the courts in their endeavors to enforce what they regard as the rights of the plaintiffs, which is shocking to one's sense of justice. There is no doubt that the workmen have just cause of complaint in many instances of the length to which the courts have gone in endeavoring to enforce alleged rights of employers.

Now the writ of injunction never was intended for any such purpose. That was an inheritance from the civil or ecclesiastical law of the middle ages. It is not a common law writ at all. It has crept into English jurisdiction from the continental courts, probably from the ecclesiastical courts, and it was always intended to apply to property rights, and it was never intended to apply to controversies, nor was it ever used in such controversies.

As I say, the application of it to controversies of this kind was never even discovered until the last ten or fifteen years and it has not been a beneficial or a useful discovery. It has not been one for the peace of a community. I think we had better go back to the old-time, common law practice in these matters and stop issuing injunctions, and that is the reason I am in favor of this and hope it will carry.

Mr. DWYER: Only a few years ago a United States judge in Minnesota issued an injunction restraining the men from quitting work.

Mr. PECK: Of course that would be simply allowing a judge to control everything to allow him to say that.

Now, Mr. Tetlow has a case that I would like to have him tell about, of abuse of a writ of injunction which seems to me to be dreadful, a case in West Virginia in which he was personally concerned, and it shows how far judges will go with this writ of injunction. You

all remember those disgraceful proceedings where, by virtue of writs of injunction, men were in jail and behind high fences and kept in for months and not permitted to leave the premises. No such thing should be permitted in a free government. They are disgraceful and injurious. This is intended to stop it in the state of Ohio if we can.

Mr. MAUCK: Just a word about the propriety of embodying this provision in the constitution of the state. It is far from clear to me that the supreme court of this state would hold that the general assembly has the power suggested by the member from Allen. The provision of the Ohio constitution in regard to common pleas courts is substantially the same as that of the federal constitution in relation to the United States district and circuit courts.

Mr. HALFHILL: Do you understand that I made the present constitution supplemented by the first five lines of this, say that the power exists?

Mr. MAUCK: But the first sentence of this proposal relates rather to the method of doing business than to the jurisdiction of the court itself. When the railroad rate bill was before the federal senate it was contended with great ability that the lower federal court having once received equity powers not conferred by the constitution, but conferred by statute, could not have that power limited by such statute because conferring equity powers carried with it certain inherent powers that must be exercised to carry into effect any of the equity powers so conferred. I have not followed that in the decisions of the federal court and do not know what has been held in that regard, but I do know that the supreme court of the state of Ohio has gone a great length in upholding what is claimed to have been and to be its inherent rights. For instance, the general assembly of Ohio has provided rules under which men may be admitted to the bar of the state. A few years ago the general assembly provided an educational qualification. It provided that any man might be eligible to an examination as provided by law if he held a teacher's certificate issued by the examiners of any county in the state. The supreme court, without any case pending before it, declared that statute unconstitutional because, it said, the general assembly had no power to infringe upon the inherent rights of the supreme court. If it would go that far to sustain what it claims to be the inherent powers of the court I think that we could not be satisfied that the ends sought to be accomplished by this proposal could be secured by any action of the general assembly. Therefore, those of us who believe that this ought to be part of the law of the state of Ohio feel that we must support it as a constitutional measure, otherwise we can have no assurance that it will ever become a part of the law of the state.

Mr. EBY: I move to amend Proposal No. 134 as follows:

Insert after the word "destruction" the following: "and to prevent the disturbance of the orderly operation of industrial pursuits."

Mr. DOTY: An inquiry please: Is this amendment as read an amendment to the original proposal? I do not think that is the way the member means it.

Mr. EBY: No.

Mr. DOTY: There is an amendment by substitute

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which strikes out all of the proposal and proposes to substitute this. If the amendment is adopted this is adopted.

Mr. EBY: I was under a misapprehension. I withdraw the amendment and will offer a different one if the president will recognize me later.

The PRESIDENT: The question is now on the proposal.

Mr. PECK: I ask a separation.

The PRESIDENT: The gentleman from Cincinnati [Mr. PECK] demands a separation and we will vote first on the first five lines.

A vote being taken that part was carried.

The PRESIDENT: Now we will vote on the remainder of it.

Mr. EBY: Now, I offer that amendment.

The amendment just offered by Mr. Eby was again read.

Mr. EBY: I notice that there has been added to this amended proposal "except to preserve physical property from injury or destruction". That contemplates those cases where laborers form themselves into menacing mobs. Now this perhaps is not what Mr. Halenkamp included, but it occurs to me if a man who is a scab wants to go to work he should be protected as well as any other person. Of course I have not introduced this at the behest of the laboring men.

Mr. ANDERSON: Aren't you getting mixed up the difference between a writ of injunction and a crime under a statute? Do you know what the difference is?

Mr. EBY: No. As I have observed it—

Mr. ANDERSON: Answer the question.

Mr. EBY: I think not. If you can enjoin men from destroying physical property you should be able to enjoin them from preventing orderly working men from working.

Mr. PECK: What are the police for?

Mr. ANDERSON: If they have a remedy below they cannot resort to the writ of injunction. Is not that where you make a mistake?

Mr. EBY: Is there any occasion where the writ of injunction has been issued against men who have prevented other men from pursuing their occupation?

Mr. ANDERSON: I have had considerable experience, but I could not answer the question, because from that experience I am not informed.

Mr. DOTY: I move that the amendment be laid on the table.

The motion was carried.

The PRESIDENT: The question is on the adoption of the second part.

A vote being taken the second part was agreed to.

The PRESIDENT: The question now is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 80, nays 13, as follows:

Those who voted in the affirmative are:

Anderson,	Crosser,	Elson,
Beatty, Morrow,	Davio,	Fackler,
Beyer,	Donahey,	Farrell,
Bowdle,	Doty,	FitzSimons,
Brown, Highland,	Dunlap,	Fluke,
Cassidy,	Dunn,	Fox,
Cody,	Dwyer,	Hahn,
Colton,	Earnhart,	Halenkamp,
Cordes,	Eby,	Harbarger,

Harris, Hamilton,	Marshall,	Stamm,
Harter, Huron,	Mauck,	Stevens,
Henderson,	McClelland,	Stewart,
Hoffman,	Miller, Ottawa,	Stilwell,
Hoskins,	Moore,	Stokes,
Hursh,	Okey,	Tannehill,
Johnson, Williams,	Partington,	Tetlow,
Keller,	Peck,	Thomas,
Kilpatrick,	Pettit,	Ulmer,
King,	Pierce,	Wagner,
Kunkel,	Read,	Walker,
Lambert,	Redington,	Watson,
Lampson,	Riley,	Weybrecht,
Leete,	Rockel,	Winn,
Leslie,	Roehm,	Wise,
Longstreth,	Rorick,	Woods,
Malin,	Shaffer,	Mr. President.
Marriott,	Smith, Geauga,	

Those who voted in the negative are:

Brattain,	Holtz,	Nye,
Brown, Pike,	Kramer,	Peters,
Collett,	Ludey,	Shaw,
Crites,	Norris,	Solether.
Cunningham,		

So the proposal passed as follows:

Proposal No. 134—Mr. Halenkamp. To submit an amendment to article I, of the constitution.—Relative to injunctions.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property from injury or destruction, and all persons charged in contempt proceedings with the violation of an injunction issued in such industrial controversies involving the employment of labor, shall, upon demand, be granted a trial by jury as in criminal cases.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

On motion of Mr. Doty Proposal No. 134, as passed on second reading, was ordered printed.

On motion of Mr. Doty one thousand additional copies of Proposal No. 151, as passed on second reading, were ordered printed.

Mr. Doty moved that the Convention recess until 7:45 p. m.

Mr. Hoskins moved to amend the motion of recessing until 9 o'clock a. m. tomorrow.

The motion to amend was lost.

The original motion was carried.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

The PRESIDENT: The next thing in order is Proposal No. 227.

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The proposal was read the second time.

Mr. HARRIS, of Ashtabula: The purpose of this proposal is clear to anyone who has given it any attention. I suppose some of you think this is one of the unimportant proposals, yet I have a sort of idea that it has been considered in some places from some information that has come to us. With your permission I would like to go over it a little by way of explanation and a little by way of comparison with the present constitution in regard to apportionment before the matter is opened for consideration.

The one point to which attention is given, and which is the only point in the proposal, is separate or distinct legislative districts, both as to members of the lower house or house of representatives and also as to the senate. As we now know, the constitution by amendment adopted in 1903, I believe, wipes out all of the provisions which previously applied in smaller counties by providing that each county in the state should have at least one representative. The previous ratio was wiped out. Then the ratio which is reached by dividing the whole number of people in the state as shown by the last preceding census by the number one hundred, provided the ratio for members in a county having more than one member. In other words, that determines the number to which each county should be entitled during the decennial period following that census. Ever since the adoption of the constitution of 1851 we have had a provision in the constitution for what might be called the cumulative practice in counties having a population greater than the ratio which existed during that decennial period with the provision that if that ratio multiplied by the number of terms of the general assembly, which was five—if that cumulative fraction multiplied by five would produce another full ratio, then at some time during the decennial period the county should be entitled to an additional representative, and the time was fixed in the constitution; and the constitution also provided that the governor, secretary of state and auditor of state should constitute a board of apportionment which should make the calculation following each decennial census and should assign to each county for the coming decennial period for each term the number of representatives it was entitled to and provide in which term the excess representative should be given to it. So it has come about that we have had a very indeterminate number of members, in the lower house particularly, and also a varying number in the senate. For instance, under the present constitution the apportionment for this decade has already been made up, and along the line of variations in number I call your attention to these figures very briefly. In the legislature the house will consist in the first period of a hundred and twenty-three members, in the second period of a hundred and twenty-three, in the third period of a hundred and twenty-eight, in the fourth period of a hundred and twenty-four and in the fifth period of a hundred and twenty-five.

The cumulative fraction multiplied by five produces such results as to justify an apportionment like that, and the various counties have this excess representative granted to them. This proposal proceeds upon the theory that that is not of itself very desirable; in other words, that the apportionment should be fixed by the decennial period, also that the representation in the senate should be fixed as well. Now, the purpose of this proposal is

to divide the counties entitled under the census of 1910 into representative districts. That is, that each county shall be divided by a board, which is provided for in the proposal, into as many districts as it has representatives and providing the time when that apportionment is to be made. If this proposal should meet with your approval and the approval of the people of Ohio, and become a part of the constitution, a reapportionment would be necessary in accordance with this provision. That apportionment should be made in ample time so that notice could be given of it and preparations for election under the new provision could be made in each county and each senatorial district. It provides for the first apportionment during the month of March, 1913, and for another apportionment during the month of March, 1921. These distinct periods must be fixed in order to make it clear. The first apportionment begins after the apportionment for the decade has begun.

This proposal was amended to meet a certain situation. It first provided that during the month of February, 1921, this apportionment should be made. I was told that there was some uncertainty as to whether the census for 1920 could be given so as to make the apportionment before March, but there was no doubt that during March, 1921, such apportionment could be made in accordance with the provisions of this section.

Now as to the personnel of the board which is to make this bipartisan or nonpartisan apportionment of territory in the counties entitled to more than one. It provides that the members of the senate and the members of the house of representatives, who of course will be in session next winter, representing the two leading political parties respectively, shall meet separately and each of said bodies shall designate two electors, not members of the general assembly, who shall forthwith be appointed by the governor, and said four electors so designated and appointed shall constitute a commission who shall ascertain and determine the ratio of representation for members of the house of representatives and senators, the number of representatives to which each county is entitled, and the boundaries of each senatorial district. Then there is a provision for vacancies, in case one should occur, by choice of the senators, they being the smaller body and most easily convened in the event of there being a vacancy in the board.

The original proposal provided that the population of the state should be ascertained by the preceding federal census or by such other means as the legislature shall determine, but the proposal now requires that the population must be ascertained from the federal census, a correct and regular means of ascertaining and determining the population of a state, and which can safely be taken as a base of proceedings. There is no change of divisor from the provisions of the present constitution. Of course, under the present census, a greater ratio will follow than that of any previous decade owing to the growth of the population of the state. Each county shall be entitled to at least one representative as the people have provided by constitutional amendment regularly—and I want to call attention to the fact that no changes have been made in the constitution except such as were necessary to maintain and carry out the provisions of this proposal for separate legislative districts. Each county having a ratio of one and a half or over shall be entitled to two representatives. It is

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perfectly plain to anyone that the large counties will be the ones that will be benefited by this. The present constitution requires three-fourths; it is changed to one-half for a reason that is apparent to everyone. Then each county having two and a half times the ratio shall be entitled to three representatives and the same order continues, whatever number of ratios a county may have. Each county shall be divided by this commission, where they have more than one representative, into as many districts as there are representatives in said county, and one representative shall be chosen to each district.

The provision in the sixth section is that the territory fixed by this board shall be compact territory, that it shall be bounded by election precinct lines. I am not adopting this without some consultation with those who are familiar with the election laws and with election procedure. Necessarily the board which shall make this division, if it is provided that such division shall be made, will get in contact with the election officers regularly appointed. They must be guided by their advice in the matter of fixing these lines to conform to district boundaries.

Now, I want to make briefly a few comparisons between this and what we have already in the apportionment made for this decade, and it will be apparent at once that some counties will lose by having cut off a fraction of a representative, which when multiplied would give them an extra representative more during the decennial period. It is noticeably true of the county which I have the honor to represent in this Convention, Ashtabula. We have a population of 59,547. The ratio for representatives during this decade will be 47,671, with a fraction over, so that the fraction representing the difference between 47,000 and 59,000 for ten years will not be provided for.

Allen county, somewhat less in population, of course will lose in the same way, and these concessions must necessarily be made if this scheme is carried out. There is no getting away from it. There ought to be a rule, and that rule must hold throughout the state. On the other hand, some counties in the list entitled to more than one representative will have a continuous representation for ten years equal to the highest representation which they will have at any time during the decade under the cumulative fraction that I have spoken of. The county of Cuyahoga has thirteen representatives during the whole period. The county of Franklin has varying representatives, but is entitled to five for the whole period.

I do not want to make this tiresome by going into the details, but I will endeavor to answer any questions later that are asked me, and I will pass on to the consideration of the central part of the proposal. You are all aware that as the districts are fixed in the constitution of 1851, the cumulative fractions to which I have referred hold for senators just as with the members of the house of representatives. Consequently the number of senators will be variable. When the constitution of 1851 was adopted, the bulk of the population was differently located from the bulk of the population of today. That is readily observable, so that there will necessarily be a provision that those fixed districts as they are in the constitution would have to be changed, so that the joint senatorial district would not sometimes have one senator and sometimes have two and sometimes one senator for

three or four terms of the decade. That is not a happy way of fixing senatorial representation in the constitution. Consequently, in this proposal we authorize and provide that this commission shall divide the population of the state by the number thirty-five, the same number in the constitution now, and then as nearly as possible they shall make the senatorial districts which shall form from the ratio 136,203.

There may be some question arising out of this as to the practicability of any board, however well disposed, making an apportionment in accordance with this provision. I have never believed that it was a wise policy in this Constitutional Convention or anywhere else to direct the legislature to do anything that you could not do yourself or that you did not have a definite idea could be done. Accordingly, I have taken the counties and gone over them in my own way and have attempted to ascertain whether this is a practical thing to do. I have made several typewritten copies of a tentative arrangement, and they are on my desk. I don't know whether you are interested in hearing them, but I will read a few of them. Beginning in the northwestern part of Ohio, on the senatorial ratio of 136,203, Williams, Fulton, Henry, Defiance and Wood would be combined for ten years, and they have 145,000; Ottawa, Sandusky, Erie, and Seneca, 138,000; Huron, Lorain and Medina, 133,841; Paulding, Van Wert, Putnam and Allen 130,000; Hancock, Hardin, Wyandot, Marion and Morrow, 139,000; Crawford, Richland, Ashland, and Knox, 134,000; Ashtabula, Trumbull, Lake and Geauga, 149,000; Mahoning and Portage, 146,000; Columbiana and Jefferson, 142,000; Stark and Carroll, 138,000; Summit and Wayne, 146,311; Holmes, Coshocton, Tuscarawas and Guernsey, 147,000; Harrison, Belmont, Monroe and Noble, 136,000; Licking, Muskingum and Perry, 138,000; Morgan, Athens, Washington and Meigs, 134,000; Lawrence, Gallia, Jackson and Scioto, 144,000; Ross, Pickaway, Vinton, Hocking and Fairfield, 142,000; Pike, Adams, Brown, Clermont, Clinton and Highland, 40,000; Warren, Butler and Preble, 118,000; Auglaize, Mercer, Shelby and Darke, 126,000; Miami, Clark and Greene, 141,000; Logan, Champaign, Madison, Union, Delaware and Fayette, 147,000; Cuyahoga, with a population of 637,000, has five senators; Hamilton three senators for the entire decade; Franklin, two senators; Lucas, one senator with a large fraction. The compensation there is that Lucas, which now has one senator for every term, will in the next decade certainly have two senators the whole time. Montgomery will have one senator, with such a large fraction over that probably Montgomery will have two if this arrangement should be undertaken in the next decade.

I suggested that we would make some comparison with the present senatorial districts. I have indicated the number in this tentative arrangement. Now let us see how they compare with some of the present senatorial districts.

For instance, the eighth senatorial district as at present situated is composed of Lawrence, Gallia, Meigs and Vinton with a population of 103,000. They have a senator all of the time during the entire decade. Clark, Champaign and Madison, the eleventh senatorial district, 112,000, which is 6,000 less than the one under the ten-

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tative arrangement that I have prepared, and they have one senator for the entire period. Miami, Darke and Shelby, the twelfth senatorial district with a population of 112,000, will have a senator for the entire time. The seventeenth and twenty-eighth joint senatorial district under present arrangement, Morrow, Knox, Wayne and Holmes, has 102,000 people and yet has a senator for the entire decade. I only make these comparisons to show you that as far as fairness is concerned the tentative arrangement that I have prepared is vastly more representative and fairer than the present apportionment.

Mr. RILEY: How many would you have?

Mr. HARRIS, of Ashtabula: Thirty-four. Under the apportionment of this decade the senate will be varying in number. For instance, in 1880 it was 33; in 1881, 33; in 1882, 36; in 1883, 33; in 1884, 37.

Mr. RILEY: Your scheme contemplates the change from year to year during the decade?

Mr. HARRIS, of Ashtabula: It absolutely retains the same number for the decade.

Mr. RILEY: What would be the size of the house the next term?

Mr. HARRIS, of Ashtabula: A hundred and twenty-five members for the entire decade.

Mr. McCLELLAND: Some advantages will accrue to some political parties and some disadvantages to others by this apportionment?

Mr. HARRIS, of Ashtabula: Yes, sir; almost inevitably.

Mr. McCLELLAND: Is it not hopeless that the board elected by a partisan caucus will ever agree without an umpire upon that redistricting?

Mr. HARRIS, of Ashtabula: I have not the slightest doubt of it. I should think and I should expect that four gentlemen would be chosen. I have provided here that they shall not be members of the legislature, and I would expect they would agree upon men of character who had reputations that they would not want to lose and men who could meet and discharge an important work like this on grounds above party.

Mr. MAUCK: The gentleman from Ashtabula is aware of the advantage that is always taken by political parties for congressional purposes. What warrant has he to believe that the general assembly will select any other but their own kind?

Mr. HARRIS, of Ashtabula: There will be two democrats and two republicans on the commission.

Mr. MAUCK: I understand that, and I think it will be a deadlock unless you make a fifth member of the commission.

Mr. HARRIS, of Ashtabula: I do not assume all wisdom and I do not know that I object to an amendment of that kind, yet I cannot conceive that four gentlemen could meet disposed to reach an honest, fair conclusion and have any serious difficulty in reaching it.

Mr. MAUCK: Does the member mean to suggest that his associates, not himself, at the various legislatures in which he has sat have lacked that quality which makes them willing to do what is called gerrymandering?

Mr. HARRIS, of Ashtabula: I never have assisted but once in gerrymandering the state. I thought it was a pretty piece of work, as far as I was concerned, but, understand, the two parties didn't do it.

Mr. DOTY: Just one party did it.

Mr. HARRIS, of Ashtabula: And the minority didn't have any say so in the proposition whatever. The two parties never did it at all.

Mr. DOTY: Only one party did it and the minority didn't have anything to do with it. Was the member from Defiance or your colleague present on those occasions?

Mr. HARRIS, of Ashtabula: No; I never got anything from him. I am always doing for him, and I never ask anything from him.

Mr. HOSKINS: How would you provide for this contingency? Suppose there would be some one nominated for president that everybody was for, and the entire senate would be elected from one political party?

Mr. HARRIS, of Ashtabula: I remember one time when we had only three democratic senators down in the South Carolina corner.

Mr. HOSKINS: But suppose those districts had gone the same way, how would the minority party be represented in this districting?

Mr. HARRIS, of Ashtabula: I would think if the state ever becomes so nearly of one political faith that it cannot have any senators of the other party the party in power ought to have everything.

Mr. HOSKINS: You provide that the democratic members of the house and senate may meet in one body and the republicans meet in one body?

Mr. HARRIS, of Ashtabula: Yes.

Mr. HOSKINS: That constitutes two separate boards made up of the men of both houses?

Mr. HARRIS, of Ashtabula: Yes.

Mr. MAUCK: By that you confer upon them in their political capacity power to disfranchise everybody else?

Mr. HARRIS, of Ashtabula: That is going all the way through the election machinery.

Mr. HOSKINS: What do you think are the necessities for this Constitutional Convention providing an apportionment method of any sort? Is not the present one good enough?

Mr. HARRIS, of Ashtabula: I think I have already indicated, so far as being representative is concerned, that the apportionment that I have provided here is a great deal fairer than the one that now exists. If you have heard my comparisons of the various tentative arrangements as compared with the present arrangement you will certainly say that.

Mr. PECK: What is your senatorial ratio?

Mr. HARRIS, of Ashtabula: It is 136,203. The division of 4,767,121 by 35 produced that ratio.

Mr. THOMAS: Was it not agreed in the committee that there might be a socialist and it might be a leading party?

Mr. HARRIS, of Ashtabula: It doesn't make any difference what the names of the two leading parties are, the two leading parties are the ones who will elect the board. There is nothing concealed about this. The figures are there to speak to everybody, and I simply present this to you compiled as it is to have it in convenient shape. Now if any further explanation is needed I shall be pleased to give it.

Mr. FACKLER: What objection could there be to creating an assembly of districts throughout the state on a basis of population?

Mr. HARRIS, of Ashtabula: You try it in a pro-

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posal and see. That is all the answer I can make to that. I have from the beginning up to this time stated, which I shall continue to hold, that this proposition is drawn along the line of securing at least one representative from each county to the house and at least one senator from each senatorial district, and any changes made in the old constitution have been made to conform to that.

Mr. KING: What argument would you advance why a county having sixteen thousand population should have one representative and one with seventy thousand only one representative in the lower house?

Mr. HARRIS, of Ashtabula: I shall answer that as I answered Mr. Fackler. We had a provision, as you know, in the constitution for combining counties, and a great many were combined to make up the ratio, and then we didn't reach it. We also had a provision that a county with half a ratio should have one representative, and then a resolution was submitted to the people providing for a constitutional amendment guaranteeing to each county one representative. Do you want me to answer why a county should have a representative?

Mr. KING: If it is desirable, and I am inclined to think it is, why should not the ratio of the smallest county be the ratio of the larger?

Mr. HARRIS, of Ashtabula: Because of the impossibility of the case. If you make your ratio small enough to provide for the small counties you would have in your house two hundred men.

Mr. KING: New Hampshire has over two hundred and is one-third as large as Ohio.

Mr. HARRIS, of Ashtabula: Well, it is not the ideal legislature.

Mr. KING: Vermont has about two hundred.

Mr. HARRIS, of Ashtabula: It is not an ideal legislature. The new constitution of Michigan provides for having the largest body in the assembly eighty, and never to exceed one hundred. It is fixed within those limits. New York has separate and distinct assembly districts and has had since 1873.

Mr. KING: Why should not the legislature be permitted to change it every ten years?

Mr. HARRIS, of Ashtabula: The matter of having it fixed within limitations is to conform to the idea that the legislature must not be too numerous in order to accomplish work successfully and to accomplish it rapidly, and to do this a smaller number is more desirable.

Mr. HURSH: I offer a substitute for Proposal No. 227.

The substitute was read as follows:

Strike out everything after section 2 of amended Proposal No. 227 and insert the following:

SECTION 3. The population of the state shall be divided by the number seventy-five and the quotient shall be the ratio of representation in the house of representatives. The population wherever mentioned in this article shall be ascertained by the preceding federal census.

SECTION 4. Each county having a population of more than one-half such ratio shall be a representative district, and shall be entitled to at least one representative; counties having a population equal to one and one-half such ratios shall be entitled to two representatives; counties having

a population equal to two and one-half such ratio shall be entitled to three representatives, and so on.

SECTION 5: The counties having a population of less than one-half such ratio, shall be formed into representative districts as follows: the county having the smallest population in the state shall first be attached to the county adjacent thereto having the largest population and less than one-half such ratio; then the county next smallest in population, not already paired shall be attached to the county adjacent thereto having the largest population and less than one-half such ratio, and so on until all the counties having a population less than one-half such ratio that can be, are thus paired. Should any county with a population less than one-half such ratio be unpaired, it shall then be attached to the legislative district adjacent thereto thus formed, having the least population.

SECTION 6. The ratio for a senator shall be ascertained by dividing the population of the state by the number "thirty."

SECTION 7. The state shall be divided into senatorial districts, as herein provided, and each district shall choose at least one senator, each district containing such ratio and three-fourths over shall be entitled to two senators and each district containing twice such ratio and three-fourths over shall be entitled to three senators and so on.

SECTION 8. Each senatorial district shall be composed of compact territory, as nearly equal in population as practicable, and shall be bounded by county lines.

SECTION 9. The apportionment so made for members of the general assembly shall be reported to the governor, by such commission, within two months after their appointment, and the general assembly shall provide by law for publishing said appointments and otherwise carrying into effect the foregoing provisions of this article.

Mr. HURSH: Mr. President and Gentlemen of the Convention: As to the advisability of the consideration of this proposal I wish to say that is a matter over which I have not much control. Proposal No. 227 has been introduced here for the purpose of providing legislative apportionment in the state of Ohio. Now, friends, we have succeeded in this Convention in getting along pretty well in regard to party matters. We have never been compelled, and I am very glad of it, to consider any partisan measures up to this time, but I want to ask you if there ever was in the history of the American government anything of the nature of a gerrymander or of an apportionment entered into that did not have more, or less of a partisan tinge. When I first came to this Convention last winter I realized that the lines of cleavage were on entirely different lines than those of party politics, and until this time we have not had the necessity of considering anything of a partisan nature. When this question of apportionment comes up we will become more or less wary in referring to it. We can see how we could be affected politically, but there are other reasons for the introduction of this substitute proposal. The Legislative and Executive committee has considered

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Proposal No. 227 a good deal and we could not agree upon its contents. So by common consent we reported it back to the Convention without recommendation. Then it devolved upon some of us who could not agree upon the proposal to evolve something that came nearer to our ideas of what the apportionment should be and this question occurred to us: Is it the intention or the desire of this Convention or the people of Ohio to make smaller the representation in the legislature? Another thing to be considered was, is it necessary to regard the fact of population in this apportionment? In the studying of that matter we came as it were to the parting of the ways as to what should be the ratio that would serve best and give nearest equal representation to the different political subdivisions as provided by the proposal. Then the question occurred, shall the apportionment be smaller or larger? I want to say in regard to making the apportionment larger that the great fault I have with Proposal No. 227 is the fact that the ratio is not right, considering the fact that each county shall have at least one representative. To be absolutely fair, giving each county one representative, we would have to divide the population of the state by the number 13,096, the population of the smallest county, and that would give us three hundred and sixty-four representatives, which would be impossible. But let us not assume anything quite that large. Let us assume that we will take a number of small counties of practically twenty thousand population and make that a divisor and we find that that would give us two hundred and thirty-eight in the house. Then the question occurred, how can we make a larger ratio and give the people practically the same fairness in representation? Now, friends, in making this apportionment we should at least be somewhat fair. I know that there may be some prejudice against the idea of combining counties, but we must remember at all times we cannot afford to be anything less than is fair in this apportionment, and if we are going to be fair we must have a ratio that will at least assure the larger counties of the state something near equal representation according to their population. We have hit upon the divisor of seventy-five, which gives 63,588 as the ratio of the representative districts, and we have provided that every county having one-half of a ratio or 31,794, shall be entitled to a representative. If the county has not a half ratio then we commence, not exactly by arbitrary rule, but by an automatic rule, to combine the smallest county of the state with the largest county adjoining that county having less than half the ratio, and so on until the whole state is apportioned. That appeals to me as being somewhat fair. It gives this apportioning board very little discretion, just the same as our present constitution, and we got by that a representative body of eighty-four or eighty-five members. As the member from Ashtabula [Mr. HARRIS] has informed you, it is not desirable in these days to have your legislative bodies too large. And assuming that as a fact, we have gone upon this theory by which we can cut down the representation in the house of representatives to eighty-four or eighty-five as apportioned under the census of 1910.

There is one serious objection that we have to the proposition of the gentleman from Ashtabula [Mr. HARRIS]. The people become habituated to certain usages and one of those usages in the state of Ohio is the political subdivision of the state, the county being the local

unit. Now we do object to the idea of dividing the counties up into these legislative districts. We feel that if an apportionment is submitted in the manner provided by Proposal No. 227 and this bipartisan board goes to work to divide the larger counties, then trouble will begin, for this proposal provides that you need not divide those counties by townships or ward lines, but by precinct lines. Then there will come trading and jockeying for advantage, and every ten years no citizen in any large county in this state will have any assurance as to what district or what kind of a district he is going to be put in. The fact that this does give an opportunity for a practical gerrymander is objectionable. I maintain that the ratio, whatever it may be, should always apply to the county as a whole. Now, this is a nonpartisan convention and I suppose this is a nonpartisan proposal and something may just have happened, but in the evolution of this proposal something did happen. As originally introduced section 4 provided that each county should be entitled to at least one representative; each county containing such ratio and three-fourths should be entitled to two representatives and so on. Later on it was changed so that a county with one and a half ratio should be entitled to two representatives and so forth. I find in looking over the census of the different counties that the county of Butler has 70,271 population, that that county just falls below the one and a half ratio, which gives it one representative; but I find that Belmont county has just a little over one and a half ratio, that Columbiana county is just a little over one and a half ratio and that Lorain county is just a little over one and a half ratio, and of course any of you who are familiar with the political complexion of these counties in a normal year can understand what advantage that is. But there is another thing I wish to call attention to, and I will take the county of Butler to illustrate. The county of Butler has 70,271 population; by the apportionment according to Proposal No. 227 it will have for the remainder of the present decade one representative.

The time of the gentleman here expired and on motion of Mr. Roehm was extended five minutes.

Mr. HURSH: The county of Butler has 70,000 population in round figures. Five smaller counties of Ohio have 75,000 in round figures. Therefore Butler county will get one representative and five other counties of the state of Ohio will get one each, and they have only five thousand more people than Butler.

But I find something else. I find in the last decade that Butler county has increased 13,401 and the other counties have decreased their population 7,615. So at that ratio we have a right to assume that Butler county is bigger than the other five counties just now, and yet it will only have one representative and they will have five.

Now I want to call your attention to another fact, that thirty of the smaller counties of the state have a population of 637,439. The county of Cuyahoga has 637,825. Increasing in population as it is and the other smaller counties decreasing in population, Cuyahoga county undoubtedly now has more population than those thirty smaller counties. Under the proposed apportionment of my substitute to Proposal No. 227 Cuyahoga would have ten representatives and under the same arrangement the smaller counties would have about fifteen representa-

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tives, so that you see that the smaller counties would have the advantage. I know you say that it is discriminating against the country, but I want to call your attention to the fact that we have got to do one of three things. We have either got to admittedly give many country districts three or four times as much representation according to population as the larger districts have, we have to combine the smaller districts or have to make the representation larger. I have chosen the course of making the representation smaller and combining the counties.

I wish to say that this is not a selfish motive with me, because my county is not benefited, but we must come to some conclusion whereby we can give at least a partially fair representation. All the larger centers of population in the large counties, when we go to making these apportionments, must necessarily have more than one representative and consequently that is one reason why the large counties should be prevented from being divided into districts from the fact that they are entitled to some compensation. Take the county of Montgomery, with a population of 162,000, and it will have three representatives and there are eight or nine or ten counties in this state that will have nine or ten representatives and have no more votes than Montgomery county.

Mr. ANDERSON: I understand you to say that county lines would be destroyed in your county.

Mr. HURSH: If I said that I misstated it. I wish to say that my county falls under the ratio and will have to be joined to some other county under this arrangement.

Mr. ANDERSON: Are the people of your county favoring this proposition?

Mr. HURSH: I don't know whether they are or not, but I want this thing to the apportioned fairly.

Mr. ANDERSON: Could you think of anything that would cause people to vote against our constitution more than your proposal wiping out county lines?

Mr. HURSH: We do not propose to wipe out county lines. We propose to join one county with another. The point we make is this: The fact that we have got to come to some definite arrangement by which we can give at least fair representation makes it necessary to provide a smaller or a larger representation.

Mr. WINN: Are you in favor of the adoption by this Convention of the substitute offered by you?

Mr. HURSH: I am.

Mr. WINN: Will you support it?

Mr. HURSH: Yes.

Mr. LAMPSON: Really, does representation depend so much on numbers, that is, the number of one's constituents, as it does upon the community of interest? In other words, may not a representative represent fifty thousand people quite as well as twenty-five thousand if the fifty thousand people have a community of interest?

Mr. HURSH: That may be true, as regards the community of interest, but I think you will have to admit that it is not fair to give one community twice the representation that you give another.

Mr. LAMPSON: Take a population of fifty thousand in a compact mass, living in a small area. Take another population of fifty thousand widely scattered, covering a very much larger area. Do you think that they should have the same representation?

Mr. HURSH: I will answer that by saying I cannot see where we can get away from the logic of the proposition that the population, wherever it occurs, should be represented; and I will remind you of another fact, that in all the areas of large population in the large counties of the state, no injustice is done by the apportionment arrangement that I have proposed. The smaller counties of the state, even by that arrangement, are going to get a larger representation than the larger population of Cuyahoga and Hamilton counties.

Mr. LAMPSON: Has it ever occurred to the gentleman that there was an injustice in allowing one citizen of Ohio living in one county to vote for ten or a dozen representatives, whereas a citizen living in another county can only vote for one representative?

Mr. HURSH: Did it ever occur to you—to give you a concrete example—that the citizens living in Montgomery county, being permitted to vote for three representatives, are only being represented by three men, whereas in nine smaller counties with no more population than Montgomery county they have nine representatives? Is it not unjust to the citizens of Montgomery county when it only gets one-third of the representation that the smaller counties get?

Mr. LAMPSON: I hardly think so. I think those three might give better representation if Montgomery county were divided into three districts arranged with some reference to the interest of each district. Let the agricultural district be represented and the manufacturing interest and the commercial interest. Take Cuyahoga county with all the mass of industrial, commercial and other conditions that go to make it up. If that were divided into districts so that they could have more representative representation of the population than they possibly can as it now is, it would be a great improvement.

Mr. HOSKINS: Do you not think in a large county like Cuyahoga you will get better representatives of its various interests by the selection of men rather than by dividing the territory?

Mr. LAMPSON: I think the dominating political interest will dominate the whole business whatever that dominating interest is. East Cleveland is a residence district and they might have a representative, and then each of several interests might have a representative, and that would give a very much stronger representation.

Mr. HOSKINS: The representative would be there to represent that particular interest rather than the interest of Cuyahoga county.

Mr. ROEHM: I am against Proposal No. 227 by Mr. Harris, of Ashtabula. I was against it in committee and I spoke against it and am still against it for two reasons: First that I am from Montgomery county and second that I happen to be a democrat. As it happens Montgomery county at present is represented by democrats elected by something like 2,500 plurality. If this proposal goes through, on account of the city of Dayton lying away to the east end of the county, we will have sliced off the heavy democratic district by a north and south line and the remainder will be cut by an east and west line, and the republicans would get two representatives whereas the democrats would get only one. There is no question in the world but that this matter is loaded

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with politics. I do not say that Mr. Harris has any designs in offering Proposal No. 227, but the matter is full of politics. The proposition of Mr. Hursh is much fairer. It does give a democrat a chance once in a life time at least, but a fair proposal would be to have a representation by population. If each county has to have a representative let it have it. Let it have one-fifth of a vote if real small and let the others vote in proportion. I therefore move that the proposal and amendment be indefinitely postponed.

Mr. HARRIS, of Ashtabula: I want to ask Mr. Hursh a question. Have you made any combination of the counties on your proposal?

Mr. HURSH: I have to some extent.

Mr. HARRIS, of Ashtabula: How many do you combine?

Mr. HURSH: Forty-eight.

Mr. HARRIS, of Ashtabula: Then you drop off twenty-four representative districts as not represented and combine?

Mr. HURSH: Yes.

Mr. HARRIS, of Ashtabula: You have been over it and made an estimate so that you can say that those will fairly combine in that way?

Mr. HURSH: Yes.

Mr. HARRIS, of Ashtabula: I wish you would show it to me. I would like to see it.

Mr. HURSH: I am sure it can be done.

Mr. HARRIS, of Ashtabula: The members of the Legislative committee treated me with the greatest kindness and I was not aware that Mr. Hursh's proposal went to the extent that it does. I deny any idea of loading this proposition in any way. If it is true, as these gentlemen assert, that the democrats would suffer by this, I am sorry and it was inadvertent, but I cannot help it. I don't know how anybody can help it. As to the matter of communities and counties having thirteen representatives and being allowed the same number as thirteen counties having so much less population, that simply cannot be helped.

Mr. PETTIT: Suppose some district now has a certain number of representatives and is left the same. Does not that in fact become less of representation from the fact that other districts have an increased representation given them?

Mr. HARRIS, of Ashtabula: Giving or taking away representation was not considered by me. I was simply trying to get something absolutely fair.

Mr. PETTIT: You have not answered my question. I asked you if thirteen members in a certain district remained the same now as before, and if you raise the voting power of the smaller counties don't you lower the voting power of those thirteen that remain the same?

Mr. HARRIS, of Ashtabula: Not at all. What difference does it make to the people of Cuyahoga county?

Mr. PETTIT: If you let the thirteen remain the same and increase some of the others, don't the thirteen necessarily lessen in value?

Mr. HARRIS, of Ashtabula: Not at all, relatively it is not much.

Mr. PETTIT: Don't those smaller counties that are increased have a greater voting power than under the old rule?

Mr. HARRIS, of Ashtabula: No, your county has

just the same. If a county has the same number of representatives all of the time there is no difference.

Mr. PETTIT: You say everybody has the same representation and yet some increases are made some places. Now wherever those increases are made and the other counties remain with the same number of representatives the power—the voting power of the representatives of those other counties is decreased.

Mr. HARRIS, of Ashtabula: You can figure it out that way. As a matter of fact it will not work that way.

Mr. DWYER: I came to this Convention as a free lance, pledged to nothing but to do the best for the interest of the state of Ohio. Up to this time we have avoided politics. Our relations have been of the most pleasant character. There has not been even a tinge of politics. We have met and discussed all questions before us entirely independent of politics, all looking to the welfare of the state. I would be sorry to have any politics injected into this discussion and therefore, Mr. President, I believe we should continue as we have in the past, to elect our representatives by counties. I am opposed to these changes suggested.

Mr. DOTY: I had expected to vote for this proposition and my expectations were based entirely on a casual conversation I had with the author. While talking with him he asked me if I was in favor of dividing my county up into legislative and senatorial districts and I said, "Yes, I am in favor of that." A few years ago when we had local legislation I was not in favor of it. That is all the information I got about this proposition. It is not his fault that he didn't give me more, so I came to this meeting tonight and for the first time to hear a full explanation and a very excellent explanation on the part of the member from Ashtabula [Mr. HARRIS], and I find many changes that prevent me from voting for this proposal. The objections I have are numerous and I do not know that I can remember them all. A bipartisan board would not work. The member from Gallia [Mr. MAUCK] has pointed that out. Any man who has ever had much to do with that kind of work knows that this scheme without an umpire will not work. The present constitution does not allow the legislature to elect one public official except its own officials. The general assembly of Ohio has not the power to elect any other living official, and now we are proposing that the legislature shall elect four.

Mr. HARRIS, of Ashtabula: We don't do any such a thing. This designates to the governor certain persons that he shall appoint.

Mr. DOTY: That is a distinction without a difference. I stand corrected on a technicality, but the practical result is that the legislature is going to be ripped up the back every ten years in electing these boards, and when you get the boards you are deadlocked; you would get a condition that would be simply indescribable. You may think it is a small thing to divide up legislative districts by classes when you have power, two to two, but you just try it once.

Mr. HARRIS, of Ashtabula: You don't think the decision could be made by anybody?

Mr. DOTY: Yes; one man could do it, or three men could do it, or five men could do it, but four men, equally divided in their political minds, in my judgment,

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as I have observed political workings in twenty years, will not do it.

Mr. HARRIS, of Ashtabula: Your opinion differs from those of men who have had considerable experience along the same line.

Mr. DOTY: Well, really, I think that is the first time in my life that anybody ever disagreed with me.

Mr. HARRIS, of Ashtabula: Very likely.

Mr. DOTY: I am giving my opinion for what it is worth. There are plenty of men who agree with me too on that.

Mr. BROWN, of Highland: I move that this proposal and amendment be laid on the table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 57, nays 35, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Dunlap,	Harter, Stark,
Beyer,	Dwyer,	Henderson,
Bowdle,	Earnhart,	Hoffman,
Brown, Highland,	Fackler,	Hoskins,
Brown, Lucas,	Farrell,	Jones,
Brown, Pike,	FitzSimons,	Keller,
Collett,	Fox,	Kilpatrick,
Cordes,	Hahn,	King,
Crosser,	Halenkamp,	Kunkel,
Davio,	Halfhill,	Leslie,
Donahey,	Harris, Hamilton,	Ludey,
Doty,	Harter, Huron,	Malin,

Mauck,
Partington,
Peck,
Pettit,
Pierce,
Price,
Redington,

Riley,
Roehm,
Rorick,
Shaffer,
Solether,
Stalter,
Stamm,

Stokes,
Tetlow,
Thomas,
Ulmer,
Weybrecht,
Wise,
Mr. President.

Those who voted in the negative are:

Anderson,
Baum,
Colton,
Cunningham,
Dunn,
Fess,
Fluke,
Harbarger,
Harris, Ashtabula,
Holtz,
Hursh,
Johnson, Williams,

Kehoe,
Knight,
Kramer,
Lambert,
Lampson,
Longstreth,
McClelland,
Miller, Crawford,
Miller, Ottawa,
Okey,
Petters,
Read,

Rockel,
Smith, Geauga,
Stevens,
Stewart,
Stilwell,
Taggart,
Tannehill,
Wagner,
Walker,
Watson,
Woods.

So the motion to table was carried.

Mr. OKEY: I move that we adjourn until nine o'clock tomorrow morning.

Indefinite leave of absence was granted to Mr. Tallman.

Leave of absence for Wednesday was granted to Mr. Johnson, of Madison.

The Convention then adjourned until tomorrow at nine o'clock, a. m.

SEVENTY-FIRST DAY

MORNING SESSION.

WEDNESDAY, May 8, 1912.

The Convention met pursuant to adjournment, was called to order by the vice president and was opened with prayer by Rev. A. M. Leyden, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. DOTY: I move that the employes of the Convention be required to go to Chillicothe tomorrow.

The motion was carried.

Mr. KNIGHT: I ask unanimous consent to introduce a resolution.

The resolution was read as follows:

Resolution No. 121:

Resolved, That this Convention when it adjourns on Thursday, May 9, 1912, shall adjourn to Wednesday, May 22, 1912, at two o'clock p. m., at which time the standing committees on Schedule, Submission and Address to the People, and Arrangement and Phraseology shall report upon such matters as shall have been referred to said committees.

Resolved, That the calendar of business for May 22, 1912, and thereafter, shall consist only of proposals for third reading and questions appertaining thereto, and no other business shall be considered except that which shall have reference to the concluding work of the Convention.

Resolved, That Resolution No. 114 is hereby rescinded.

By unanimous consent the rules were suspended and the resolution was considered at once.

Mr. KNIGHT: My reason for introducing this resolution is sufficiently apparent. Our work on second readings will be practically, if not completely, concluded today or tonight. The committee on Schedule and the committee on Arrangement and Phraseology, and especially the committee on Schedule, cannot do any of its work to completion until it knows what the Convention is adopting on second reading, and that committee has had but a preliminary meeting. The committee on Arrangement and Phraseology would like to work twenty-four hours a day if it could. It has been doing pretty near that since last Friday, and down to the present time, so far as my information now goes, has approved one-half of the proposals, and in that half are the short ones. There are still many proposals any one of which has more subject matter than all the matter that has been handled by the committee on Arrangement. If it is desired that the work of the committee shall be in the best form possible, there should certainly be more time given than until next Tuesday to accomplish the work. A third reason perhaps makes it more appropriate for me to introduce a resolution than some others on the floor; we would like to consult the convenience of a majority of this Convention who have special business be-

tween now and the twenty-first of May. Personally I do not believe there will be more than a beggarly quorum after tomorrow night whatever day we fix for the next meeting. I believe as citizens of the state of Ohio some of us who are and hope to remain citizens of the state are and ought to be interested sufficiently to allow the last ten days before the primaries to be devoted to the citizenship of the state. May 22 is the day immediately following the primary, and the intent of the resolution is that when the Convention reassembles May 22 it will work Fridays and Saturdays until we get through. I ask that the rules be suspended and that this be put on its passage.

The president here assumed the chair.

Mr. FESS: Is it the purport of your resolution that we must finish all second readings tomorrow night?

Mr. KNIGHT: Yes.

Mr. FESS: Don't you think that is unwise?

Mr. KNIGHT: If we haven't finished then we can modify it.

Mr. FESS: Will you agree to it?

Mr. KNIGHT: When the times arrives I will. We might finish today.

Mr. FESS: Suppose we cannot do it?

Mr. KNIGHT: We can control that when we come to it.

Mr. FESS: But if we cannot?

Mr. KNIGHT: We will modify it.

The rules were suspended.

The PRESIDENT: The secretary will call the roll on the adoption of the resolution.

The yeas and nays were taken, and resulted—yeas 83, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Peck,
Antrim,	Harris, Ashtabula,	Peters,
Baum,	Harris, Hamilton	Pettit,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beyer,	Harter, Stark,	Redington,
Brattain,	Hoffman,	Rockel,
Campbell,	Holtz,	Roehm,
Cassidy,	Hoskins,	Rorick,
Collett,	Keller,	Shaffer,
Colton,	Kerr,	Shaw,
Cordes,	Kilpatrick,	Smith, Geauga,
Crites,	Knight,	Stamm,
Crosser,	Kramer,	Stewart,
Cunningham,	Kunkel,	Stilwell,
Davio,	Lambert,	Stokes,
Donahey,	Lampson,	Taggart,
Doty,	Leete,	Tannehill,
Dunlap,	Leslie,	Tetlow,
Dwyer,	Longstreth,	Thomas,
Earnhart,	Ludey,	Ulmer,
Elson,	Marshall,	Wagner,
Evans,	Matthews,	Walker,
Fackler,	Mauck,	Watson,
FitzSimons,	McClelland,	Weybrecht,
Fluke,	Moore,	Wise,
Fox,	Nye,	Woods,
Hahn,	Okey,	Mr. President.
Halenkamp,	Partington,	

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Those who voted in the negative are:

Beatty, Wood,	Kehoe,	Price,
Fess,	King,	Riley,
Harbarger,	Malin,	Solether,
Johnson, Williams,	Miller, Crawford,	Stevens,
Jones,	Norris,	Winn.

The resolution was adopted.

SECOND READING OF PROPOSALS.

The PRESIDENT: The question before the Convention is Proposal No. 16, Mr. Elson. The president would like to say we hope that during the last day's work endeavors will be made to facilitate the work. The roll call should not be idly demanded. It takes ten or fifteen minutes to call a roll. When a roll call is being had members should be in their seats to answer to their names and not lounging in the smoking room. We ought not to have any long speeches made or papers read. The author should explain directly his proposal, exactly what it is and what it is aimed to do.

Mr. ELSON: I expressed myself a few weeks ago on this subject. The proposal was sidetracked and now it comes up again. I hope that those who were in opposition to it at that time have since reconsidered and have looked upon the thing in its true light.

There are said to be two classes of delegates opposed to the short ballot. One is the class of politicians who are looking for political preferment. I can readily see how such might be the case. I think that we have met that condition in making this proposal go into operation not before the first of January, 1914, so that whatever the present applicants and aspirants for office may aspire to, they will not be interfered with on account of the adoption of this proposal. I hope that they will look at it in that light. As I said I do not blame anyone for aspiring to certain offices or for taking that view of the matter. However, I hope we have met that objection and will secure their support.

The other class are men who have not studied the subject and do not clearly understand what it means. If there were any of that class before I hope there are none now. There has been literature sent to members on the subject and I believe all of us are posted on what the short ballot really is and really means. The great objection of that class of men arises from the fact that they fear that it has a tendency away from instead of toward greater democracy. Such is positively not the case. It is a giving of more power into the hands of the people than the people had before.

Evidence is one of the things by which we decide cases, whether they are before a court or anywhere else. We need evidence in order to convince ourselves and if we will take a general view of the conditions of the short ballot in the United States today, we shall find all of the evidence that anyone could possibly need to convince him of the probable effect of the short ballot. For instance, Governor Woodrow Wilson, of New Jersey, is president of the national association advocating the short ballot. We know Governor Wilson is a progressive in a genuine and real sense of the word. Second, ex-President Roosevelt spoke on that subject before this Convention a few weeks ago. In clear language he said, "I am in favor of the short ballot." Why would he say such a thing if the short ballot were a tendency away from democratic government instead of toward it? What

he said on that subject has been published broadcast all over the United States.

Now I want to restate what I said before, that there are two great objects in the short ballot. One is actually to shorten the ballot so that the common voter may vote intelligently, and the other is that it concentrates power in the hands of a man whom the people can watch, and takes the power out of the hands of a political boss.

As to the first or the shortening of the ballot, let me show you a ballot voted upon by the people of Nebraska a few weeks ago in their state primary. It is nine feet long. They voted one in New York fourteen feet long. Just imagine such a thing! So that the actual shortening of the ballot is one of the objects to be obtained in passing this short-ballot measure. All over the United States there is a general comment on this subject, and men who are at the head of this movement are patriotic men, men who are not working for selfish motives. I have here hundreds of editorials from the leading newspapers of the country, all favoring the short ballot. I shall read you three or four excerpts. Here is one from a Michigan paper:

It has been well said that the stronghold of the machine politician is the long ballot. He trades on the fact that while wide publicity is given the leaders of the ticket the minor officeholders escape almost unnoticed. What we need is a short ballot, a ballot confined to the offices that really count. The man elected should be entrusted with the power to make appointments to the minor offices and could be held responsible for the selections made.

Here is one from an Iowa paper:

The long tickets of the present day will some time be looked upon as an unbelievable farce.

One from a Tennessee paper:

It is a reform that the professional politicians will fight as they fought the adoption of a classified civil-service system in the federal government, but it must come if public offices are to be filled with capable business men and not with professional politicians.

Here is one from the New York Evening Sun:

The proposal to cut down the number of our elective officers is plain common sense.

From the Chicago Record-Herald:

Friends of the short ballot are congratulating themselves with ample reason on the progress of their movement. The notion that the short ballot is "undemocratic" or incompatible with popular control of government is fading in the light of reason.

Here is one from Collier's Weekly:

No political device is gaining ground faster than the short ballot. It is perhaps the most important of the changes of government machinery now under consideration.

No other governmental device threatens the system of machine boss and corporation rule which has grown up in our cities as seriously as the short ballot threatens it.

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From the Minneapolis Tribune:

Probably it would go far alone to cure many of the evils that are attacked by more clumsy and elaborate machinery of reform.

The essence of the short ballot is confidence in the people. Its fundamental assumption is that the majority of the people will go right, if you permit them to see where the right lies.

Now, I do not want to weary you with reading all of these clippings. One of the great objects to be secured by the short ballot is just what the name signifies, shortening the ballot; because now when we go to the polls our ballots are so long and we have so many people to vote for that we really do not know anything about the candidates and we have no opportunity to learn who they are or what their fitness for the office is. We must either vote blank or blindly. We find out who the leading candidates are and as to their fitness because the newspapers will be holding them up, but the minor officers are comparatively little known. All we know about them is from a few circulars, and so we have to vote blindly or blank. You can go on the streets of Columbus or any other city in the state and ask the average voter as you meet him to name over the state officials below the governor and there is not one man in fifty who can do it, and yet he voted for or against them. He does not even know who they are.

Now the second point, the concentration of power in the hands of one man, not because we wish to give that man the power at the expense of others, but because if we so concentrate the power in the hands of one man we will keep our eyes on that man. He will be in the lime-light all the time, and if anything goes wrong with his administration he will be held responsible by the people. If a state treasurer were to go wrong now, the governor might snap his finger and say, "I didn't have anything to do with putting him there." He may even be of a different political party from the governor. But suppose the governor appointed that state treasurer. Then the people would place their finger upon the governor himself and say he was responsible.

Mr. FACKLER: This proposal says "The governor and lieutenant governor shall hold their offices for two years and the auditor for four years." What is the reason for lengthening that term of office?

Mr. ELSON: As we have it arranged here you will completely divorce the state from national politics. For a long time the agitation went on to divorce municipal from state and national politics, and this has been accomplished by reason of the fact that the municipal elections are in the odd-numbered years. We all admit that greater efficiency has taken place by reason of this change. Those who believe in the short ballot believe that if city, national and state elections were divorced we would have still a better grade of men running for office. Then the voter in making his choice, instead of running down a long list of names, many of whom he never heard of before, because their positions are relatively inconspicuous, will have comparatively few names to select from. He will not be tempted to mark his cross in the circle above the name of the president he favors and you will not have the state government dominated by national politics. This we want to get

away from forever, and by the provisions in this proposal we do it.

Mr. MILLER, of Crawford: How much will such a ballot as you exhibit there be shortened—how much would the New York ballot be shortened?

Mr. FACKLER: We are not proposing the New York ballot for—

Mr. MILLER, of Crawford: You have used that as a demonstration.

Mr. FACKLER: Yes.

Mr. MILLER, of Crawford: Show us how much shorter the ballot would be.

Mr. FACKLER: The ballot would be shorter in Ohio.

Mr. HOSKINS: Is not that all made up of county committees?

Mr. FACKLER: This is for full elections.

Mr. HOSKINS: How much shorter would it be? Show us. Is not four-fifths of that ticket made up by the county ballot and are you not attempting to deceive the Convention?

Mr. FACKLER: No, sir; that is an actual ballot. I am giving you an illustration.

Mr. HARRIS, of Hamilton: Well, another way to get at it—how many names would be stricken from that New York ballot by this proposal?

Mr. FACKLER: Six.

Mr. HARRIS, of Hamilton: Then the entire shortening of the ballot would be the elimination of six names?

Mr. FACKLER: That is true. We have to start some place. We cannot shorten everywhere at one time. The legislature can then take steps to shorten it as to the minor offices.

Mr. HARRIS, of Ashtabula: You voted for the primary proposal—

Mr. FACKLER: I did.

Mr. HARRIS, of Ashtabula: Providing that all candidates shall be voted for at primaries?

Mr. FACKLER: Yes, sir. These men will not be candidates for state offices.

Mr. HARRIS, of Ashtabula: They will be on the county ticket?

Mr. FACKLER: The county ticket will be nominated by direct primary, and for the purpose of getting efficiency in that primary we want to have few men to be voted for. It has been always a game of special privilege to get a large number of officials running for office at the same time in order that the people might be confused as to the men upon whom responsibility is placed. Professor Knight, in his proposal, was aiming at that very thing. The American Book Company has always fought for large school boards because they could handle them better.

Mr. HARRIS, of Ashtabula: You are not going to shorten your primary ticket very much.

Mr. FACKLER: If we shorten the number of officials nominated at the primary, do we not shorten our primary ballot?

Mr. HALFHILL: If you have one elective official and elect delegates to a convention, it takes the same number of delegates to the convention.

Mr. FACKLER: Yes, but the convention will be a thing of the past very soon and we desire to get our government in such form that it can work efficiently.

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Now the question has been raised here about this taking power away from the people. Why, this proposition puts back into the hands of the people power instead of taking it away. The most progressive men in the United States who have been fighting for popular rights are fighting for the short ballot so that the machinery can be placed in hands that can be watched and controlled. We believe that the people with the initiative and referendum can express themselves on measures, and we believe that shortening the ballot will tend to make that expression just and right.

Mr. RILEY: As a matter of fact did not the first constitution provide for the election of only one state officer and that continued until 1851?

Mr. FACKLER: Yes.

Mr. RILEY: And the people were tired of it?

Mr. FACKLER: Yes, but how were the rest elected? By the general assembly, not by the voters.

Mr. RILEY: Why don't you provide that the senate or some one shall confirm the appointments of the governor as is done in the United States Senate when the president appoints?

Mr. FACKLER: We do not do that because we believe the people will watch their governor on appointments and it will be the aim of the governor to appoint the very best men.

Mr. HOSKINS: Mr. President and Gentlemen of the Convention: I think of all the propositions that have been presented to the Convention that are undemocratic, unrepugnant and smacking of czarism and Russia, this is the worst. I cannot conceive of anything as monstrous as this proposition ever having been introduced in a legislative body or a constitutional convention in modern times. It beats anything I ever heard of.

Mr. DOTY: Is not that the same remark you made on Judge Peck's judicial reform proposal?

Mr. HOSKINS: It is not. Now you keep your seat and don't ask any more questions. I don't want you to take up my time. This is a democratic-republican form of government. The governors elected in the state of Ohio are no better than other citizens and no less affected by politics than other men are affected by politics. You have talked about the short ballot, and this short ballot meant only that you would eliminate certain elective state officers and make them appointive. That is not the idea of the men who have been advocating the short ballot at all. Why, you men who have been voting to make the primary system general and universal are voting in direct opposition here to what you advocated there. Look at the functions performed by the different state departments. Almost every legislature adds some administrative board, or board of some sort, that carries with it a vast number of employees. Now you make all the state offices appointive and you have simply added to the appointing power of the governor of the state. You have added to his power to build up a machine that it will be almost impossible to eliminate. There is no single state in the Union that provides for a four-year term of the governor that does not make that governor ineligible for re-election, and yet, if I have read this correctly, the governor may perpetuate himself in office term after term, there being no limit as to the number of times that he can be elected, and he can be elected as many times as his machine can control the state. You know what the main thing is

when it comes to fixing up election machinery out in wards. You know four-fifths of it is political machine power simply. I do not care where it comes from, it is part of that human nature that we discussed so much in the tax proposition, and you cannot tax human nature.

Now take the attorney general's department. The attorney general of the state is a member of eight different boards outside of his official duties, and he must pass upon different subjects in conjunction with the governor, secretary of state and possibly auditor of state and others. I cannot go into the details of that, but if you make the attorney general, the secretary of state and the others that are now elected by the people dependent upon the governor for their tenure of office, you will abolish every one of the boards on which these men act, because there would not be any use to have anybody on the boards except the governor, if he is to be associated only with his own appointees on these boards. Just turn the whole matter over to the governor and let him handle it all. Then you are not shortening your ballot enough to talk about. The author of the proposal said that the people of Ohio didn't know who their state officials were. If I had that opinion of the people I would not have voted for a primary. I would vote for a czar, a boss, and let him run the whole job and let the people go about their business. Do you mean to say the people of Ohio don't know who Tim Hogan is, or who Grant Denman is, or who Charlie Graves is, or who S. E. Strode is, he who is enforcing the pure food laws, or who the commissioner of common schools is?

Mr. DOTY: You cannot name him; what is his name?

Mr. HOSKINS: Mr. President, have I the floor?

Mr. DOTY: You can't name the commissioner of the common schools.

Mr. HOSKINS: I hate to apply "the short ugly word" to you. Do you know?

Mr. DOTY: I do not know.

Mr. HOSKINS: If Brother Doty doesn't know the name of the school commissioner he is not fit to move an adjournment in this Convention and he has been pretty generally usurping that privilege.

Mr. ANDERSON: What greater fame would that gentleman have if he were appointive?

Mr. KNIGHT: Is it not a fact that a majority of the Convention did not know the name of the present school commissioner until he attacked one of the very best proposals that has been offered here?

Mr. HOSKINS: That may be the case. He was against Professor Knight's proposal and I voted for it on the second reading, but I may vote against it on the third reading if you ask me many more questions like that.

It was said that the temptation of the voter was to vote a straight ticket. The best answer to that would be to ask the question whether or not the voters of the state of Ohio have been voting a straight ticket. You know the history of the last ten or fifteen years shows that the people know how to scratch a ticket and they know how to vote for the men they want in a particular office. All the voting we have had in the last fifteen years shows that the people have arrived at the point where they know how to discriminate.

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Now with reference to this long ballot. I don't desire to mislead the Convention and I know my friend from Cuyahoga [Mr. FACKLER] would not do that, but he at least overstepped the bounds of reasonable argument when he exhibited that great long ticket, all of which refers to committeemen, except the top four names, and you would be shortening that ballot just by four or five names by this proposal, and you destroy the most important functions of state government. I want to say to you you are attempting something very revolutionary.

Mr. STALTER: If the governor has the appointing power are you not forced to vote a straight ticket?

Mr. HOSKINS: Practically, yes. There is one thing certain, so far as I am concerned, I am against this entire proposal unless the proponents put in a prohibition of the re-election of the governor. That might make it a little better, but with that I would be against it. It seems strange to me that if anybody desires to pass such a proposal as this he does not prohibit the governor from being re-elected, for if he is allowed to be re-elected he can perpetuate himself in office term after term.

Now this is not a matter of present politics, or present administration, or future administration, but a question of principle. Will we undertake to put in the hands of the governor of the state of Ohio a more autocratic power than ever was conferred on any official in the state of Ohio, and, as far as I know, in the United States? The question was very pertinently asked of the proponent of this proposal why he did not put some of the safeguards in the proposal that are in our present constitution, for instance, when the governor makes these appointments that they be confirmed by the senate. That might be a safeguard, but even with that I would be opposed to it, because you take power out of the hands of the people when the intent of this Convention has been to confer upon the people of the state a greater share in their own government. I am in sympathy with every proposition we have had along that line. I am surprised that men in this Convention like the gentlemen from Cuyahoga [Mr. FACKLER and Mr. DOTY], who have voted persistently to put in the hands of the people power, are today found attempting to throttle the people, take away from them the power they have enjoyed and confer it upon the appointing power and thereby enable the appointing power to perpetuate himself in office. I appeal to all of you to be true to the four months' history you have made. Gentlemen, turn your backs on this revolutionary measure and let us unanimously put it where it belongs, let it sleep on the table.

Mr. READ: Mr. President and Gentlemen of the Convention: I admit that there is a certain convenience and some virtue in the short ballot and I also concede that there is some merit in the arguments of those delegates who have advocated that method of selecting our officials, but, while I agree with much that has been said this morning, I still contend that their remarks are far from justifying affirmative action on this proposal, which aims to have all the elective officials of the state, except the governor and lieutenant governor, appointed by the governor. That looks to me, as the gentleman from Auglaize [Mr. HOSKINS] says, like taking the power out of the hands of the people instead of conferring more direct power upon them and bringing the people and the government closer together.

Even should this short-ballot scheme prevail, it would not relieve the people of any grievous burden. I know of no demand from electors asking that they be denied the privilege of selecting their own state officials. On the other hand, I believe the citizens of Ohio generally want to continue electing their officials and are not demanding any radical reduction of their state ballot. I will agree that it is desirable and would be a genuine reform for the cities, like Cleveland, Cincinnati and Columbus, to materially shorten their municipal tickets. There is a real necessity in big cities for a shorter ballot where a great many candidates of each party, unknown to the electors, are to be selected. If these municipalities want to cut their elective officers down to two or three, let them do it and have the short ballot. But if you apply the same rule to cities and state in this respect, you may benefit the former and work harm to the latter.

The clerk of the supreme court should be appointed by the judges of that body. The board of public works will no doubt be eliminated. There is a proposal in to have the governor appoint the superintendent of public instruction. I believe that is right. After these changes we will only have to elect the governor, lieutenant governor, secretary of state, auditor of state, treasurer, attorney general and dairy and food commissioner. I have too much faith in the average intelligence of the Ohio voter to believe that he cannot exercise the discrimination and judgment necessary to make a wise selection of this number of state officials. I am in favor of reducing the frequency of the ballot one-half by electing state officials for four-year terms and have such election come midway between the presidential elections. It would be a great improvement over our present method to elect the governor for four years and have it arranged so that he would be ineligible to succeed himself. I will submit an amendment to that effect at the proper time. I do not know that I would be in favor of having all the officers ineligible to succeed themselves. The auditor of the state is already elected for four years. I do not consider it a mere bookkeeping position, as has been said, but an office that not only requires expert accounting but also a knowledge of public business and of state finance. The auditor should have talent for systematizing details and the gift, or acquired ability, for accuracy in the compilation and preservation of records. I believe it is a wise provision to have him elected for four years as he now is. That the governor should be elected for four years and be ineligible to succeed himself must be evident to all. When elected for two years much of his time and attention is too often given to scheming and planning for re-election, and at the end of two years, if he is re-elected and, perchance, becomes a candidate for the presidency, then his mind is diverted from the gubernatorial duties by the attractions of the White House. Therefore I would advise that the governor be elected for four years and be ineligible to succeed himself that he might give his whole attention to his official duties. I do not suppose any of the candidates in this Convention would be guilty of such dereliction of duty, but notwithstanding the fact that several distinguished delegates are casting wistful glances toward the governorship, the temptation to shirk present duty while aspiring for future honors should be reduced to the minimum.

Were we to make this change, it could be arranged so

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that officials elected the coming fall would be eligible for re-election in 1914, and that would give them six years to serve, but after that the length of service at one time would be limited to four years. Following the interim of four or eight years a former official could be elected again. That has been done in Pennsylvania and other states. There are about twenty-nine states to-day that elect their governor for four years. Most of them are ineligible to succeed themselves and the experience of these states with the four-year term furnishes all the substantial reasons we need for adopting the same in Ohio.

In regard to clothing the governor with more appointive power, I would like to call attention to what the governor has already in the way of responsibility and the power and opportunity he has to build a political machine: One of these appointees is the adjutant general, and he has fifty-two attaches; the department of banking, fifteen; the department of insurance, thirty-three; the railroad commission, seventeen; the department of public printing, four; labor and statistics, twenty-two; chief mining inspector, sixteen; workshops and factories, forty; state fire marshal, thirty-four; department of state board of agriculture, twenty-eight. This makes ten heads of departments intimately connected with state government and constituting the governor's cabinet. Under these ten departments there are two hundred and eighty-three employees and in addition to those there are other departments under the control of the governor, the penal and charitable institutions, the Ohio board of health department, commissioners of the sinking fund department, state board of pharmacy, board of arbitration, geological survey, highway commissioner and numerous other departments that are all under the direct control of the governor, and in addition to that you would have him to appoint the secretary of state, auditor of state, treasurer of state, attorney general, and you add about one hundred and ninety more employees, making in all over seven hundred employees under the direct control of the governor. Do you want to make him a monarch? What would we gain by giving the governor any more power than that he already has?

Mr. RILEY: Is it not a fact that all the election machinery of the state is in the hands of those employees?

Mr. READ: Well, there is much truth implied in your question and that condition too often leads to the subordination of state service to political work.

Mr. DOTY: You were there and you ought to know.

Mr. READ: But I am speaking from observation and not from personal experience. I hope the delegates will consider this carefully. I am not opposed to a shorter ballot, but this proposal does not shorten the ballot where it needs shortening, but aims rather at centralization of power, and all remarks made this morning favoring a short ballot have been irrelevant to this proposal. It proposes to take away from the people their right and opportunity to select, control and advise their own officers. Let them be appointed by the governor and they will no longer be responsive to the desires and will of the people.

Mr. PIERCE: I offer an amendment.

The amendment was read as follows:

In section 2, in line 10, strike out the period and insert a comma, and add: "all such officers shall be ineligible to a successive election."

Mr. MILLER, of Crawford: I move that the proposal and the pending amendment be laid on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 57, nays 47, as follows:

Those who voted in the affirmative are:

Beatty, Wood,	Hoffman,	Partington,
Brattain,	Holtz,	Peters,
Brown,* Pike,	Hoskins,	Pettit,
Collett,	Johnson, Williams,	Redington,
Colton,	Jones,	Riley,
Cordes,	Kehoe,	Roehm,
Crites,	Keller,	Rorick,
Cunningham,	Kilpatrick,	Shaw,
Davio,	Kunkel,	Solether,
Donahey,	Lambert,	Stalter,
Dunlap,	Ludey,	Stokes,
Dwyer,	Malin,	Tallman,
Earnhart,	Marshall,	Tetlow,
Farrell,	Miller, Crawford,	Thomas,
Fox,	Miller, Fairfield,	Ulmer,
Halenkamp,	Miller, Ottawa,	Wagner,
Halfhill,	Norris,	Walker,
Harris, Ashtabula,	Nye,	Watson,
Harris, Hamilton,	Okey,	Wise.

Those who voted in the negative are:

Anderson,	FitzSimons,	Mauck,
Antrim,	Fluke,	McClelland,
Baum,	Hahn,	Peck,
Beatty, Morrow,	Harbarger,	Pierce,
Beyer,	Harter, Huron,	Read,
Bowdle,	Harter, Stark,	Rockel,
Brown, Highland,	Henderson,	Shaffer,
Brown, Lucas,	Hursh,	Smith, Geauga,
Campbell,	Kerr,	Stevens,
Crosser,	King,	Stewart,
Doty,	Knight,	Taggart,
Dunn,	Kramer,	Tannehill,
Elson,	Lampson,	Weybrecht,
Evans,	Leslie,	Woods,
Fackler,	Longstreth,	Mr. President.
Fess,	Matthews,	

So the motion to table prevailed.

Mr. ELSON: I just wish to say as a matter of personal privilege, that when a question of such great importance is before the Convention and there is no intention of consuming any more time than we have today, and it is being managed as best it can be by those interested in it, for any one to get up and make a motion of this sort and force it to a vote is a contemptible, mean trick, and I want everybody to know it.

Mr. DOTY: I move that the language of the member be stricken out.

The PRESIDENT: The language is improper.

Mr. HARRIS, of Hamilton: I had a splendid speech that I did not get to deliver, but it is ready anyway.

Mr. MILLER, of Crawford: I want to justify myself in making this motion: There are twelve proposals on the calendar to be disposed of today, under a resolution of the delegate from Franklin, and I opposed that resolution because I thought it was not possible to do that. The gentleman from Athens [Mr. ELSON], the author of this proposal, voted for that resolution. How are we going to dispose of the eleven other propositions if we do not cut off debate?

The PRESIDENT: The member's conduct [Mr. MILLER, of Crawford] is perfectly proper and needs no defense. The next matter is Proposal No. 15.

Mr. FESS: I want to raise my voice in protest against this manner of proceeding, which you can evidently see the end of. You propose to deal with the

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next twelve proposals in order to get rid of them, and I want to say it is absolutely out of order and most reprehensible for us to end this Convention like a legislative body, the errors of which may be corrected in two years, while our errors cannot be corrected except by the people. It is an outrage upon this body of men for you to undertake to call off debate upon important measures and thwart the will of the people by this sort of procedure. It is going to be done on every proposal and there seems to be only one thing sought and that is to get rid of this business now. I am going to stay right here and fight for the rights of these people as long as I have breath, and I am going to see that they get them.

Mr. HOSKINS: I want to —

Mr. FESS: You have had your say twice upon this measure and I was not allowed to speak.

Mr. HOSKINS: I want to ask you a question.

Mr. FESS: What do you want to ask?

Mr. HOSKINS: Now smile.

Mr. FESS: No, I will not smile.

Mr. HOSKINS: Let me remind you that you had me hot the other day and not smiling, and now you are the same way.

Mr. MAUCK: I rise to a point of order. There is nothing before the Convention to justify this colloquy and I demand the regular order.

The PRESIDENT: The point is well taken and the next matter before the Convention is Proposal No. 15 by Mr. Riley. The proposal has been read a second time and the question is on the adoption of the proposal.

Mr. RILEY: Some of the members who remained here last Friday heard some discussion of this question. A good many were not here and some explanation of the proposal should be made to them. The proposal is No. 15. The amended proposal is in front of the original proposal. This is a proposal to amend the bill of rights, article I, section 10. One of the provisions of the bill of rights is that a criminal accused of crime shall be confronted by his witnesses. The language of some constitutions is "brought face to face with the witnesses." Now for a long time, perhaps ever since the criminal was permitted to testify, he has been permitted to take depositions, but there has been no provision for taking depositions on behalf of the state. That never appealed to any one, certainly, as a square deal or as a fair thing. If it is proper to prosecute crime at all it is proper to give society and the state some chance as well as the defendant. This proposal provides that the legislature may provide for taking depositions of witnesses on behalf of the state when the presence of the defendant can be secured at the place with his counsel. Now it seems to me that no argument ought to be necessary to show that that is reasonable and just and is not needlessly expensive, because the state would probably pay the expenses as it does for the witnesses in general.

Now another change in this section of the bill of rights was introduced by the gentleman from Hamilton [Mr. BOWDLE] and incorporated in this proposal by the Judiciary committee. I should say that this proposal has the indorsement of the Judiciary committee—whether all of them or not, I am not advised.

Mr. TAGGART: Would not your proposal be strengthened in line 21 by inserting before the word "opportunity" the words "means and," so that it would

read "always securing to the accused the means and opportunity to be present in person," etc.?

Mr. RILEY: If the gentleman prepares that amendment I shall be glad to accept it. There will be no sort of objection to it. The "opportunity" carries with it that idea. If he didn't have the means he couldn't have the opportunity. However, if he is under arrest the state will be compelled to defray the expenses.

Mr. TAGGART: But if he were on bond he could have an opportunity and not have the means?

Mr. RILEY: There may be an objection there. I shall have no objection to your amendment. Now as to the other matter introduced on the suggestion of the gentleman from Hamilton [Mr. BOWDLE].

The present constitution says that no prisoner shall be compelled, in any criminal case, to be a witness against himself. To this language is added "but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel." The rule has been ever since defendants were permitted to testify in a felony case that if he fails to testify no reference to his failure to do so shall be commented upon by counsel or referred to in any manner, and if it is, the verdict is set aside.

Realizing that you are anxious to get along today, I shall content myself with what I have just said and what I said last week.

Mr. KERR: I want to ask the gentleman, if this is put in wouldn't it require a man to prove himself innocent?

Mr. RILEY: No, sir; there is nothing of that sort. It seems to me that is not a fair way of putting it.

Mr. KERR: It amounts to that.

Mr. RILEY: I do not think so. I leave that to the Convention.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

In line 21 before the word "opportunity" insert the words "means and."

The amendment was agreed to.

Mr. PECK: This proposal was recommended by the Judiciary committee and it has been discussed to a considerable extent in this Convention, though a good many members were absent at the time of the discussion. I only rise to say that it has received a lengthy and careful consideration in the Judiciary committee. We put our best efforts on it and at one time nearly everybody in the committee took a hand in the discussion. Finally it comes here with pretty near the unanimous support of that committee. I hope it will be adopted. I think it is to the public interest and I think something should be done to strengthen the hands of those who are attempting to punish the criminals of the state. The prosecution of criminals is in a deplorable condition in the state of Ohio. There is nothing that needs righting worse than that.

Mr. HALFHILL: I offer an amendment.

The amendment was read as follows:

In line 12, strike out "the general assembly" and insert "law."

The amendment was agreed to.

Mr. KNIGHT: It seems to me that this is one of the proposals which ought, after the careful study the members of the committee have given to it, to commend itself

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without any need of argument. The people at large have, ever since the state of Ohio has been in existence, been at a disadvantage in ascertaining the facts in the case of a person charged with an offense against all of them. All that the major part of the proposal undertakes is to say that all of the people in our collective capacity, society as a whole, shall have an equal chance with the accused person in getting at the facts.

It is well known that for illness or for other reasons, or through the spiriting away of witnesses, it is difficult often to obtain the needed testimony to set forth the facts in order to convict a man when there is no way by which, in the absence of witnesses outside of the state, it is possible for us as a community or as society to get at the facts in the case charged against one of us or having committed an offense against the rest of us, and this undertakes to provide against that, with proper precautions, and to allow the taking of testimony outside of the state which may bear against the testimony of the accused, just as he has an opportunity now to get that testimony in his own behalf against the rest of us.

Mr. HOSKINS: I would like to ask how the indigent defendant who is charged with crime could afford or what means will be provided for him to face the witnesses?

Mr. KNIGHT: The gentleman from Auglaize has at times lapses or he would know that within five minutes an amendment has been put in providing that he shall have the means and the opportunity.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

In lines 18 and 19 strike out the general assembly may provide" and insert "provision may be made."

The amendment was agreed to.

Mr. DOTY: This proposal has been debated in this Convention more than three hours and as there seems to be no well-defined opposition to the proposal—

Mr. HOSKINS: You say this has been debated three hours?

Mr. DOTY: Yes, sir; last Friday, when the member was not here.

Mr. HALFHILL: There is an amendment injected that has not been considered by the Convention to any extent. While I am in favor of the proposal in general terms as reported by the committee I want to be heard on it.

Mr. DOTY: I move that the vote be taken finally on the passage of this proposal at eleven o'clock.

The motion was carried.

Mr. HALFHILL: In lines 24, 25 and 26 there are amendments offered now which will make that part read as follows: "No person shall be compelled in any criminal case to be a witness against himself, but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel."

Mr. PECK: That was discussed for about an hour by you and me and others.

Mr. HALFHILL: This last part of it, I think, was not part of the original proposal.

Mr. PECK: Yes; here it is in the report of the committee. That amendment was offered by Mr. Woods.

Mr. RILEY: That was incorporated in the proposal

in the Judiciary committee and it has been printed three weeks and it was debated by yourself and Judge Peck thoroughly last Thursday.

Mr. HALFHILL: The whole question was debated in a general way.

Mr. PECK: The whole thing, and you debated that. You can refer to your argument and you are simply repeating that all the time now.

Mr. HALFHILL: No, sir; I am not. I have not yet said anything. I haven't got started and therefore I have not repeated anything.

Mr. PECK: Well, go ahead.

Mr. HALFHILL: We had a short talk by the distinguished chairman of the Judiciary committee in support of that portion of the amendment, and I have here now a letter just received from a very eminent judge in our portion of the state that was written to me without any solicitation. Judge J. J. Moore of Ottawa, Ohio, has had as many years' experience on the bench as probably any judge in Ohio, and he has also been a practitioner at the bar both before and since his judicial career, and I desire to give the Convention the benefit of his observation because I consider him to be a man wise in the administration of justice. Judge Moore says:

Mr. Matthews has handed me a proposition reported by the Judiciary and Bill of Rights committee in which, if upon trial of an accused person the defendant fails to go upon the witness stand, his failure may be considered by the court and jury and made the subject of comment by counsel. I had always supposed that a party accused of crime was to be convicted by the evidence adduced by the state, and not by the comment of unscrupulous prosecuting attorneys on what might be done. You can convict an accused without sufficient evidence by loud and long appeals because the defendant did not testify. I have in my general practice both prosecuted and defended accused persons and fail to see any merit or justice in the proposition. Many defendants in criminal cases are uneducated and ignorant, and, although innocent, their counsel feel it is not safe for them to be placed upon the witness stand to be annoyed and badgered by unscrupulous prosecuting attorneys seeking to establish popularity by securing convictions.

I regard the opinion of Judge Moore, as expressed in that letter, as being of very great weight and importance.

Mr. PETTIT: Is he not a little bit partisan in his views, don't you think?

Mr. HALFHILL: I do not know. He is a good Jacksonian democrat.

Mr. PECK: The letter reads as if he had in mind a case where he didn't want his client to testify.

Mr. HALFHILL: I submit that is an unjust observation, because this gentleman is not taking any active interest in the prosecution or the defense of criminals. He is an old man, but in the full possession of his intellectual powers.

Mr. PECK: He has evidently become fossilized.

Mr. HALFHILL: I am opposed to that method of injecting observations into debate, for it is not argument. In the discussion of this proposal I stated in effect

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that where you can strengthen the criminal procedure so that it reaches to those that belong to the criminal class, without taking away safeguards of innocent men that they ought to have and ought to be entitled to in any civilized community, I am for it.

Mr. PECK: How can you make a law that doesn't apply to all alike?

Mr. HALFHILL: You cannot make a law that will not apply to all alike, and therefore the wise and humane declaration of the law is that it is better that ninety-nine criminals escape rather than that one innocent man be punished, and that maxim is just as true now as when it was first uttered.

Mr. MAUCK: Judge Moore's proposition seems to be that all testimony should be affirmative against the accused. Is it not true that under the present rule we have a vast amount of negative testimony used against the accused, that the man was arrested under suspicious circumstances, which should be explained?

Mr. HALFHILL: Does not that now have to appear to the jury as testimony?

Mr. MAUCK: No, not clearly, as you put it, not as a club in the hands of the state to badger an innocent person. I am just referring to Judge Moore's letter wherein he says that the testimony is affirmative and I point out that under existing rules of evidence all testimony is not affirmative and so far as that is concerned this is not an innovation.

Mr. HALFHILL: A great body of proof is not affirmative. The court instructs the jury that they can observe the witnesses, and the defendant and his demeanor and various things that go to make up a conclusion in weighing evidence. It is part of the proof but it is not testimony. Testimony, ordinarily considered, refers merely to the oral and written evidence.

Mr. WINN: What would you think of the proposition that after one has been indicted for a crime he is taken away from his family, his wife and children needing his attention, carried to California and kept for several weeks, may be for a month, against his will, in order that he might be present at the taking of the depositions?

Mr. HALFHILL: That is opening up a question we debated last week. I expressed my view at that time.

Mr. RILEY: Do you see anything of that sort in this proposal.

Mr. WINN: Yes.

Mr. HALFHILL: I do not know that I can see that exactly, but I see nothing in the proposal that guards against that.

Mr. ANDERSON: The fact that the person would not come back from the foreign jurisdiction guards against it.

Mr. WINN: Did you hear the very able argument of the member of Franklin [Mr. KNIGHT] insisting that this amendment is asked for in order that the prisoner may be taken out of the state?

Mr. HALFHILL: That has been part of the argument urged in favor of it. I submit that it is not because I have defended more criminals than I have prosecuted that I am opposed to this change, for, as I stated last week, I have by appointment of the court assisted the prosecuting attorney in important cases, and I try to look at the rights of the prisoner and I try to look at the rights of the state, and I want to consider the

rights of all the people. I am in favor of law enforcement, but there are certain rights of the individual that must not be overridden by the state under general law.

Mr. RILEY: A point of order; the gentleman has spoken ten minutes.

Mr. PECK: The trouble is there is nobody to answer him. He is consuming all the time.

Mr. HALFHILL: That is unfortunate. But I have been shouldered into so many pockets in this Convention by other gentlemen that I just exercised my rights on this occasion.

Mr. HOSKINS: I move that the time for voting be fixed at 11:15 o'clock.

The motion was lost.

Mr. BOWDLE: Give me two minutes of your time. I want to speak a minute or so.

Mr. HALFHILL: I am not intending to occupy the time just to occupy it, but I am glad to allow other gentlemen to get in a little argument.

Mr. BOWDLE: I feel a peculiar interest in this proposal because I introduced the two lines under discussion by the member from Allen, my desire being in this Convention to help the administration of criminal justice to get ahead a little. The legal profession is very curious in this, that whenever you meet lawyers in a legal convention all weep over the archaic conditions of the criminal law and deplore tremendously the failure to convict, but when they get to a constitutional convention there is a peculiar metamorphosis. We are always met with a cry and a sob on behalf of the "weak-eyed, weak-kneed" criminal as described by the gentleman from Defiance—"taken away from his wife and his home" and who sits in a court room with a face like a cherub or a madonna—which finishes its description. Why, if you want to start a sob just commence talking where lawyers are present about the criminal.

The best argument that can be adduced for this proposal is that the whole Judiciary committee agreed that the time had come to get rid of this condition. The legal profession is in a curious position. Lawyers want to get ahead, but when you suggest something progressive their attitude reminds you of the admonition of the mother to the child: "Mother can I go out to swim?" etc. They want to get ahead, but when you suggest something tending ahead the water becomes dangerous. Here is a proposition, attacked by the gentleman from Allen, for whose opinion I have great respect, a proposition which is an effort to get rid of the old ox-cart in our criminal jurisprudence and substitute something that has rubber tires and ball-bearings to help us move down the pike towards something respectably progressive in the administration of justice. But he says let us wait, wait, and "it is better that ninety-nine guilty men should escape than one innocent man should be punished." I want to say, it would be a good deal better that ninety-nine criminals be convicted, and occasionally an innocent man sent up too, for it might be a good thing for a penitentiary to have a real innocent man once in a while. I want to see a system of justice that will get the ninety-nine even though in the process it occasionally convicts an innocent man. Why, his reward in heaven will be immeasurably greater.

Mr. HOSKINS: Do you mean what you say?

Mr. BOWDLE: Precisely.

Deposition by the State, Etc., in Criminal Cases—Jurisdiction of Probate Court.

Mr. LAMPSON: How would you like to be that innocent man?

Mr. BOWDLE: Of course, I would not, but I tell you, gentlemen, if you are going to have a system of criminal jurisprudence that allows ninety-nine guilty men to escape you are going to have a situation that borders on anarchy.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 33, as follows:

Those who voted in the affirmative are:

Anderson,	Henderson,	Peck,
Antrim,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pettit,
Beyer,	Johnson, Williams,	Redington,
Bowdle,	Jones,	Riley,
Brown, Highland,	Kehoe,	Rockel,
Cody,	King,	Roehm,
Colton,	Knight,	Rorick,
Cordes,	Kramer,	Shaw,
Crites,	Kunkel,	Smith, Geauga,
Cunningham,	Lambert,	Solether,
Dunn,	Lampson,	Stalter,
Dwyer,	Leete,	Stevens,
Evans,	Longstreth,	Stewart,
Fess,	Ludey,	Stokes,
FitzSimons,	Mauck,	Taggart,
Fluke,	McClelland,	Tannehill,
Hahn,	Miller, Crawford,	Ulmer,
Harbarger,	Miller, Fairfield,	Wagner,
Harris, Ashtabula,	Miller, Ottawa,	Walker,
Harris, Hamilton,	Okey,	Woods,
Harter, Huron,	Partington,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Halfhill,	Nye,
Brown, Pike,	Harter, Stark,	Pierce,
Campbell,	Hoskins,	Shaffer,
Crosser,	Hursh,	Stilwell,
Davio,	Keller,	Tallman,
Donahay,	Kerr,	Tetlow,
Doty,	Kilpatrick,	Thomas,
Earnhart,	Leslie,	Watson,
Farrell,	Malin,	Weybrecht,
Fox,	Marshall,	Winn,
Halenkamp,	Moore,	Wise.

So the proposal passed as follows:

Proposal No. 15—Mr. Riley. To submit an amendment to article I, section 10, of the constitution.—Relative to bill of rights.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SECTION 10. Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in all offenses for which a punishment less than imprisonment in the penitentiary is provided, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury and the number of persons to constitute such grand jury and the concurrence of what number thereof shall be necessary to find such indictment shall be determined by law.

In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and

cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance cannot be had at the trial, always securing to the accused the means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.

No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel.

No person shall be twice put in jeopardy for the same offense.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next order of business is Proposal No. 315—Mr. Smith, of Geauga, for second reading.

The proposal was read the second time.

Mr. SMITH, of Geauga: In some of the counties there is a juvenile court that takes charge of all of the dependent and helpless people, old or young. In our state our constitution only provides for the probate judge's appointing guardians over minor children, etc. As has been shown from my experience, jurisdiction should be conferred in all such cases in the probate court where they have no juvenile court. In Geauga county they have such a juvenile court. I thought it was better that the probate court should be charged with the special duty of enforcing these laws, because the poor and dependent have no way of protecting themselves.

Mr. MAUCK: I do not like to be opposed to anything that the venerable member from Geauga proposes, but in lines 8 and 9 of the proposal, which repeat the language of the constitution as it now stands, you will read, in addition to the enumerated powers, "such other jurisdiction in any county, or counties, as may be provided by law." These words expressly give to the general assembly the power of increasing or altering the jurisdiction of courts. It is manifestly statutory, because expressly made so by the constitution, and it seems to me a constitutional amendment that is wholly unnecessary.

Mr. PECK: It is so manifestly useful that I think it should go everywhere and that all over the state there should be some court charged with the duty of caring for and taking charge of destitute children. I think the proposal ought to pass.

Mr. KNIGHT: May I suggest that in my opinion the general assembly has already passed a law that authorizes this?

Mr. PECK: I never heard of it.

Mr. KNIGHT: That is the present law for the entire state.

Jurisdiction of Probate Court—Abolishing Prison Contract Labor.

Mr. PECK: Somebody refer me to it. If it has been passed this won't hurt.

Mr. SMITH, of Geauga: There is no such law at present.

Mr. PECK: Mr. Smith says there is no such law at present, and he is good authority on probate matters. I want to fix it that these children may be taken care of in the smaller counties as well as in the larger counties. We want it all over the state. That is a good thing.

Mr. WINN: I think the suggestion of one of the speakers was not wholly understood, so I want just a minute to comment on that. The present constitution provides, as was suggested by the member from Gallia [Mr. MAUCK], that the probate courts shall have such jurisdiction as the legislature shall provide. My county has jurisdiction in foreclosure cases, partition cases, divorce suits and other jurisdiction that does not prevail in all the counties. That is because the general assembly may confer upon any probate court just such jurisdiction as it sees fit. The supreme court held this law to which I refer to be constitutional. So, under the present provisions of the statute, the general assembly has power to do all that is sought to be done by the italicized lines in this proposal, and the italicized lines contain the new matter. The general assembly has not only authority to do it, but the general assembly has proceeded and it is the law. The probate court of Defiance county is the juvenile court; so the probate court in every county which has not a juvenile court is the juvenile court by statute. The juvenile court has authority to do everything authorized by those italicized words. It is statutory and there is no occasion for this provision.

Mr. SMITH, of Geauga: The court should be charged with the responsibility and duty of enforcing these laws with regard to these minor dependent children.

Mr. CAMPBELL: Will the member from Geauga [Mr. SMITH] state what is his understanding of this expression in the proposal: "Such probate court shall have jurisdiction in all matters pertaining to minors, orphan children, and all dependent persons?" Does that mean in any matter pertaining to that class? Has the court civil and criminal jurisdiction in every matter pertaining to minors, orphan children and dependent persons?

Mr. SMITH, of Geauga: In matters pertaining to those helpless people who have no one to look after them I would give the probate court jurisdiction just as in the juvenile court.

Mr. CAMPBELL: But how broad does the gentleman understand his proposal to be in that regard? What kind of matters will the court have jurisdiction of?

Mr. PECK: The last two lines explain what kind of matters. In construction you must take the whole thing together.

Mr. WATSON: I move that the proposal be tabled. The motion was carried.

Mt. STILWELL: Some two weeks ago a matter under consideration in the Convention was referred back to the committee of which I have the honor to be chairman. The committee was given leave to report the matter out at any time. I desire to make the report at this time.

The report was read as follows:

The standing committee on Labor, to which was referred Substitute Proposal No. 34—Mr. Thomas, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after the word "Proposal" and insert the following: To submit an amendment to the constitution relating to prison labor and the sale of prison made goods:

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same are conspicuously marked "Prison made". Nothing herein contained shall be construed to prevent the general assembly from providing that convicts may work for and that the products of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof.

Mr. THOMAS: In my former remarks, when this proposal was before the Convention, I tried to make my remarks very brief, with the idea that the membership understood this question. But I have come to the conclusion that a number of the members do not understand very much about the question. I want to be as brief as possible on the subject today, but I want to explain the provisions so that the members can understand.

Organized labor for thirty years has been trying to abolish contract prison labor in Ohio. It is not abolished yet, despite the fact that in 1892 a bill passed the legislature providing for its abolition. In 1906 a similar bill was passed and we are still fighting, trying to get contract prison labor abolished. Before I say anything on the subject I want to read a letter from the National Free Labor Association, with its headquarters at New York, composed entirely of manufacturers in New York in business competition with prison labor, and I point out to you that in New York they had the same difficulty in abolishing contract prison labor as we have had in this state:

In view of the progressive character of the majority of the delegates to the Constitutional Convention, why not make a strong fight for the passage of a constitutional amendment prohibiting contracts for convict labor or sale of convict-made goods on open market, some such provision as we have had in our state constitution since 1894?

Abolishing Prison Contract Labor.

And this provision which we are offering you is a copy of the New York provision except the clause about exposing prison-made goods for sale. The letter continues:

Conditions are far more favorable in Ohio for this than they were then in New York. We had legislation almost every year for years over the contract system, but it was really not killed till this constitutional provision put it out of the power of the legislature to revive the abuse. We earnestly hope you will give this suggestion your consideration.

Now on the matter of competition I want to call the attention of the members of the Convention to the fact that in the year 1910, the latest reports that we have on the contract prison labor in Ohio, there were manufactured \$1,878,029.58 of goods in Ohio. The wages paid for making these goods was \$262,104.62. You can look over the census report, or the reports of any manufacturing industry in Ohio or any other part of the country, and you will not find any such proportion that is paid for the value of the product of labor. The census report shows about one-tenth—one-fourth to one-tenth—and it is no wonder that the contract system is opposed by both labor and capital.

A question has been raised that this is purely a legislative matter. I want to call your attention to the fact that if congress acts on the matter it is still necessary that our constitution should retain some provision, so as to conform to the bill that has passed the house of representatives and will pass the senate at this session. This bill reads as follows:

Be it enacted, etc., That all goods, wares and merchandise manufactured wholly or in part by convict labor, or in any prison or reformatory, transported into any state or territory, or remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in such state or territory, be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares and merchandise had been manufactured in such state and territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise.

The report was agreed to.

The PRESIDENT: The question now is, Shall the proposal pass?

Mr. DOTY: I offer an amendment correcting some words:

In line ten strike out "the general assembly from" and insert "the passage of laws to".

In line 11 strike out "providing" and insert "provide".

The amendment was agreed to.

Mr. HARRIS, of Ashtabula: I ventured a few remarks on this proposal on this original presentation. It was referred back to the committee with the privilege to report when they secured recognition, and the substitute is before us now.

The member from Cuyahoga [Mr. THOMAS] has

called attention to the fact that a bill is being attempted in congress that is expected to break down the barrier which is supposed to be interposed by that provision of the constitution which prohibits interference with interstate commerce as I understand it. Now I am wholly of the opinion, as I was two weeks ago, that this is a legislative matter. I think it would be ample time for the legislature of Ohio to deal with it when the federal congress has provided in fact, and not in anticipation, for our handling the convict labor goods of other states. The question in its essence is not changed in any degree by the alteration of the wording. All of the original clause still remains. I always did object a little to gentlemen who represented organized labor posing as leaders in this particular movement, because I do not think they represent all the labor there is in the country. I have never heard of any of them objecting to the use of prison labor in agriculture. They suggested the other day that that could be done without interfering with anybody. There are probably other things, but any of them will interfere with some man's work, because no work can be found that honest men cannot do and will not do. I do not want to curtail the debate and I don't want to move to lay on the table because I presume there are others who want to speak.

Mr. McCLELLAND: I spoke two weeks ago against this proposal and I don't see how anybody can speak in favor of it now. Look at that provision preceding the first semicolon. As it appeared in the proposal book it was a prohibition of contract labor. Now there are some things that I oppose. I do not oppose the prohibition of convict labor, but unless we are more cruel than even capital punishment we must give them something to do. The first part of the sentence provides that the legislature shall furnish something for them to do, but after the first semicolon it provides that "no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be sold." Now if he can't do any of those things—

Mr. THOMAS: Read the rest.

Mr. McCLELLAND: It is not necessary to read the rest.

Mr. THOMAS: Yes; it is.

Mr. McCLELLAND: It provides it shall not be sold, farmed out, contracted or given away. Now if you cannot part with the product by selling it, what is the use? The next part of it, "And goods made by persons under sentence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same are conspicuously marked 'prison made'." You have already provided that you can't sell the product of the labor. What is the need of marking it "prison made" if you prohibit the selling of it? If you cannot sell the product of his labor, why are you going to mark it prison made? It seems to me that the two parts of the proposal are contradictory.

Mr. HARTE, of Stark: Could we not use those prisoners out of doors in agricultural pursuits, and couldn't we have state farms?

Mr. McCLELLAND: No doubt.

Mr. HARTE, of Stark: There is on doubt that

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they interfere with the product of legitimate manufactures?

Mr. McCLELLAND: There is no doubt of that, but any labor interferes with competition. We farmers are willing to bear our share if the penitentiary can be moved outside of the city and produce vegetables and farm products, but so long as that is not possible we see no objection to their coming in competition with some other trade-union besides the farmers.

Mr. HARTER, of Stark: Do you think penitentiary labor would interfere with agriculture if a good portion of it were used in that line?

Mr. McCLELLAND: Just to the extent it was used. Just whatever of the labor of the convict is used on the farm—whatever he produces—that doesn't have to be bought from outside people.

Mr. HARTER, of Stark: Is there any competition there? Don't we come in competition with the great West?

Mr. McCLELLAND: Yes; we cannot eliminate competition.

Mr. HARTER, of Stark: This is not a question that I expect to demonstrate or anything of that kind, but I am going to ask you whether the employment of all of our prisoners, say 5,000 prisoners in the state of Ohio, would make any particular difference to the farmers of Ohio—whether we don't have to contend with the great West and other parts of the country in competition with free labor, not prison labor—whether that doesn't injure the farming interests of the state of Ohio much more than the employment of part of our prisoners would?

Mr. McCLELLAND: As I understand the gentleman from Stark, he objects to competition in manufacturing industry by our convicts and yet thinks it does not affect at all the competition of the farmer. I don't know how much it would; I can't tell how much it would, but it would come in competition and there is no doubt about that.

Mr. THOMAS: Does not the member understand that this section applies to goods manufactured outside of the state and sold in Ohio? The proposal provides that there can be no goods manufactured for sale on the open market in Ohio, so that there is no competition so far as that is concerned. It is all manufactured for state use. The other provision is against the sale of prison-made goods unless marked "prison made," and there are more goods sold from outside the state of Ohio, convict made, than are manufactured in Ohio, because manufacturers make it their business to sell in other states than in their own states.

Mr. McCLELLAND: I am sorry, but I don't think that explanation explains. Then after the second semicolon the design is to prevent the importation of prison-made goods from outside of the state unless distinctly marked so that objection to the other provision does not entirely obtain as to this. It seems to me that that thing should be straightened out and made plain.

Mr. TALLMAN: I will offer an amendment.

The amendment was read as follows:

Strike out of line 6 the word "sold".

Mr. TALLMAN: The idea is not to prevent the sale of goods made in the penitentiary, but to prevent the selling or farming out of the labor of the convicts.

Mr. THOMAS: I move that that amendment be laid on the table.

The motion was carried.

Mr. KRAMER: I would rather like to vote for a proposition like this, but I do not want to put any provision into this constitution that is so absolutely uncertain as to its meaning. If this provision is adopted I doubt whether either the products of prison labor or the prisoners themselves can be employed on the roads, and if there is anything that I think prison labor should be used at it is on the roads. "And no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away." Suppose we were to employ the labor of a particular penal institution in manufacturing the products for our roads; suppose the state wanted to give the product of those prisoners to a contractor or it was to be sold to a contractor to be used upon the roads, how could we do it with that provision in our constitution?

Mr. THOMAS: Back of the insane asylum in the quarries the state at present is quarrying material for good roads under the Wertz law and Franklin county is buying that.

Mr. KRAMER: Suppose you put this in the constitution and the question is brought before the court as to whether they can manufacture that, and the Wertz law is before the court, what will the court say?

Mr. THOMAS: This enforces the provision and makes it continuous. Read the last clause.

Mr. KRAMER: "Nothing herein contained shall be construed to prevent the passage of laws to provide that convicts may work for and that the product of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof." It is the state. The state has the convict, and suppose the state desires to get that material into the hands of some contractor. The state cannot build the roads. It must build the roads through a contractor. The state is manufacturing material by prison labor. Now if the state manufactures the material and cannot give the material away or sell the material to any contractor, pray tell me how that material is going to get on the roads.

Mr. THOMAS: Every county will buy material direct from the state and the contractor will contract for the labor.

Mr. KRAMER: The only way that this can be done at all is either to make the state or county go into the business of building roads. In ninety-nine cases out of a hundred neither the state nor the county can go into the business.

Mr. HARRIS, of Hamilton: Could not the state itself build a road in this way: The state asks for bids on five miles of state roads and says that the bids must exclude the stone. Would not that be a simple proposition?

Mr. KRAMER: What does the state do? The state gives the contractor the stone?

Mr. HARRIS, of Hamilton: I think this clause would not prevent that.

Abolishing Prison Contract Labor—Buying and Selling of Farm Products.

Mr. KRAMER: If we could see that the product of prison labor could be used on such roads—I don't see how it is.

Mr. DUNN: I have been highly honored by the president by being made a member of the Labor committee although I am a farmer and a preacher. The laboring men have no better friend in the state of Ohio than myself. I know what it is to labor and this Convention wants, I am sure, to be a reform convention, and we should be anxious to do any thing we can in a just way to help labor. I do not need to argue that the contract system in the prisons of this country has been degrading to a great degree in some states and it ought to be abolished. We ought to find some way by which the laboring men of this state must not be in any way degraded by being compelled to work against the contract system in the penitentiary or against convict labor. It seems to me there is a very plain road out of this trouble. I heard it said that it is impossible to have these convicts work without coming in competition with some form of labor. Suppose that under our present plan of building roads in Ohio we go forward under a bond issue and build the roads in the regular way, will there not be a great many roads in the state of Ohio that cannot be built in this way and that will not be built? Why not employ the convicts of the state of Ohio in building those roads that cannot be built in any other way? How can there be any competition in such a case? The farmers need the roads, the whole state of Ohio will be greatly blessed if you will put the convicts on the roads, and I am sure that the legislature can find some plan to set the convicts at work.

Mr. ULMER: I move the previous question. The main question was ordered.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 68, nays 35, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Read,
Beatty, Wood,	Harter, Stark,	Redington,
Beyer,	Hoffman,	Riley,
Bowdle,	Hoskins,	Rockel,
Brown, Highland,	Hursh,	Roehm,
Cassidy,	Keller,	Shaffer,
Cordes,	Kerr,	Smith, Geauga,
Crosser,	Kilpatrick,	Solether,
Davio,	King,	Stalter,
Donahey,	Kunkel,	Stevens,
Doty,	Lambert,	Stilwell,
Dunn,	Lampson,	Stokes,
Dwyer,	Leete,	Tallman,
Earnhart,	Leslie,	Tannehill,
Fackler,	Longstreth,	Tetlow,
Farrell,	Malin,	Thomas,
FitzSimons,	Marshall,	Ulmer,
Fluke,	Miller, Crawford,	Watson,
Hahn,	Moore,	Weybrecht,
Halenkamp,	Okey,	Winn,
Halfhill,	Peck,	Wise,
Harbarger,	Pierce,	Mr. President.
Harris, Hamilton,	Price,	

Those who voted in the negative are:

Baum,	Crites,	Holtz,
Beatty, Morrow,	Cunningham,	Johnson, Williams,
Brattain,	Dunlap,	Jones,
Brown, Pike,	Elson,	Kehoe,
Campbell,	Evans,	Knight,
Collett,	Harris, Ashtabula,	Kramer,
Colton,	Henderson,	Ludey,

Matthews,
Mauck,
McClelland,
Miller, Fairfield,
Miller, Ottawa,

Norris,
Nye,
Peters,
Pettit,
Rorick,

Shaw,
Stewart,
Wagner,
Walker.

So the proposal passed as follows:

Proposal No. 34—Mr. Thomas. To submit an amendment to the constitution, relating to prison labor and the sale of prison-made goods.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories of the state; and no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory, either within or without the state of Ohio, shall not be sold within this state unless the same are conspicuously marked "Prison made". Nothing herein contained shall be construed to prevent the passage of laws to provide that convicts may work for and that the products of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next proposal in order is Proposal No. 152—Mr. Brown, of Highland. The proposal was read the second time.

Mr. BROWN, of Highland: This proposal is in the interest of cheaper living to the people of the cities. Legislatures and presidents and governors and kings all over the world are now instituting investigations as to the reason for the increased cost of living and the general consensus of opinion is that the price of things to eat depends upon the expensiveness of distribution. Investigating upon my own part the elements of the high price of distribution, I have discovered that every city in Ohio almost, and every town of any respectable size, has passed an ordinance in the interest of organized dealers in the villages prohibiting in effect anything like free trade in the products of the table. When I went to see the solicitor in Columbus and asked him for the ordinance he said, "If you cut that out you will do more to cheapen the price of the table than anything that has been done in this state." The solicitor told me that a few weeks ago, and I also learned at the same time that there was so much money made in the distribution of farm products to the housewives of this city that the persons who have the right under the authority of the city to occupy the stalls in the markets have sublet those stalls, in some instances, at a premium of \$3,000 annually. The price

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at which they distribute it is absolutely exorbitant contrasted with the price to the producer.

Mr. MAUCK: Does this proposal prohibit the municipalities from charging for the stalls?

Mr. BROWN, of Highland: No, sir. It permits people to distribute articles of food without having to pay for the privilege to do it. In our town we have three meat dealers and forty-eight hundred consumers. We have an ordinance that will prevent a farmer coming in with meat to sell unless he has raised it himself, and the prohibition consists in an ordinance charging him \$15 per day.

Mr. MAUCK: Why does not Hillsboro repeal its ordinance, if it does not want it?

Mr. BROWN, of Highland: Because it is controlled by persons who are not interested in the welfare of the general consumer.

Mr. MAUCK: Do you seriously contend that a constitutional convention of the state of Ohio ought to do what you think might be done and ought to be done by the village council of Hillsboro?

Mr. BROWN, of Highland: I think if all the village councils in the state of Ohio refused to do it some constitutional convention or some central power, in the interest of the consumer and in the interest of bringing down the high price of living, should force them to do it.

Mr. KING: Will not this proposal prevent the passage of such an ordinance as requiring inspection of butter and eggs and milk and other food products?

Mr. BROWN, of Highland: No, sir. Now I want to read something from a publication in Baltimore. It is headed "Public Ownership of Public Markets:"

A week after the appearance in this journal of a comprehensive article describing the profits of direct selling certain persons made an offer to the city of Baltimore for its market houses. The article described these particular markets because Baltimore is the only city that has an exclusively municipal system by which the farmers may drive into market and sell their own produce. A thousand of them do it every week. There were a few mild criticisms, mainly about the lax management, the need of more cleanliness, and the evils of private control of stalls. The persons mentioned offered a large sum and pledged the building of new market houses of the finest type.

If, however, they regarded themselves as philanthropists they were soon undeceived. The people rose in protest. The market men and those who dealt with the market men, the farmers and the customers of the farmers, declared in no uncertain language that they objected. The feeling was so strong that no public official or politician dared to give the offer serious consideration. At the very time when the need of public markets is being so strenuously urged it is gratifying to know that those who enjoy the advantages of such markets are willing to fight for them.

A farmer will come to Columbus to distribute his goods for fifteen per cent profit. The organized dealers make from one hundred to one hundred and twenty-

five per cent profit for the distribution to the consumer. Now I leave this matter with you. I do not care personally whether you pass it or not. It is in the interest of cheaper living for the people and that was my object. So far as I am concerned I am a grocer in addition to some other things. I have a half interest in a house that is a member of an organized society of dealers in my town and when we pass this proposal my house will suffer, but I am doing this in the interest of the consumer, because I am thoroughly convinced of the necessity and good of it. I have watched it for years and I have concluded that the real trouble is in the distribution. I have been a distributor and I know what it costs to distribute.

Mr. ELSON: Will not this be a great advantage to farmers who wish to market their products?

Mr. BROWN, of Highland: It certainly will be, because when the farmer has his own market, he can deliver the goods at any time he pleases. Otherwise he must sell to an organized dealer whenever the organized dealer pleases. The consumer here has the opportunity to buy direct from the farmer without the added cost of organized distribution.

Mr. DOTY: I live in a city where we do not have any trouble in running our own affairs.

Mr. BROWN, of Highland: Cleveland, I want to say, is the only city in Ohio that does not prohibit by ordinance the free distribution of her food products.

Mr. DOTY: We must draw a line somewhere. We have been doing almost everything and now we are asked to be a city council. The city council of Hillsboro could attend to this matter if they wanted to. I therefore move that the proposal be tabled.

Mr. BROWN, of Highland: How is that in order? I have the floor.

The PRESIDENT: The president understood that the gentleman had yielded the floor.

Mr. DOTY: He had and I was recognized. But it makes no difference.

Mr. BROWN, of Highland: I don't care whether this passes or not, but I know it is in the interest of the people and I know that a man who votes against it votes against a very worthy measure. I move the previous question and demand the yeas and nays on it.

Mr. DOTY: I rise to a point of order. The gentleman has not the floor to make the motion.

The PRESIDENT: The motion is out of order.

Mr. BROWN, of Highland: Why is the motion out of order?

The PRESIDENT: The motion to table had been made.

Mr. BROWN, of Highland: But he hadn't the floor to make that motion. I think the president inadvertently recognized him by nodding at him.

The PRESIDENT: The president will say that the motion was made to table and we will now take the vote on it.

The yeas and nays were demanded, but the president took a vote on a division and the motion to table was lost by 38 yeas and 41 nays.

The PRESIDENT: That illustrates how the time of this Convention will be saved if members will not needlessly demand the roll call.

Buying and Selling of Farm Products.

Mr. BROWN, of Highland: I see. Now I demand the previous question.

The PRESIDENT: The president would like to recognize the member from Williams before that motion is put.

Mr. JOHNSON, of Williams: Mr. President: I hope this amended proposal, No. 152, will not pass. The proposal was first referred to the committee on Agriculture, and after thorough consideration by the committee its indefinite postponement was unanimously recommended, but before the report could be presented to the Convention the author of the proposal, who had been given every opportunity to be heard and who was heard by the committee, asked to have the committee discharged from its further consideration. The proposal was again referred to the committee on Agriculture with the understanding that it would be amended by the author and then considered by the committee and reported back to the Convention. No such proceeding took place, but instead the author of the proposal asked the committee to report it back to the Convention with the recommendation that it be referred to the committee on Judiciary and Bill of Rights. The argument was made before the committee on Agriculture that the adoption of this proposal would reduce the cost of living and that it would be in the interest of both the farmer and the consumer. In my opinion it would be detrimental to both these classes, but before I enter into a discussion along that line I wish to say that there is absolutely no necessity for this amendment to the constitution. Everyone in this Convention knows that the legislature has full authority to pass such a law, not only in regard to the sale of foodstuffs, but also in regard to the sale of all other products of commerce. There is now a first-class law on the statute books in regard to this subject. Why should this proposal, both in its original as well as in its amended form, refer only to the products of the farm? It looks as if the author wishes to curry favor with the farmers. Let us examine the language of the proposal: "The business of buying, selling or handling foodstuffs shall not be subjected to any license or other charge by any municipality." Why not strike out "foodstuffs" and insert "any article of merchandise?" Notice the clause, "Shall not be subjected to any license or other charge by any municipality." That means that there shall absolutely be no inspection or regulation whatever in regard to the sale of foodstuffs, but the sale of other products might be regulated. Why hold out this pretended sop to the farmers of Ohio? Why attempt to curry favor with them by means of an absurdity like this? There is an excellent law in regard to this subject at present. I refer to section 3672 of the General Code, which, among other things, provides for licensing hawkers, peddlers, auctioneers of horses and other stock, and which reads in part as follows: "But no municipal corporation may require of the owner of any products of his own raising or the manufacture of any article manufactured by him, license to vend or sell in any way by himself or agent any such article or product."

There is no demand for this proposed amendment to the constitution and if it is made a part of the constitution it can do no good, but on the other hand it will

have a tendency to weaken or destroy the pure-food laws of the state. The farmer can now sell the products of his farm in any market in Ohio without a license or any other restriction whatever, and in that respect he is placed alongside of the manufacturer, who has the same privilege. This gives the farmer an opportunity to sell direct to the consumer if he desires to do so, and this enables him to get the best market price and at the same time furnish the consumer with fresh products direct from the farm. But why should farm products—foodstuffs, if you please—many of which deteriorate rapidly, be sold by the farmer to an irresponsible stranger and that buyer be permitted to sell them in any village or city in this state without any restrictions whatever, simply because such articles are "foodstuffs?" Such a result would be absolutely preposterous. It would be worse than that, it would be a crime, and I for one shall not be a party to it. A person does not need a very active imagination to suppose a case like this: I am very busy on my farm; along comes a stranger and I sell my first-class butter, eggs and vegetables. He gathers more of this class of goods together and in a day or two takes them to the village or city and sells them without any restrictions whatever, simply because they are products of the farm. That is absolutely wrong and I think that every member of this Convention knows it to be so.

But suppose that my conclusions are wrong and that such things should be permitted. Even then this proposed amendment should not pass, as it is not needed. All of this can be done under the present constitution. Why cripple the efficiency of the dairy and food department of the state, which has done the producer and the consumer more good than any other department of the state government? The legislature has full authority at present to make all necessary provisions for the buying and selling, not only of farm products, but of all other articles of merchandise. Good and wholesome laws have been passed and will be passed in the future for the protection of the farmer and the consumer. Every voter is a consumer of farm products and it is his desire to have these products clean and fresh and as cheap as he can get them, so far as is consistent with the public good. The farmer does not come to this Convention asking for special favors; all he wants is justice. This proposal will not give him even that. The legislature of Ohio passed a law protecting the farmer and the manufacturer against the irresponsible dealer and now it is proposed by this amendment to deprive the farmer of that protection under the guise that it will be a benefit to him. If this amendment prevails the farmer personally, or through his responsible agent, will be compelled to compete with the irresponsible, unknown huckster, who can sell in competition with him without any restriction whatever. I hope that this proposal will not pass.

The question being "Shall the proposal pass?" The yeas and nays were taken, and resulted—yeas 28, nays 68, as follows:

Those who voted in the affirmative are:

Brown, Highland,	Crites,	Earnhart,
Campbell,	Cunningham,	Eby,
Cassidy,	Donahew,	Elson,
Collett,	Dunn,	Hursh,

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Jones,	Moore,	Shaw,
Kerr,	Okey,	Stilwell,
Lambert,	Peck,	Winn,
Leete,	Pettit,	Woods.
McClellana,	Pierce,	
Miller, Ottawa,	Riley,	

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Read,
Baum,	Harter, Huron,	Redington,
Beatty, Morrow,	Harter, Stark,	Rockel,
Beatty, Wood,	Hoffman,	Roehm,
Bowdle,	Hoskins,	Rorick,
Brattain,	Johnson, Williams,	Shaffer,
Colton,	Keller,	Smith, Geauga,
Cordes,	Kilpatrick,	Solether,
Crosser,	King,	Stevens,
Davio,	Knight,	Stewart,
Doty,	Kramer,	Stokes,
Dunlap,	Kunkel,	Tallman,
Dwyer,	Lampson,	Tannehill,
Evans,	Leslie,	Tetlow,
Fackler,	Ludey,	Thomas,
Farrell,	Malin,	Ulmer,
Fluke,	Marshall,	Wagner,
Fox,	Matthews,	Walker,
Hahn,	Mauck,	Watson,
Halenkamp,	Miller, Crawford,	Weybrecht,
Halfhill,	Miller, Fairfield,	Wise,
Harbarger,	Nye,	Mr. President.
Harris, Ashtabula,	Price,	

So the proposal was lost.

The Convention then recessed on motion of Mr. Doty until 1:30 o'clock this afternoon.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

The PRESIDENT: Proposal No. 240 has been read and the question is, "Shall the proposal pass?"

Mr. Anderson was recognized.

Mr. DOTY: What are the rights of the gentleman in the debate? He has spoken once on the measure and time is very precious.

The PRESIDENT: He has fifteen minutes.

Mr. ANDERSON: Mr. President and Gentlemen of the Convention: This matter was before you once a few days ago, but at that time in the hurry of trying to get everything off the calendar this was put upon the table and it was afterwards taken from the table. It is Substitute Proposal No. 240. It reads as follows:

The right of action to recover damages for injuries resulting in death shall not be abrogated and such damages shall not be subjected to any statutory limitation as to amount, but the recovery must be for the full amount of all damages so sustained.

The committee recommends its passage and it is signed by Judge Peck, Mr. Stilwell, Judge Winn, Mr. Leete, Mr. Cassidy, Mr. Brown, Judge Smith, Mr. Tetlow, Judge King and Mr. Kilpatrick.

Mr. TAGGART: What is the force and effect of the words "shall not be abrogated"? Would that affect the employers' compensation law?

Mr. ANDERSON: No, sir. I am glad you asked the question. New York put into her constitution in

1894, article I, section 18, those exact words. The general assembly passed what was a workmen's compensation law. That was then taken to the court of last resort and there declared unconstitutional, but the question that you have raised was entirely disregarded by everyone connected with the case. In other words, no one believed that this provision in the New York constitution in any way prevented a workmen's compensation law, but the workmen's compensation law was declared unconstitutional by reason of the federal constitution. However, I am perfectly willing that any amendment should be made if there is any question about it.

Mr. TAGGART: Would it not be sufficient and better if the words "shall not be abrogated" were stricken out? Would not that permit compensation to employees?

Mr. ANDERSON: I want to suggest that there is more constitutional authority for Proposal No. 240 than for any other proposal that has come before the Convention. State after state has since that put this proposal in their constitutions and besides those states there are others that have similar laws. Pennsylvania since 1873 has had this provision. New York since 1894.

Now I do not care to answer any more questions. I want to cover this matter in the time I have to do it in.

In the first place, the right to recover for wrongful death does not exist in common law. It is entirely created by statute. Consequently, I presume that was in the minds of the constitution makers when they placed these words preventing the abrogation of the rights of recovery for wrongful death in the constitution.

Now, in reference to the limitation clause. In 1851 the legislature of Ohio provided that the limit for recovery for wrongful death should be \$5,000. That remained the same until 1872, when the legislature increased it to \$10,000. You must remember that it does not mean so many dollars shall be given to the widow and the children for a husband or father wrongfully killed, but it means that they shall receive a certain number of bushels of potatoes, barrels of flour, stuff to live on. It means schooling for the children.

As the purchasing power of a dollar decreased, the amount, although it may remain the same, decreases, because it means fewer bushels of potatoes, fewer barrels of flour, fewer school books and not such a good place to live in, and the object of this statute is to prevent the children of men wrongfully killed from becoming public charges. After all, it falls back on society. The question comes up, What protection would they have? It would be the same protection as in the other states where they have like provisions. They have found not a detriment a like provision in the constitution of New York, where they have a great many more men employed and consequently more deaths happen, and if it is not a hardship there, there would not come any hardship in Ohio.

Mr. WATSON: Will the gentleman yield to a question?

Mr. ANDERSON: Not now. I did not get through the other day because I yielded to so many questions.

The point I want to demonstrate under the laws of Ohio is that no hardship can arrive; I mean with the limitation being taken off. You try your case before the jury. We will assume that the jury cannot be trusted. We will assume that the jury by reason of sympathy and prejudice will not be fair and they will return an excess-

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sive amount. Under our statutes it is provided that if an amount indicates passion or prejudice the judge must give a new trial, and if the common pleas judge fails to do his duty it goes to three learned gentlemen who constitute the circuit court now, or, under Judge Peck's proposal, the court of appeals. Those three cannot be influenced by any passion or prejudice. They have a right to give a new trial and the common pleas judge has a right, if he thinks the amount is too large and that it indicates prejudice—he is supposed to deal justly with both sides, and he can cut down the amount to any figure he pleases. Then it can go to the court of appeals where the three judges are sitting. Two of them may cut down the verdict of the jury that is influenced by passion or prejudice if they conclude that it is too large, and they can cut it down to any figure they want. I maintain that is all the protection the individual gets and it is all the protection any corporation ought to have. No harm can come under the many safeguards—and I ask pardon of a certain gentleman for using the word—under certain safeguards now always present without any limitation being fixed. Now let me give you what the jury must take into consideration: "In arriving at the total amount of damage in such cases, the jury should consider the pecuniary injury to each separate beneficiary, not found guilty of contributory negligence, but the verdict should be for a gross sum, not exceeding ten thousand dollars."

In other words, the jury must take into consideration, where the husband or father has been killed, the loss to the widow, and in determining that they consider the amount of money he was making, etc. Then the jury, under the authority I have read, must take into consideration the loss in money to each one of his children. Say there were eight children; that would make nine people who have lost by reason of the wrongful killing of the father, and under the authority of 55 O. S. the jury takes all of them into consideration and must return a verdict for a gross amount. I insist, under that authority, if you please, the amount of \$12,000, as the law is today, when you take into consideration the high cost of living, is ridiculously small.

Mr. WATSON: You said something about the loss going back upon society. Is not that the right place for the loss to fall?

Mr. ANDERSON: On society?

Mr. WATSON: Yes.

Mr. ANDERSON: The reason I am in favor of workmen's compensation laws is this: If the husband or father is killed and if the widow is strong enough to make a living at the washtub for her family and herself, then the whole burden of the loss falls upon the family. If, on the other hand, she cannot make a living for herself and children, the widow and the children become public charges and all burden falls upon the innocent public. Under workmen's compensation laws and proper liability laws the burden falls upon the corporation, and if it does not fall upon the corporation, if they choose to put it back on the consumer, it falls upon those who purchase from the corporation. The burden must fall somewhere. It falls on the family, the community, the corporation or upon those who buy the products of the corporation.

Mr. WATSON: The gentleman misunderstood the

point of the question. I was looking toward the latter end—that is, the expense of running the manufacturing establishment, including the loss of life, goes out on society as a whole.

Mr. ANDERSON: It goes out on the consumer.

Mr. KERR: I understand you to say this proposal permits the court to set aside a verdict?

Mr. ANDERSON: No, sir; they have that authority now. I will read it to you.

Mr. KERR: I would suggest that that be added at the end.

Mr. ANDERSON: It wouldn't interfere with any of the rights of the jury or judge now, and they have ample power to protect everybody.

Mr. CRITES: Mr. Anderson seems always to be calling attention to corporations. We are not all corporations doing business in this state and they are not all big corporations who are doing business. This Proposal No. 240 has in it no limitation. It says that the amount of recovery shall not be subject to statutory limitations. Take some small manufacturing concern, organized by a man of small means. Say a man has been working twenty or thirty years and he has made \$5,000 or \$10,000. He goes into a manufacturing business and after running a few weeks he may have an accident, not from his own negligence, but still the case may be decided against the manufacturer, and it will take every dollar that man has earned for twenty or thirty years. It would bankrupt him. I don't think that we should put everything through that comes up here against the manufacturers. The manufacturers have not come in here and asked a single thing up to this time, and there have been labor proposals put through entirely against the manufacturer. The manufacturer said nothing. I think this is a wrong proposal to be put in the constitution and I hope the delegates will help out the manufacturers by tabling this proposal. I move that this proposal be laid on the table.

Mr. ANDERSON: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 30, nays 59, as follows:

Those who voted in the affirmative are:

Antrim,	Fox,	Malin,
Beatty, Morrow,	Halfhill,	Matthews,
Brattain,	Harter, Stark,	McClelland,
Campbell,	Holtz,	Miller, Ottawa,
Collett,	Kehoe,	Redington,
Crites,	Keller,	Riley,
Cunningham,	King,	Rorick,
Dunlap,	Knight,	Shaw,
Evans,	Kramer,	Stalter,
Fess,	Longstreth,	Watson,

Those who voted in the negative are:

Anderson,	Dwyer,	Kunkel,
Beatty, Wood,	Earnhart,	Lambert,
Beyer,	Elson,	Lampson,
Bowdle,	Fackler,	Leete,
Cassidy,	Farrell,	Ludey,
Colton,	Halenkamp,	Marshall,
Cordes,	Harbarger,	Mauck,
Crosser,	Harris, Ashtabula,	Miller, Crawford,
Davio,	Hoffman,	Nye,
Donahey,	Hursh,	Okey,
Doty,	Johnson, Williams	Miller, Fairfield,
Dunn,	Kilpatrick,	Moore,

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Peck,
Peters,
Pettit,
Pierce,
Read,
Rockel,
Roehm,
Smith, Geauga,

Solether,
Stevens,
Stewart,
Stilwell,
Stokes,
Taggart,
Tallman,
Tannehill,

Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Weybrecht,
Winn.

So the motion to table was lost.

Mr. WINN: Gentlemen of the Convention: I, along with ten or eleven other members of the Judiciary committee, after a thorough consideration of this question recommended the passage of this proposal. I heard some little discussion of the proposition on the floor of this Convention since then and I have heard some discussion elsewhere. So far nothing has been said that causes me to change the opinion I entertained at that time, and I shall briefly state my reasons for favoring the proposal. I do not regard the provisions of this proposal that have attracted the closest attention as of much importance. The proposal is that the general assembly may not limit by statutory provisions the amount of recovery. I believe that the statutory limit is now \$10,000 in case of death. I do not regard the constitutional provision against such limitation as of such great importance, but the statute also provides that one suing in case of death may recover for the actual pecuniary loss and nothing more.

A case was lately decided in the common pleas court growing out of the wrongful death of a young man who was nineteen years of age. Under the rule that obtains, the amount of recovery to the father suing on behalf of himself and of the brothers and sisters of the deceased was \$200. That was the amount of the actual pecuniary loss they were able to show. Just a few days afterwards I tried a case growing out of an assault. One man struck another and knocked a tooth out and precisely the same amount was given.

A DELEGATE: Your client had the best lawyer.

Mr. WINN: No, it was not that. I brought an action against a railroad company for wrongful death of a young girl of Putnam county. She was eighteen or nineteen years old and attending the high school in the village of Continental, living a few miles out in the country. The death was wrongful and the alleged negligence was on the part of the Clover Leaf Railroad in backing a train, which resulted in her death. The case was moved to the federal court and knowing what I would be against, in the face of the rule that my client could recover for the next of kin the actual pecuniary damage and no more, I was obliged to take \$300 in settlement. I was glad to forego charging the usual fee in the case.

I am here to say it is wrong for the legislature to pass any statute saying that in case of wrongful death the party suing for the beneficiaries can recover only actual pecuniary loss; and for that reason this proposal becomes a proper subject of organic law. It is a province of the Constitutional Convention to put into the organic law those things which it believes the legislature should not do. Therefore I hope that this proposal will be adopted.

Mr. JONES: What is there about this proposal that abrogates this rule about which you have been speaking, limiting the recovery to actual pecuniary loss?

Mr. WINN: I say the legislature should not be able to enact a law limiting the amount of recovery.

Mr. JONES: Is it limited now?

Mr. WINN: Yes; it is confined to actual pecuniary loss.

Mr. JONES: Has not that always been the law?

The vice president here assumed the chair.

Mr. WINN: No, sir; it has not. It is a statutory provision and it should be actual damage, not measured in dollars and cents only. Let me give you another concrete case. Today Judge Roehm told me of an instance where he brought a suit growing out of the killing of a little child eight or nine years old, and the only ground upon which that mother could recover anything at all was that she was able to prove at the trial that her little child each morning carried a pail of milk to a customer, thus earning two or three cents. Had it not been for that little service she would not have recovered anything.

Mr. HALFHILL: There is a number of things that happen in society for which there is not and cannot be any redress. There can be no redress for the bereavement following the loss of a relative. It is mere sentimentalism to argue on that point.

This is so plainly statutory that I do not think it should pass. The legislature now has fixed the amount at \$10,000. It is perfectly competent for the legislature to fix the amount of \$20,000 or \$30,000, in which event a good portion of the argument about decreasing the purchasing power of a dollar would vanish by action of the legislature. This is so plainly a statutory right, fully existing and provided for under the present constitution, that I can see no reason whatever, and I have not been furnished with any valid reason, why it should be put into the constitution.

Mr. ANDERSON: Will you permit me a question?

Mr. HALFHILL: Not until I get through. I have not the time. When you start into a manufacturing business, whether you are an individual or a big corporation, one of the fixed expenses incident to that business is the carrying of all kinds of insurance that you can get. One of this kind frequently carried is casualty insurance. What insurance company can write casualty insurance except at an exorbitant premium, where there is no limit to the possible liability? It is argued there is a limit against excessive liability because of the power of the court to cut down verdicts.

Mr. ANDERSON: Will you permit a question?

Mr. HALFHILL: Not until I get through with my argument, for the time is limited. What court would have the courage to cut down verdicts to a point where they correspond with the actual damages incurred? Now the situation is this, that under the existing statute that rule of law permitting a court to reduce the verdict, quoted by the gentleman on the other side, plainly does obtain; but I should like to know what court there is in the state of Ohio that would have courage enough to cut down a verdict that was rendered in a case of wrongful death, when there was not any statute in the state of Ohio that fixed any limitation, and when the fundamental law said there should not be any? What court would have the courage to do that; and furthermore, what court would have any right to do it when you change the fundamental law upon which those rules rest which say

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that the court can cut down the verdict? Then you take out the foundation of the rule and another rule obtains. Now I think there is no question that my interpretation is correct of what the rights of the courts under such a new rule would be, and that the old rule immediately vanishes and would be supplanted by the constitutional inhibition.

Another thing: This question of workmen's compensation laws is a new thing in this country. It was met and settled twenty-five years ago in Continental Europe, and there is not a state in this Union up to this time that has passed a full, free, comprehensive workmen's compensation law which is on the line of what they have done in Continental Europe, save and except perhaps the state of Washington. All the rest are experiments. The whole theory and basis of workmen's compensation laws are that there is a fund created which shall be administered as an insurance fund, and it is intended that the injured workmen or bereaved family shall be able to apply to the commissioners of that fund direct and be paid direct according to a fixed, ascertained and definite schedule, so as to obviate all civil court procedure. That is the correct theory of an approved workmen's compensation law. Now in the state of New York the workmen's compensation law passed there conflicted with the constitution and it was declared void by the courts, not however by reason of a conflict with the original of this proposal, which the author of the proposal says is practically taken from the constitution of New York. But I call your attention to the fact that under workmen's compensation laws the commissioners that control that fund have to be governed by the same theory that casualty insurance companies are governed by, and they have premiums of a certain amount in certain kinds of factories, according to the class of the risk. Where the risk is great, the premium would be higher; where the risk was less, the premium would be less, so that you absolutely throw down the bars so far as safeguards are concerned and take away the foundation rule which permits the court at the present to cut down verdicts if excessive, and you have established a rule whereby the commissioners of the workmen's compensation fund are not able to figure and to make a right premium. I don't know whether or not that objection has occurred to any of those gentlemen advocating this proposal, but I submit it now for the careful consideration of all of you. I contend that you are so arranging the constitution that there cannot be a perfect workmen's compensation law passed.

Mr. ANDERSON: Do you not know that the more corporations go into the workmen's fund or under workmen's compensation laws the more drastic the liability laws are, and consequently every act of this kind is a benefit to workmen's compensation laws instead of a detriment?

Mr. HALFHILL: I expect and hope that we shall live to see the time when there will be the most thorough and approved kind of a workmen's compensation law in effect in the state of Ohio, and that it will be so thorough that every corporation and every body employing workmen will have to come under the operation of that law. That is a thing that I am in favor of unreservedly. I hope the time will come when it will be impossible for any casualty insurance to be written on any factory in

Ohio, and that the law of the land will be broad enough so that all casualties will be taken care of under that law.

Mr. ANDERSON: You stated a while ago that the rate in industrial casualty insurance would go up to such an extent that it couldn't be taken. Don't you know that in Pennsylvania and New York the rates are not way up?

Mr. HALFHILL: I do not know that and I don't care.

Mr. ANDERSON: Why did you argue it?

Mr. HALFHILL: I argued it for this, if anybody has wit enough to follow it: I took the insurance law as the premise upon which to base the argument for the workmen's compensation law.

Mr. ANDERSON: "Another question.

Mr. HALFHILL: Not until I finish this — because that is necessary. You have to observe the very same rule in administering the workmen's compensation law as a casualty company uses now in fixing its casualty rate, and we haven't got that kind of workmen's compensation law now in Ohio; and what I am arguing or intending to argue is that this in my judgment conflicts with the workings of an approved workmen's compensation law. Now if the worthy proponent cannot in some way amend it to meet that objection, I cannot bring myself to think that it should pass.

Mr. ANDERSON: Here is an amendment that will meet that objection. Now just one other question: You stated if this became part of the constitution of the state of Ohio then the common pleas judge or the higher court would not cut down the amount. Do you not know that in Pennsylvania and New York and in every other state, and there are many that have similar provisions in the constitution, the judges there just as freely cut down a verdict rendered by a jury as in any other state?

Mr. HALFHILL: You cite no authorities, but are stating matters that I do not know anything about.

Mr. ANDERSON: I thought you did not.

Mr. HALFHILL: And it is easy to deal in general principles and make general statements, but I do say that the authorities in Ohio which you have cited and to which I am directing attention, will vanish, because the foundation for these authorities will be removed, and they will be supplanted by the direct inhibition of the fundamental law.

Mr. BOWDLE: I expect to assist this provision with my vote. I should like to see a man made more valuable in human society than mere property. Today in the state of Ohio it is far more profitable for a negligent corporation to kill a man outright than to injure him. It is said by the distinguished member from Allen [Mr. HALFHILL] that damages cannot be given for sentiment. That is not in my judgment technically true. The law is a very curious science. Occasionally you see it and occasionally you do not. If there is anybody here who does not believe that the law does not give damages based on sentiment let him, if he be unmarried, engage himself to a young woman and then proceed to break the engagement. He will find a heavy charge given to the jury that this young woman is to be compensated for her trousseau and for her lacerated affection and for her outraged feelings. She must be compensated for the damage to her prospects in life, and

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I can assure that young man that a huge section of his fortune will be transferred from him.

Mr. ANDERSON: Do you not know that that rule does not apply in personal injury cases?

Mr. BOWDLE: When you come to a personal injury case involving death sentiment counts for nothing. The loss to society is counted for naught. Only pecuniary loss counts. I have a little girl at home, ten years old. If the traction company were to kill her I could not recover anything. Sentiment goes for nothing except in a breach of promise case. I should like to see some kind of rule of reason adopted in cases of personal injury causing death; but if my little girl were killed I couldn't recover one cent. I could not ask the court to charge the jury that the jury should take into consideration the fact that I have cared for that daughter from infancy and for ten years, and that the average cost would be \$200 a year.

Mr. ANDERSON: Do you not know that the circuit court of Lucas county held that a judgment for \$1,000 for a girl nine years old was not excessive and sustained the verdict?

Mr. BOWDLE: I never heard of it, but I take your word for it. I think we should see to it that this proposal is incorporated in the constitution so that those who are left may in some fair way be compensated for those who have been taken away. Under the present condition it would be very much more profitable for a motorman busily engaged in serving his employers, whenever he saw there was no reasonable chance for one imperilled to escape, to turn on power and kill the person rather than injure him. I do not believe that the present law is what it ought to be, and I feel that everyone who is in favor of justice ought to support this proposal.

Mr. KING: I cannot support the proposal in the form in which it now stands. My objections to it are several. In the first place, there is nothing in it that is not purely statutory and which the legislature can not take care of.

In the second place, resorting, as we naturally do, to our experiences, I say that so far as my personal experience reaches, which is only thirty-nine years in the practice of the law, I have prosecuted innumerable cases of personal injury and defended almost as many more; I have listened to the hearing and reading of records in almost as many more, and I never have known a case in which the jury went to the present statutory limit in case of a death. I have heard of a great many cases in the larger cities, and usually damages given by the jury are higher there than those given in the country. So I say there is no necessity for it.

In the third place, I say that this provision, as written by the proposer, will interfere with workmen's compensation laws in another manner than that stated by the gentleman from Allen [Mr. HALPHILL]. It provides that the right to recover damages for injuries resulting in death shall not be subject to any statutory limitation as to the amount of recovery. The workmen's compensation law is an act of the legislature, designed to permit the injured party to secure damages for injury or death resulting therefrom, and the authority is given in the act to the commission created by it to fix

the amount of damages that shall be payable either in injury not resulting in death or in one resulting in death. This proposal interferes with the right of the legislature to provide for workmen's compensation laws and to provide a fund out of which to compensate the injured person.

Mr. PECK: Does not the act fix a limit to the amount that can be recovered?

Mr. KING: Very likely.

Mr. PECK: Of \$3,500?

Mr. KING: I do not remember, but if it does this constitutional provision repeals it.

Mr. PECK: It ought to be repealed. That is what we are after.

Mr. KING: It gives the legislature the power to do that or to delegate that power to a commission, so that you strike a blow at the very heart of workmen's compensation acts by a constitutional provision.

Mr. WINN: Then if the section of the statutes fixes a limitation and the constitution says there shall be no limitation, the compensation laws would drop?

Mr. KING: Yes.

Mr. WINN: Do the compensation laws depend for their existence on the fact that the statute contains a limitation of the amount of recovery?

Mr. KING: No, sir; the law will fix the compensation or delegate the power to fix it.

Mr. WINN: Do you not know that the amount recovered under compensation laws is purely a matter of contract and not of statute at all?

Mr. KING: It is not an involuntary but a voluntary law, where the employer and the employe must enter into it, but there are those cases where it is absolutely involuntary.

Mr. WINN: But the amount recovered under the workmen's compensation act is a matter of contract.

Mr. KING: In a way.

Mr. WINN: Do you tell this Convention that if there should be written into the constitution this provision a person cannot thereafter contract to receive \$3,500?

Mr. KING: Yes; because the legislatures of some states have taken away entirely the contract feature and it may be found before we get very far that it ought to be eliminated.

Mr. ANDERSON: What difference is there between the liability laws and rules—do you not know that this in no way can interfere?

Mr. KING: I would not have said so if I had known it. I said I thought it did and that it might receive that construction.

Mr. ANDERSON: You had the same opinion in the committee?

Mr. KING: No, sir.

Mr. ANDERSON: You signed this out and recommended its passage.

Mr. KING: If I did I announced at the time that I would not support the measure, except to report it in. Now I am going to offer an amendment.

Mr. PECK: Will the gentleman explain the difference?

Mr. KING: It takes away entirely any question of compensation under the compensation laws.

Damage for Wrongful Death.

The amendment was read as follows:

Strike out lines 4, 5, 6 and 7 and insert the following:

"No limitation shall ever be imposed by statute on the amount of damages recoverable by civil action in the courts of this state for an injury resulting in death caused by the wrongful act, neglect or default of another."

Mr. ANDERSON: I accept that amendment.

Mr. PECK: One of the pleasures of this Convention to me has been the ability to get back and consider things worthy to essential justice. Every lawyer knows that in court whenever we try a case, or anywhere that we consider a case, we discuss it or try it in a court of review or in the court having the final passage on questions of law; we find it is all controlled by prejudice and we hardly ever get really to consider a thing simply in the light of its natural justice. Now I want to try this section that way. We are here making a foundation law upon which this people shall proceed, and I for one want to base our fundamental laws upon the eternal precepts of justice, without regard to any judge's decision or precedents established by any court. We can draw light from those things, but we are establishing a foundation and we are not bound by them.

This right to recover for wrongful death is a matter of modern legislation. There came a time when the sentimental human race had advanced in its progress to that point where it said to any one who had wrongfully caused the death of another, "You shall compensate the people who are dependent upon him and who are closely related to him for that death." The common law of England gave no such action. If you go back to Anglo-Saxon times you will find it was fundamental to them. When you come down to the books, you will find there was no such action until about 1850 when the parliament of England, under the lead of Lord Campbell, then lord chancellor, passed an act providing that anyone who caused the wrongful death of another should be liable in damages not to exceed five thousand pounds. In transferring that law over here the five thousand pounds was transferred as \$5,000. There is a tremendous difference there. Five thousand pounds means \$25,000. So it was first introduced in the state of Ohio as statutory law that anyone who wrongfully caused the death of another should be liable to the next of kin to the sum of \$5,000, and that was afterwards raised to \$10,000. I believe it is now \$12,000. It never reached the level of natural justice. Would not natural justice say that whoever causes the wrongful death of another shall compensate those who have lost by his wrongful act? What does compensation mean? It means pay, and that would be the amount lost. Now we know there are some deaths for which there cannot be any compensation, but there are many others in which there can be compensation, and the question is how shall it be fixed. No statutory limitation can be fixed which will authorize persons bringing that kind of an action to recover the amount they ought to recover—in other words, enough to repay them for what they have lost by the death of that relative.

Now it may be that the law compensation sometimes will be very small and the courts have been inclined to

consider the loss only temporary, but there are phases of the situation in which the sentimental aspect of which Mr. Bowdle speaks has come in and could not be kept out, when a man is injured and sues for compensation and he recovers compensation* for his suffering. It is a suggestive matter. His feelings, his sufferings, his pain, his internal injuries—for those there would be no recovery. There should be a recovery which would fully compensate for every sort of injury, for the loss of companionship, the loss of good advice, the loss of friendly assistance and a thousand and one things that an affectionate relative can render to another. These are things that the jury can estimate, and to say that the damage should be limited to only the pecuniary loss is to say that full compensation is not to be made.

I want to say in the light of natural justice whoever has deprived one of a relative should give full and complete compensation. That is all we want. I am not bothering about the statutes. They will be fixed. Let us fix the foundation and fix it good and strong in natural justice. I tried the case of a little girl twelve years old and I tried the case of a young boy sixteen years old, a young man killed by a railway engine, and in both cases very low verdicts were rendered. In the little girl's case the court sustained a verdict of \$1,200. They said there could only be compensation granted and I thought the verdict might not be sustained, but the court did not set it aside. They showed the feeling there is in these matters. There is no use in talking about confining the matter simply to pecuniary injury. The law of justice requires full and complete compensation for the loss of that person, including all of those innumerable things that are implied in it. Let us fix the fundamental law firmly on the foundation of justice, and the legislature can do the rest about the workmen's compensation law.

Mr. TALLMAN: I am opposed to the amendment of the delegate of the member from Erie. It is really a substitute amendment for the one that we have been discussing. My objection to that is that it takes away any limitation. I do not regard the matter of limitation as being very important, especially relative to death, but I do regard this one thing of importance, and that is the power of the legislature to take away from the next of kin the right of action in case of the death of a child or of an unmarried man. You take the law as it now exists with reference to a man who works in a mine, and he may be under age or he may be an adult and in neither case does his next of kin, father, mother, brothers or sisters, have a right of action, and the amendment of the gentleman from Erie leaves to the legislature the power to pass a law of that kind. I want to say that the legislature has passed that law, and I want to say further that the court of common pleas and the circuit court have held that law to mean just what I say, that is, that an unmarried man, adult or minor, working in a mine and who is injured by the wilful violation of the mining act—if he is killed his mother, his father, his sisters or his brothers have no right of action. His mother may have to pay the expenses of his funeral and of a long siege of confinement after his injury before his resulting death; she may have to buy his coffin and shroud, but not one cent can she recover from that mining corporation. That is already the law of the state of Ohio as passed in the mining act, and it has been so construed by the court of

Damage for Wrongful Death.

common pleas and the circuit court of Belmont county. Four judges have decided it that way. That was one reason why I wanted the supreme court to have jurisdiction in cases where the construction of a statute was brought in question. But my friend from Hamilton county, of whom I think so much, the chairman of the Judiciary committee, would not have it that way. It was Judge Worthington's amendment. The case to which I call attention is now in the supreme court to construe that statute, the two of them linked together, and the construction of one involves the construction of both. It is in the supreme court and if the supreme court follows the decision of the courts below and the legislature is content to let it remain that way, then there is nothing on earth that can give a right of recovery in a case such as I have mentioned where death results and no wife or children survive. I object to the King amendment because it leaves the legislature the power to do that.

Mr. DUNN: Just a word on this subject. It seems that this proposal is another one in the direction of genuine reform. It is a proposition somewhat in favor of the individual and of the rights of the common people in opposition to the advantages of the corporations as heretofore exercised. It is a fact that some of the railroads would rather kill a person than wound that person because the damages would be far less. This proposal it seems to me is rising above the mere question of money, the mere question of the advantage of a person killed to his relatives, to the question of affection and love. I had a friend who in the exercise of his duty, was cut in two by a railroad train. Three friends went to the company and asked for damages for his wife and infant daughter and they were told, "If we paid for every man we killed we would break up the company." That daughter is now a young lady who has lost for all of her young life the affections of a father, and her whole character has in a great measure been changed from the lack of influence of that father and the lack of a home. The mother worked with her for years and finally it resulted in her own death. The railroad company would not pay one cent. I am strongly in favor of anything that is in the direction of reform and in favor of the individual.

Mr. REDINGTON: I desire to go on record as against the proposal and this amendment. I do not understand that master and servant are the only persons who are interested in this question. Wrongful death often results where neither of the parties, the master or the servant, has anything to do with it. There may be a third person.

Now I think it is all wrong, this setting aside the rules of evidence and allowing the jury or the court to speculate upon what was the actual damage in any particular case. For at least twenty-five years I have been interested on both sides of personal injury cases. In our county we have a great many of them, and I know from observation and experience that nine out of ten of wrongful-death cases are settled and do not get into the court. First we bluff settlements in a good many of the cases. We try to get by the court. We nearly always trust the jury if we have the other side and we try to block everything so as to let it get by the court. The purpose of this whole proceeding is for some attorney who has the side against the corporation or persons blamed. This is wanted to make a bluff for a great big settlement so that

a small corporation or an individual who has been sued would rather pay a larger amount of money than to take the chances of a jury trial. Besides, since being a member of this Convention I have settled three cases and I have bluffed everyone of them through, and if you give me that law I will go out and bluff every corporation. They dare not take a chance of getting before a jury. They dare not take a chance of my getting by the court, for if I do I will skin them every time.

Do you want to wipe out corporations? No one wants to kill people. I never knew an official of a corporation wanting to kill any employe. If you put this thing in you will break up a good many institutions attempting to do a legitimate business. Today we have certain definite rules to follow in determining the damages in any particular case. Under these rules the employer can get insurance and, as well stated, no insurance company would dare to take the hazard under this provision that is now offered, or if they did take it they would want to raise the rates.

Mr. ANDERSON: A question please.

Mr. REDINGTON: Just a moment. I know if you will give us this provision you and I can go out and do a lot of bluffing. I think it is wrong. I believe in receiving fair compensation where there is a wrongful death, but the moment you go beyond the actual damages sustained and attempt to show loss of affection and love and all that kind of sentimental stuff in fixing value you reach the point where danger begins. No one will know what the damage would be, and such fellows as Redington and Anderson would go out and make barrels of money by it, but I say it is not right. That is all.

Mr. MAUCK: This question has been very thoroughly debated on two different occasions and I feel justified in demanding the previous question upon both the original proposal and the amendment.

The PRESIDENT: The vote will be upon the amendment.

The amendment was agreed to.

The question being, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 68, nays 30, as follows:

Those who voted in the affirmative are:

Anderson,	Henderson,	Read,
Beatty, Wood,	Hoffman,	Rockel,
Bowdle,	Hursh,	Shaffer,
Brown, Highland,	Johnson, Williams,	Shaw,
Cassidy,	Kerr,	Smith, Geauga,
Colton,	Kilpatrick,	Solether,
Cordes,	King,	Stevens,
Crosser,	Kunkel,	Stewart,
Davio,	Lambert,	Stilwell,
Donahey,	Leete,	Stokes,
Doty,	Leslie,	Taggart,
Dunn,	Marshall,	Tannehill,
Dwyer,	Mauck,	Tetlow,
Earnhart,	Miller, Crawford,	Thomas,
Elson,	Miller, Fairfield,	Ulmer,
Evans,	Miller, Ottawa,	Wagner,
Fackler,	Moore,	Walker,
Farrell,	Nye,	Watson,
Fess,	Okey,	Weybrecht,
Hahn,	Peck,	Winn,
Halenkamp,	Peters,	Wise,
Harbarger,	Pettit,	Woods,
Harter, Huron,	Pierce,	

Damage for Wrongful Death—Abolishing Board of Public Works.

Those who voted in the negative are:

Antrim,	Halfhill,	Malin,
Beatty, Morrow,	Harris, Ashtabula,	Marriott,
Brattain,	Harter, Stark,	McClelland,
Brown, Pike,	Holtz,	Price,
Campbell,	Jones,	Redington,
Collett,	Kehoe,	Riley,
Crites,	Keller,	Roehm,
Cunningham,	Kramer,	Rorick,
Dunlap,	Longstreth,	Stalter,
Fox,	Ludey,	Tallman.

So the proposal passed as follows:

Proposal No. 240—Mr. Anderson. To submit an amendment to article I, of the constitution.—In relation to damages for wrongful death.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

No limitations shall ever be imposed by statute on the amount of damages recoverable by civil action in the courts of this state for an injury, resulting in death caused by the wrongful act, neglect or default of another.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next business is Proposal No. 331—Mr. Walker, which the secretary will read. The proposal was read the second time.

Mr. WALKER: I think the simple reading of this proposal will inform every delegate as to its object and we can dispose of it in a very little time. The constitution as now provides for the creation of a board of public works, to have supervision of the public works of the state. The only public works the state has are the canals. Large parts of them have fallen into disuse, and of the canals we still have two which reach across the eastern and the western parts of the state and the state has vested rights to the extent of \$15,000,000. It is too valuable an asset to permit to be passed by and leave to the disposition of future members of the general assembly to do as they see fit. The proposal provides for caring for any situation as it may arise. If you are in favor of shortening the ballot this is one method of doing it, by cutting out all of these super-numerary officers.

Mr. BROWN, of Highland: Is there any provision to do away with the board of public works?

Mr. WALKER: This drops section 12 and 13 of article VIII.

Mr. KING: Those sections provide for the election of the board of public works and in your proposal you do not say whether the officers shall be elected or appointed.

Mr. WALKER: I purposely put it in this brief way so that it can be left to the wisdom of the Convention.

Mr. PECK: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 331 by inserting in line 8 thereof after the word "public works" the words "appointed by the governor for one year."

Mr. WALKER: I have no objection to that.

The amendment was agreed to.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 97, nays 1, as follows:

Those who vote in the affirmative are:

Anderson,	Harter, Huron,	Peck,
Antrim,	Henderson,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beatty, Wood,	Holtz,	Pierce,
Bowdle,	Hursh,	Price,
Brown, Highland,	Johnson, Williams,	Read,
Brown, Pike,	Jones,	Redington,
Campbell,	Kehoe,	Riley,
Collett,	Keller,	Rockel,
Colton,	Kerr,	Roehm,
Cordes,	Kilpatrick,	Shaffer,
Crites,	King,	Shaw,
Crosser,	Knight,	Smith, Geauga,
Cunningham,	Kramer,	Solether,
Davio,	Kunkel,	Stalter,
Donahey,	Lambert,	Stevens,
Doty,	Leete,	Stewart,
Dunlap,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Taggart,
Earnhart,	Malin,	Tallman,
Eby,	Marriott,	Tannehill,
Elson,	Matthews,	Tetlow,
Evans,	Mauck,	Thomas,
Fackler,	McClelland,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Weybrecht,
Hahn,	Nye,	Wise,
Halenkamp,	Okey,	Woods,
Harbarger,	Partington,	Mr. President.
Harris, Ashtabula,		

Mr. Winn voted in the negative.

So the proposal passed as follows:

Proposal No. 331—Mr. Walker. To submit an amendment to article VIII sections 12 and 13, of the constitution—Relating to the board of public works.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VIII, SECTIONS 12 AND 13.

Strike out sections 12 and 13 of article VIII, and in lieu thereof insert the following:

So long as this state shall have public works which requires superintendence, there shall be a superintendent of public works appointed by the governor for one year whose duties and powers shall be defined by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. ANDERSON: I move that the usual number of copies of Proposals No. 240 and No. 331 be printed.

The motion was carried.

The PRESIDENT: The question now is, Shall the motion by which Proposal No. 25 was indefinitely postponed be reconsidered?

Mr. BROWN, of Highland: I move to lay that motion on the table.

The motion was carried.

Outdoor Advertising—Registering and Warranting Land Titles.

The PRESIDENT: Proposal No. 333—Mr. Peck. The proposal was read the second time.

Mr. PECK: I hope you will not put the skids under this. I do not think any proposition has come before the Convention which is so completely the work of myself as this. On Proposal No. 184, which you kindly passed, I had the assistance of a great many able men, but this is the work of my own unbridled genius, though it was instigated by a great many people in Cincinnati. I was continually asked by social and business clubs, women and men both, why we didn't do something to stop the billboard nuisance. I had investigated a little and they explained to me a little, and I understood why they thought it was up to us to do something about it. They said every time they tried to enforce any regulation or do away with the billboard evil before the police court or in various courts to stop their operations of defacing the landscape of the state, the offenders had always taken refuge in their claim of the constitutional right of property. I have a right to put as many billboards on my property as I please. I have a constitutional right. Therefore nothing could be done. So here is the only place that we can correct it. This nuisance is a great one. It is being talked about all over the United States. Everywhere they are seeking to remedy it. I have seen a large convention, much greater than this Convention, debating on that one subject, and as this is the only place where it can be corrected in Ohio I am earnestly in favor of this proposal and hope it will be adopted.

The question being "Shall the proposal pass:

The yeas and nays were taken, and resulted—yeas 68, nays 28, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Okey,
Antrim,	Harter, Stark,	Peck,
Beatty, Morrow,	Hoffman,	Peters,
Beatty, Wood,	Hursh,	Pettit,
Beyer,	Johnson, Williams,	Redington,
Brown, Highland,	Jones,	Rockel,
Collett,	Kehoe,	Roehm,
Colton,	Keller,	Rorick,
Cordes,	Kerr,	Shaffer,
Crites,	Kilpatrick,	Smith, Geagua,
Crosser,	King,	Solether,
Cunningham,	Kunkel,	Stevens,
Davio,	Lambert,	Stewart,
Donahey,	Lampson,	Stilwell,
Doty,	Leete,	Stokes,
Dwyer,	Leslie,	Tetlow,
Eby,	Longstreth,	Thomas,
Elson,	Mauck,	Ulmer,
Farrell,	Miller, Crawford,	Weybrecht,
Fess,	Miller, Fairfield,	Winn,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Harris, Ashtabula,	Norris,	

Those who voted in the negative are:

Brattain,	Knight,	Pierce,
Campbell,	Kramer,	Price,
Earnhart,	Ludey,	Read,
Evans,	Malin,	Riley,
Fox,	Marriott,	Shaw,
Halfhill,	Matthews,	Taggart,
Harbarger,	McClelland,	Tallman,
Harris, Hamilton,	Nye,	Wagner,
Holtz,	Partington,	Watson,
Hoskins,		

So the proposal passed as follows:

Proposal No. 333—Mr. Peck. To submit an amendment to article XV, section 10, of the constitution.—Relative to the use of property for display advertising.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be adopted regulating and limiting the use of property on or near public ways and grounds for the public display of posters, bill boards, pictures and other forms of advertising.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next order of business is the reading of Proposal No. 334—Mr. Jones.

The proposal was read the second time.

Mr. JONES: Mr. President and Gentlemen of the Convention: I endeavored to make this proposal one without any legislative features whatever. Its purpose is simply to clear the way for the adoption in Ohio of what is known as the Torrens system of land titles. I want to be as brief as I can on this matter and I promise not to occupy more than ten minutes. I want to explain to those who have not given any thought to this matter the salient features of it. This system involves the registering of titles and in order that they may be registered the titles must be passed upon by a court of competent jurisdiction and only titles that are found to be good can be registered. A title, so registered, imparts absolute indefeasibility; in other words, a title registered can never be attacked for any cause. It is absolutely good for all purposes in law. The transfer of title thereafter is made as simple as the transfer of a certificate of stock in a corporation or a bond or a note or a horse or any other article of personal property. After your title is registered and a certificate put in the proper place in the record you are given a duplicate certificate and if there are any encumbrances they are noted on your certificate. If you want to transfer the property you can either execute an ordinary deed or enter on the back of your certificate an assignment, or if you want to borrow money on it you can transfer the certificate of title for that purpose. If you want to borrow money and give a formal mortgage, you can have the mortgage executed and all the party desiring to lend the money needs is to be shown your certificate. If the certificate is brought down to date, he has the whole thing before him. Your loan could be closed as quickly as if collateral were put up. A sale of a piece of land could be closed about as quickly as you could close up a sale of a horse or a block of stock. In other words the purpose of the whole system is first, to settle titles so that there will be no question as to the validity of a title, and second, to so facilitate the transfer of real estate that it can be made just as simple and just as effective, so far as passing the title is concerned, as the sale of personal property. In short, as Judge Peck suggests, it makes real estate a quick asset, absolutely so. New certificates are issued on each sale and transfer.

Now there is one other feature to which I want to call your attention and which has created a stumbling block against this system in Ohio. It is against our notions of

Registering and Warranting Land Titles.

justice that anybody should be cut out of his rights in property by mistake or otherwise without being made whole; so that wherever this system has been adopted, while it requires that the application shall be made to a court and the court shall examine the title and determine whether it is good, yet if it should turn out that the court had made a mistake in the adjudication and somebody would afterwards come up that had a valid and just claim, the sense of justice is so keen that there has always been a provision for a small fee of about one-tenth of one per cent upon the value of the property which shall go into a fund that is held to meet the cases where the parties have been deprived wrongfully of their property by the certifying of the title in some one else. There are a number of minor features, but those are the main ones. The system was first adopted fifty odd years ago in Australia in seven or eight provinces, and then in all the British provinces of the far East, including New Zealand and Tasmania, then in Scotland, Ireland and in England herself and in every one of the Canadian provinces, and it was in force in Prussia in a modified form for fifty years before it was adopted in Australia. Switzerland and many of the other European countries and six or seven states of this country, including Massachusetts, have adopted it. It was once adopted in Ohio and declared unconstitutional. It is in effective operation in Massachusetts and I have in my desk for inspection of any member who wants to see it, a letter from the secretary of state of Massachusetts in which he says that they cannot take care of the applications as rapidly as they come in for registration in their land courts.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out of lines 5 and 6 the words "political subdivisions thereof" and insert in lieu thereof the word "counties".

Mr. KNIGHT: I think the counties should do that. I do not think that other political subdivisions should.

Mr. JONES: It should be left to the legislature as to what should be done.

Mr. KNIGHT: Would it not be needless to allow the smaller subdivisions to do it?

Mr. JONES: I wanted to make this matter purely a constitutional provision and let the legislature provide the details.

Mr. KNIGHT: I think we should not regard anything less than a county in this matter.

Mr. JONES: In 1893 the general assembly passed an act providing for the appointment of a commission of three by the governor to draft a bill for the purpose of making this system applicable in Ohio. That commission spent three years in the study of the question and an examination of the system as it prevailed in the various jurisdictions in Australia and elsewhere and finally reported to the legislature in 1896 a bill which it thought would overcome the constitutional objections which had been urged to the adoption of the system in Ohio. That bill was enacted into law by the legislature and went into effect. Its constitutionality was sought to be established by the auditor of state in a suit which he brought in the supreme court for that purpose, and the supreme court, under the view of the law it then entertained, was compelled to hold the act unconstitutional,

Mr. PECK: And that is why we are here now and that is particularly why we are here with this proposal.

Mr. JONES: One of the grounds upon which the supreme court held it to be unconstitutional was that it would violate the constitutional provision with reference to due process of law. That objection could be remedied without this proposed constitutional provision in the same way they have avoided it in Massachusetts and other places, but our supreme court said it was unconstitutional also in that it engaged the state in a private business, that it was not a function of government to do anything except to perform those acts which were for the general public good, and that insuring titles was essentially not different from the business of insuring property against loss by fire or insuring life.

Now the supreme court of Massachusetts and the supreme court of Illinois and the supreme courts of some of the other states differed from our supreme court on that proposition. Our supreme court argued that these provisions after all were merely for the benefit of persons who registered their titles under the system. The supreme court of the other states took the view that while there was a direct benefit to those who registered under the system, yet it was also a public benefit and that every body was indirectly interested in having real estate in such shape that the titles would be absolutely good and that it could be readily handled, and on that ground they differed from our supreme court. I provide here for meeting that objection of the supreme court upon the theory that it is not likely to reverse itself, although the supreme courts of other states have held differently.

Mr. CUNNINGHAM: What would be the probable expense to have titles registered under the system?

Mr. JONES: It was provided in the act of 1896 that there should be deposited twenty-five dollars upon filing the application, the excess to be returned.

Mr. CUNNINGHAM: Would that be the average expense?

Mr. JONES: It would depend on circumstances, the size of the property and the complexity of the title and all that. I think in a letter that I have from the secretary of state of Massachusetts they estimate that the average expense has been about twenty-five dollars.

Mr. CUNNINGHAM: What is the expense of a transfer?

Mr. JONES: All told I think on an average about two dollars. It is a very inexpensive operation.

Mr. KRAMER: I am not acquainted with that system. Do you have to have a complete abstract?

Mr. JONES: You go in with an application to register your title. The court of course requires you at the start to furnish the evidences of your title.

Mr. KRAMER: How do you do that?

Mr. JONES: You bring the original instruments, if you can get them, and they may ask you also to bring evidence in the form of an abstract showing that you are the owner of the property and giving an exact description of it. If your abstract shows there are any persons with adverse claims, those persons are made parties to the proceeding and they are notified and given an opportunity to be heard. The court determines, with all the parties before it just as in an ordinary action, whether your title is good.

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Mr. KRAMER: Then you proceed to advertise and it would be virtually bringing a suit.

Mr. JONES: It is.

Mr. KRAMER: What is the advantage of it?

Mr. JONES: After this is once done your title is registered and thereafter every time there is any transaction concerning it you don't have to go to a lawyer to get him to make an examination of the title.

Mr. BROWN, of Pike: Would not every owner of property have to employ a lawyer?

Mr. JONES: If he wanted to register his title it might in some cases be desirable, but where the system has been adopted it has never been made compulsory. Registering is entirely voluntary, but the advantages are so great, as the letter from Massachusetts indicates, that they come in fast.

Mr. BROWN, of Pike: Does not every owner have to employ a lawyer to trace his title when he wants to sell or borrow money?

Mr. JONES: Yes, generally.

Mr. BROWN, of Pike: Does he not have to employ a lawyer when he buys land?

Mr. JONES: Yes, generally he does.

Mr. BROWN, of Pike: Would he not have to do the same in this kind of a proceeding?

Mr. JONES: He could employ a lawyer if he wanted to.

Mr. BROWN, of Pike: Do you think the ordinary citizen is able to do it?

Mr. JONES: They do do it. There is a regular referee who takes charge of the matter and he examines your evidences of titles and reports to the court what defects if any he finds. Of course the services of an attorney would not be objectionable. The details in some cases would be complicated, but the experience in nineteen out of twenty real estate titles is that there is no serious question about the title.

Mr. BROWN, of Pike: Would not the court have to appoint that referee and the parties would have to pay him a fee?

Mr. JONES: He is a regular officer of the court.

Mr. BROWN, of Pike: Who pays that officer?

Mr. JONES: Provided for by law. In many places he is a salaried officer of the court. The fees charged go into a fund out of which that salary is paid, with other expenses.

Mr. DOTY: In those places where this system is optional, as against the old system, do you not find that this system is increasing in use?

Mr. JONES: Yes. It has increased and increased until it is overwhelming the courts administering it.

Mr. DOTY: You cannot create a cloud on the title except in the recorder's office?

Mr. JONES: No, sir.

Mr. DOTY: It must all be on one record?

Mr. JONES: That is one of the features. Everything that affects the title is right there on one page of a record in the recorder's office. Mortgages would be entered there, judgments, mechanics' liens, executions, suits, tax sales and everything that could be an encumbrance.

Mr. HARRIS, of Hamilton: Ninety-eight per cent of the titles are good merchantable titles and probably not to exceed two per cent are found to be so defective

as to be rejected. Under the Torrens system the farmer or owner of property in a city would bring the deed and all his evidences of ownership to the court. He would not have to employ any lawyer at all until the court's officer, this referee, came to him and said: "Mr. Farmer or Mr. Cityman, we find a defect in this title," and they would require that defect to be cleared up before the title was found good. And upon paying this one-tenth of one per cent, which on a hundred-acre farm would amount to about ten dollars, he would be given a certificate that the title was absolutely clear, and that farmer can then go to the bank and borrow money quickly and probably one per cent lower because the lender of the money knows the title is absolutely perfect and he does not have to depend on any lawyer. The farmer borrows the money and will be able to get his money so much cheaper. He would not have to be put to the expense of an examination, which must be paid by the borrower. Is not all that true?

Mr. JONES: Yes.

Mr. HARRIS, of Hamilton: And only when the title is found defective would he have to employ a lawyer for the purpose of making the title good, and then the further great advantage would be that these titles would pass and money could be borrowed quickly and immediately as on bonds or the very best security.

Mr. JONES: That is all true; and there is one other thing that I want to state. When a party once gets one of these certificates his title is good and he knows his title is good, but he does not always know his title is good when he gets an opinion from a lawyer. I have just within the past three weeks had a case determined by the supreme court of Ohio where a lawyer declared a title good in which the purchaser lost the land. I was defending for the man and he had to pay for the land over again more than the first cost and in addition will have to pay for nine years' use of the land.

Mr. HOSKINS: I wish you would explain. You may have done it, but I didn't get it. After the owner has perfected his title and receives a certificate how is that title transferred?

Mr. JONES: Just as if you had a time certificate in a bank. You sign your name on the back of it and you go to the bank and say give me a new certificate and you surrender the old one.

Mr. HOSKINS: The officer who transfers the title must examine each certificate and assignment and be responsible?

Mr. JONES: That is the reason for incorporating in this proposal the conferring of judicial powers on the recorder. There is to that extent an exercise of judicial power by the recorder.

Mr. BROWN, of Highland: Were there an appeal to a court would not that weaken it?

Mr. JONES: No, sir; that was one of the grounds upon which the supreme court held the act of 1896 unconstitutional, that it was conferring judicial power on the recorder and allowing an appeal, when under the constitution a recorder could not exercise judicial powers.

Mr. BROWN, of Highland: Would not that appeal have to be made in every case?

Mr. JONES: No, sir; it would be like an appeal in any other case. The time for taking the appeal would

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be fixed. For instance, a mortgage is paid off and brought in to be released. The recorder must determine the validity of the release. This is in a sense a judicial act. If he makes an error the party prejudiced is given a right of appeal.

Mr. KRAMER: If these titles are so much better under these foreign systems than any other method, would not every piece of property in the state of Ohio be compelled to go into court and have its title put in the shape of a certificate because no purchaser would be satisfied with anything but the best?

Mr. JONES: He would not be compelled. It would be optional. But as a matter of fact a majority of men would prefer that kind of a title and it would be done.

Mr. KRAMER: Would not the purchaser compel him to do it?

Mr. JONES: It takes two to make a contract. He could not compel him if he didn't want to.

Mr. HOSKINS: You say that our supreme court prevented this being put into effect here. How was it put in effect in the other states?

Mr. JONES: They found a way in Illinois, Massachusetts, and in a number of other states by their supreme courts taking a different view of the similar constitutional provisions from those entertained by the supreme court of Ohio.

Mr. HOSKINS: Has the language used in this proposal been adopted in any other state?

Mr. JONES: No, sir.

Mr. HOSKINS: It is an entirely new proposition?

Mr. JONES: This proposal seeks to remove what was pointed out in *Guilbert vs. State*, 56 O. S. 626, as constitutional objections to the adoption of the Torrens system in Ohio.

Mr. TALLMAN: Suppose any large tract of land is partitioned and it is divided into a number of tracts among the supposed living heirs and one of those heirs that is supposed to be dead comes to life again, or there is a posthumous child not in existence at the time of the partition; how would that affect the registered title?

Mr. JONES: Whenever the title is registered it is good in the person in whose name it is registered. A fund is provided for just such a case as you mention, and the interest of that person would be made good out of the fund that is provided by the small guaranty fee. Experience has shown that not one-tenth part of the fund is used.

Mr. KNIGHT: It seems to me there is no occasion for departing from the historic practice in this state, so I have moved to amend the Proposal No. 334 as follows:

Strike out in lines 5 and 6 the words "political subdivisions thereof" and insert in lieu thereof the word "counties."

Mr. HARRIS, of Hamilton: I wish simply to say a few words on this subject. In my judgment it is one of the wisest and most beneficial proposals that has ever come before the Convention, and if adopted we cannot compute in money the benefit to the people of the state of Ohio if they wish to avail themselves of it. In the discussion that has occurred there is only one other point that I would like to make clear to you and that is this: If the court should err and declare a title good

that later investigation finds not to be good, the person in whom the title actually rests would suffer no injury. The court would allow that person the full value of his property at the time he proved his claim, and that would be taken out of the guaranty fund, so that it works absolute justice to all. Any of us who are at all conversant with economic laws knows that the easier you make your collateral the more readily you can obtain a loan and the lower rate you can get. It does not work an injustice to anybody. As the member from Fayette has shown you, it has been adopted by many of the civilized countries of the world and among these are half a dozen of the most progressive states in the Union.

Mr. HAHN: The great merit of the Torrens law is claimed to be that it makes the transfer of real estate as easy as the assignment of checks and notes is at present in the commercial intercourse of the world. I think the Torrens law makes the transfer of realty altogether too easy. The Torrens law is revolutionary in its character. It is unjust. As soon as the title is registered it is good against every unregistered claim against the property. From the time application is made to the county recorder to the moment that it is registered it leaves a wide scope for injustice and violence. I do not know under what circumstances it was introduced in Massachusetts or any of the other states. Why was this Torrens law proposal not introduced here earlier so that we could have had more time to give to its study?

Gentlemen of the Convention, the Torrens law is unconstitutional not merely under the federal constitution, not merely under our present constitution, but it will remain so also under the new constitution we are making, if adopted by the people. It is unconstitutional to take by force any private property and the new constitution will also demand that before a man can take private property even for public purposes the appraised value has to be first deposited in money.

The Torrens law demands no deposit of money, but merely refers the man who had to part with his interest to an uncertain insurance fund to be created by fees. You may pass the Torrens law, but any private corporation or individual that will ever bring it before the United States supreme court will surely succeed in having it declared invalid.

Mr. JONES: May I ask a question?

Mr. HAHN: When I am through I am willing to answer your question.

The federal constitution, article I, section 10, reads, "No state shall have the right to impair the obligation of a contract." Chief Justice Marshall in 1810 in the case of *Fletcher vs. Peck*, decided that the term "obligation of a contract" covers not merely contracts in general, but also conveyances of realty. The fourteenth amendment of the constitution of the United States says that no state shall have the right to deprive anybody of liberty, life or property without due process of law. What is the process of law in the Torrens law? None whatsoever! You have a claim against a piece of realty and you are not even notified about the suit against you; all that is necessary is to give a vague notice in a newspaper addressed to whomsoever it may concern, and then mention in it the name of the adjoining property owner and if the parties interested do not within a few

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weeks file their claim they are forever barred from doing so. Do you consider such a proceeding right in the state of Ohio? Is it just and fair that a man's interest in realty be taken away from him without any chance of defense? Such a law is nothing else but legalized robbery.

Mr. DOTY: I dislike very much to disagree with my colleague, and I also dislike to break up the extreme harmony that has been existing between the delegates from Cuyahoga, but I am compelled to do it. I desire to inform my colleague and the Convention that the supreme court of the United States has already passed favorably upon the Massachusetts Torrens system law, so that my colleague was mistaken in one part and being mistaken in one part it is barely possible that he was mistaken in some others.

Mr. HAHN: I am not mistaken in that. Even Mr. Jones says that on the fourteenth amendment of the constitution of the United States the supreme court did not come out directly in the syllabus. It is merely an opinion and we have no higher authority than Chief Justice Marshall, and in the work of Cooley on "Constitutional Limitations" you can find it.

Mr. DOTY: I want to say to the gentlemen that they don't get very far in their legal opinions before they are over my head, and I want to say that between the member from Cuyahoga, my colleague, and the gentleman from Fayette I would certainly decide with my colleague against the member from Fayette, but I am informed by the member from Fayette that such is the fact. Whether it is so or not I don't know. You remember my limited legal education, but in the past two or three years it has been my business to visit many places where the Torrens system has been in use on an optional basis—that is, they may or may not use it—and I have observed that anywhere I have found it the people, as they learn the usefulness of this new scientific way of doing the work, invariably use it in increasing numbers. In the city of Chicago they have the optional system. The system had small quarters in the recorder's office, but it has grown until now it is one of the largest departments. There are thousands of people in Chicago using the Torrens system. When I was in Minneapolis a few years ago I found this situation, that real estate agents who had property to sell published in their advertisements that one of the reasons it was a good piece of property was because it was a Torrens system piece of property. The people had learned the advantageous side of the Torrens system and therefore the people were advertising the fact that they used the Torrens system in connection with their land. If it were a detriment the real estate men would know of the fact and would keep the matter from being known. But that is not the tendency. The use of it in most places is optional, but the more the people use it the more they want it, and there is a continual growth in the number of people who desire to use the Torrens system. It is the scientific way of transferring property. If you buy a little piece of property in Cleveland worth only \$500 and go back to the time when Christopher Columbus discovered America and bring it on down to the present, with its five hundred grantors, it is perfectly absurd. It is antiquated. It is out of date. This is so much better that we should be able to use it if we want to.

Mr. STOKES: I move the previous question.

The motion was carried.

The PRESIDENT: The question is on the amendment offered by the delegate from Franklin [Mr. KNIGHT].

The amendment was agreed to.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 84, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Peck,
Antrim,	Harter, Huron,	Peters,
Baum,	Harter, Stark,	Pettit,
Beatty, Morrow,	Hoffman,	Pierce,
Beyer,	Holtz,	Price,
Bowdle,	Hoskins,	Read,
Brown, Highland,	Hursh,	Redington,
Campbell,	Johnson, Williams,	Riley,
Cassidy,	Jones,	Rockel,
Collett,	Kehoe,	Roehm,
Colton,	Kilpatrick,	Rorick,
Cordes,	King,	Shaffer,
Crites,	Knight,	Smith, Geauga,
Crosser,	Kramer,	Solether,
Cunningham,	Kunkel,	Stevens,
Davio,	Lampson,	Stewart,
Donahy,	Leete,	Stilwell,
Doty,	Leslie,	Stokes,
Dunlap,	Longstreth,	Taggart,
Dunn,	Marshall,	Tannehill,
Dwyer,	Matthews,	Tetlow,
Elson,	Mauck,	Thomas,
Farrell,	McClelland,	Ulmer,
Fess,	Miller, Crawford,	Wagner,
Fluke,	Miller, Fairfield,	Walker,
Fox,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Wise,
Halfhill,	Partington,	Woods.

Those who voted in the negative are:

Brattain,	Harbarger,	Norris,
Brown, Pike,	Keller,	Nye,
Earnhart,	Ludey,	Okey,
Evans,	Malin,	Tallman.
Hahn,	Marriott,	

So the proposal passed as follows:

Proposal No. 334—Mr. Jones. To submit an amendment to article II, of the constitution. —Relative to the creation of a system for the registration and guaranteeing of land titles and to simplify and facilitate the transfer of real estate.—Legislative.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 33. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or counties, and for the settling and determination of adverse or other claims and interests in and to the lands the titles to which are so registered, insured, or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and to effect and carry out said purposes, judicial powers, with right of appeal to the common pleas court, may by law be conferred upon county recorders

Registering and Warranting Land Titles — Form of Ballot Submitting Amendments to the People.

or other officers in respect to matters arising under the operation of such system.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

By unanimous consent Mr. Doty offered the following resolution:

Resolution No. 122:

Resolved, That the president is hereby authorized to appoint an additional member upon the standing committee on Submission and Address to the People.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. Lampson was appointed as the additional member of the committee on Submission and Address to the People.

By unanimous consent Mr. Donahey offered the following resolution:

Resolution No. 123:

Resolved, That the foregoing amendments to the constitution shall be submitted to the electors of the state at an election to be held on the _____ day of _____, one thousand nine hundred and twelve, in the several election districts of this state. The polls at said election shall be open at five thirty o'clock a. m. of said day, and remain open until five thirty o'clock p. m. of said day; the said election shall be conducted and the returns thereof made and certified to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of the votes cast on any of said amendments are in favor of such amendment or amendments, then the governor shall issue his proclamation, stating that fact, and said amendment or amendments shall become a part of the constitution of the state of Ohio, and not otherwise. That said amendments submitted shall be numbered in the order in which the proposals were adopted by the Convention on second reading, and each amendment shall be designated by such number and a title which shall suggest its subject matter. Said proposals with the number of the amendments corresponding thereto are as follows, to-wit: 54 (1); 118 (2); 100 (3); 2 (4); 184 (5); 236 (6); 93 (7); 212 (8); 163 (9); 5 (10); 249 (11); 62 (12); 64 (13); 242 (14); 122 (15); 209 (16); 24 (17); 7 (18); 261 (19); 309 (20); 169 (21); 72 (22); 304 (23); 241 (24); 166 (25); 322 (26); 252 (27); 272 (28). The ballots except as to proposals Nos. 151 and 91 at such election shall be printed in the following form, with each amendment designated by number and title thereon; those voters in favor of all said amendments may vote for all of said amendments by placing an X in the circle at the top of the column on said ballot, or by placing an X in the space before the word "For" in each and every title; those voters

opposed to all of said amendments may vote against all said amendments by placing an X in the space before the word "Against" in each and every title; those voters who desire to vote for certain amendments only may place an X before the word "For" in the title of such amendment or amendments; those voters who desire to vote against certain amendments and not against other amendments may place an X in the space before the word "Against" in the title to such amendment or amendments. Ballots marked with an X within the circle at the top on said ballots shall be counted for all of said amendments, except such amendments as are erased or marked within the space before the word "Against". Ballots not marked shall not be counted for or against any amendment. Ballots so marked as to clearly indicate the intention of the voter shall be counted.

The following is the form of ballot with the designations and titles to amendments thereon:

PLAN OF BALLOT (Suggested).

Special Election Saturday, Sept. 14, 1912.

OHIO CONSTITUTIONAL AMENDMENTS.



	YES	Limiting Veto Power of Governor.
	NO	
	YES	Reform of Civil Jury System.
	NO	
	YES	State Bond Limit for Good Roads
	NO	
	YES	Abolition of Justice of the Peace in Certain Cities.
	NO	
	YES	Initiative and Referendum.
	NO	
	YES	Reform of Judicial System.
	NO	
	YES	Investigations by Each House of General Assembly.
	NO	

Form of Ballot ! Submitting Amendments — Regulating Insurance.

	YES	Double Liability of Bank Stockholders and Inspection of Private Banks.
	NO	

Proposals number 151 and 91 shall each be submitted to the people for approval or rejection upon a separately printed ballot and separate ballot boxes provided for the reception of said ballots at all of the election booths in the state.

INTOXICATING LIQUORS.

	For License.
	Against License.

Proposal No. 91 shall be submitted in the following form:

ELECTIVE FRANCHISE.

	For Woman's Suffrage.
	Against Woman's Suffrage.

The resolution was laid over under the rule.

The PRESIDENT: The next business in order is Proposal No. 51. The committee on Corporations other than Municipal recommends passage as amended. The minority recommends passage of substitute. The question is on the substitution of the minority for the majority report.

The minority report was read as follows:

Strike out all after the title and insert in lieu thereof the following:

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of the state or doing any insurance business in this state for profit.

Provided, however, that the general assembly may establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident

or other insurance to the citizens of the state, and provided further, that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

Mr. MILLER, of Crawford: I shall attempt to explain briefly what the difference is between the original proposal and the report of the majority and minority. The purpose of this proposal was to cure what seemed to our mutual people a discrimination against the mutual interests of the state through an opinion rendered by the attorney general, and the matter was taken up with the hope of remedying it. I will read just briefly from the second opinion of the attorney general:

I dislike very much to be constrained to hold against the practice of insurance companies doing an honorable business, as I am sure has been done by the federation of mutual insurance associations of Ohio, and I regret exceedingly to feel compelled to adhere to my former opinion.

In addition to that we have had the opinion of the lower court of Darke county which sustains the opinion of the attorney general, so that if we are to have any relief at all it will only come through this Convention. The amendment offered by Mr. Woods at the time the proposal was up before, and which is now a part of the majority report, permits the state to control the rates of insurance companies. The minority report contains that provision and also permits the state to go into the insurance business. So far as the mutual insurance interests are concerned, we are not fearful of either one, because the cost of mutual insurance in the state is lower than it could be even under the operation of the state. The last report shows that the average rate of mutual insurance companies in the state is only \$1.98 per \$1,000, while the rate for cash companies is \$3.33. We claim that mutual insurance does not only benefit its members, but every purchaser of insurance in the state of Ohio. Do you know that while the rates of insurance have gone up in practically every city in Ohio, they have not gone up in the country for twenty years? And why? Because the mutual insurance companies have been in operation there.

Now just for a moment I will do what I did not intend to do, refer to the work of some mutual insurance companies. Eleven years ago the home owners in three cities, Bucyrus, Galion and Crestline, concluded that they were paying too much insurance on residence property. We organized a mutual insurance company and we have been in operation eleven years. Our rate has been 5.3 cents on \$100.00. The general agents of cash companies came into our city about five years ago with the expectation of raising the rates of the cash companies on that kind of insurance. Our local agents said to them, "This business is all going to mutual insurance companies now and you will ruin our business if you do that." They prevented a raise and they are now issuing five-year policies at the same price they formerly charged for a three-year policy. They issue five-year policies to the home-owners of Bucyrus for the same price that you people in Columbus are paying for three-year policies. So here is an opportunity for the state to recognize the

Regulating Insurance.

merit of mutual insurance and do the very thing that is sought to be done by this amendment.

Mr. KRAMER: Is the only thing you are asking for on behalf of the interests you represent that the mutual insurance companies may insure public property?

Mr. MILLER, of Crawford: That is all we want.

Mr. STEVENS: At the risk of repetition I want to say that the difference between the minority report and the majority report in this case is simply the amendment submitted by myself. The original proposal introduced by the member who has just spoken was amended by a provision which provided that the legislature of the state should have the power to regulate insurance rates. An additional amendment was offered by me providing that the state should have the right to establish a bureau of insurance for the purpose of furnishing fire, life and accident insurance for the citizens of the state. The question is squarely on that issue. As stated by the president, the question is Shall the minority report be substituted for the majority report? The majority report does not contain the bureau of insurance amendment. The minority report does contain that. So that those of you who are in favor of establishing a bureau of insurance should vote to substitute the minority report for the majority report. Now I think that matter is clear.

Mr. HALFHILL: May I ask you a question?

Mr. STEVENS: You have occupied hours of time where I have only occupied minutes and I now refuse to yield to you out of my meager time. Besides, I asked the privilege of putting a question to you the other day and you flatly turned me down. I know the member from Allen [Mr. HALFHILL] will vote fairly and squarely against me. He is absolutely beyond redemption. He sinned away his day of grace a thousand years ago and there is no use in trying to reform him.

For a few minutes I want your attention to some figures that are absolutely startling. Now the good roads proposal that we introduced several weeks ago contemplates the bonding of the state to the amount of \$50,000,000 in the next ten years. I am going to show you by the figures that the state of Ohio is throwing away every year in clear, clean profit more money than it will take to build the good roads at \$5,000,000 a year. It is costing us more than \$5,000,000 a year in profits that go out of the state and never return. On page 18 of the 1911 report of the commissioner of insurance of the state of Ohio I find these figures, and I would like your closest attention.

In 1901 the total amount of premiums received by the fire insurance companies in Ohio was substantially \$10,000,000. The amount of losses which the company paid that year were substantially \$5,000,000. The people in 1901 paid in for insurance \$10,000,000 and got back in the way of loss payments \$5,000,000. Pretty good, two to one.

Now come down to the year 1910. The people of Ohio in the year 1910 paid out for insurance \$15,000,000. They got back in losses \$5,000,000. The amount of premiums of all the people of Ohio has increased in ten years from \$10,000,000 to \$15,000,000, while the fire losses in Ohio have not increased at all. Is not that absolutely conclusive that that \$5,000,000 went out of the state of Ohio to New York insurance companies?

Very little of this insurance is carried by Ohio companies, and if the insurance companies can do business for ten years, starting out by keeping one dollar out of every two paid to them, and afterwards two dollars out of every three paid to them, certainly that is a mathematical demonstration that the extra profit would be saved to the state of Ohio and you would have no trouble about your \$5,000,000 per year on the good roads proposition. You are giving that away and there is no doubt about it. It is an absolute demonstration by figures.

That is only the matter of fire insurance. Look where it is going to. Suppose the same ratio continues. In ten more years we will be paying out \$25,000,000 a year and our losses will be \$5,000,000. They are not increasing. Now what are you people who do not think the state should undertake something in this line going to do? Are you going to continue to allow the millions to flow out of the state?

Now, as to the method: It has been suggested that the state should take control of the insurance rates and should say what the insurance companies of Ohio may charge. That in itself will doubtless do some good in the way of regulation, but I want to say to you it is not enough. Why, over in New York they had an insurance investigation a few years ago and the stench of it spread all over the United States. It was something terrible. The Armstrong bill was passed and that was the first real regulation of the insurance business in New York. Now there is no use to tell me it regulated it because I know better. The information that I have is in the possession of nearly every delegate in this Convention. Before that investigation I was carrying an insurance policy in the John Hancock, one of the old reliable companies, for \$5,000. I am carrying that policy yet. Notwithstanding before that investigation the whole business was reeking with corruption, and notwithstanding that since the Armstrong bill they claim to have thoroughly regulated the insurance business, I am paying the same premium on that old-line insurance now that I did previously. All there was in it was a nine days' wonder and all there ever will be in any attempt to regulate the insurance business by supervising its rates will result as did the Armstrong bill. It won't hurt the insurance companies a bit. It won't help the people a bit. The only way to do anything with them is to put competition up against them.

The first member who spoke has told you about the history of his town, showing where the mutual companies came into competition with the cash companies and down came the rates pell mell. That will be the story all over the state of Ohio just as soon as you put the state in competition with the insurance companies, and this will be another case of coming events casting their shadows before, because just as soon as the legislature is given the power to establish a bureau of insurance just that soon will the insurance companies doing business in Ohio proceed to get together and insurance will come down and down and we will save \$5,000,000.

You may say you don't want to put the state into the insurance business. Since when was it a crime for the state of Ohio to go into business? The last ten days have been spent solidly in putting the state of Ohio in one kind of business or another. First came home rule

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for cities. That gave the cities and villages of Ohio rights to go into all sorts of business. Then came the forestry proposal. It was passed, thereby giving the state the right to go into the forestry business, and only today you passed a proposal for a land-registration system to be established in the state of Ohio. What is that except the insurance of land titles? So you have been putting the state of Ohio into business almost every day since the Convention began. Why should we now shy, like a country horse, at a red automobile, at putting the state into business? And the further this progresses to a greater extent will you find the public in business of various kinds. Why, take the national government. We are in the postal savings business, the post office business, almost every sort of business. We are in the canal business, we are trying to get into the trolley business, the water works business and we know the insurance business as it is now carried on is doing far more harm and costing far more money than all of these other businesses. Now I want you to clearly understand, my friends, that it is not my purpose and it is not the intention of this proposition to start up here in the state house a great big insurance business in Columbus and not do anything else. I want simply to give the state the right to do anything it wants to do for the protection of its citizens, to furnish those citizens insurance in the various counties at reasonable rates.

The time of the delegate here expired and on motion was extended five minutes.

Mr. STEVENS: I feel grateful to the Convention and will not impose upon your good nature, but I simply want to add a few words as to how nicely this system I propose will fit in with the present order of things.

At present we have in Ohio an insurance department and at the head of that insurance department an officer who has so much time that he can attend to business on the outside. That department is so constituted that without an expenditure of more than \$5,000 the insurance business of the state could be started. In every auditor's office is the valuation of the property, and the foundation upon which the insurance is based must be values, and every spring an assessor goes around over the state examining the property; and we have the fire marshal's office and that fire marshal's office has really been doing a great work, but who is getting the benefit of it? Not the state of Ohio, because we are paying \$5,000,000 extra and that fire marshal's office is dividing and classifying and working for the benefit of the insurance companies and for no other purpose. I believe some system should be established by which the people of the state of Ohio should get some benefit and keep down the premiums at the same time, and you will never get that in any other way except by the state going in competition with the insurance companies.

The question of life insurance resolves itself to about the same thing. While we are paying out \$15,000,000 we are getting back about \$5,000,000 in fire insurance. We are paying out \$30,000,000 and getting back \$10,000,000 in life insurance. When you depart from the ordinary forms of insurance the figures become even more startling. Take the insurance commissioner's reports on the Fidelity and Casualty of New York, which is one of the great financial institutions. Out of \$1,800,-

000 received they pay out \$700,000 in accident insurance. Another company takes in \$1,100,000 and pays out \$500,000. So it is all the way down the list.

The PRESIDENT: The presiding officer wants to correct an error. We are acting on the minority report and the rule under which we are proceeding is five minutes, but since I made the mistake I should like to ask to extend to the chairman of the committee fifteen minutes.

Mr. HOSKINS: I am not an insurance expert and I do not care to take up much time in the discussion of this question, but I want to call attention to the fact that this is an important matter. I should like each member to give the minority and majority reports careful attention. The difference between the two reports is that the majority report is signed by ten and the minority report by seven members of the committee. The committee unanimously recommended Proposal No. 51 by Mr. Miller. Then when it came upon the floor there was a discussion of it and Mr. Woods offered an amendment and that was followed by an amendment by Mr. Stevens. After discussion it was referred back to the committee, and the committee, after having several hearings upon the matter, accepted in a great part the Woods amendment, and that is in the majority report and this is signed by ten members of the committee. Then the minority report embraced all that was in the amendment offered by Mr. Stevens. The ten members who signed the majority report are not in favor of putting the state into the insurance business. We believe by the incorporation of the Woods amendment we have provided as far as we possibly can go upon that proposition. It is conceded by everyone that the mutual insurance companies are not organized for the purpose of doing business at a profit and that they are attempting to give insurance to the public at cost, and there is no question that they are doing that. Of course, the law requires certain reserves to be carried in order to insure safety, and the larger the reserves carried the safer the company is and the more it is sought as a medium of insurance. The very idea of insurance is to make the company perfectly safe. Now, from all that I can gather—I do not understand some of the figures read by Mr. Miller, of Crawford, but in a general way it seems to be conceded that the mutual companies are able to do fire insurance business from twenty to thirty-three per cent lower than the old-line companies. I have had considerable experience and have made some observations. I am very largely insured in mutual companies and I know that the insurance runs twenty per cent less in the mutual than in the old-line companies. In other words, the mutual companies in which I carry insurance and of which I have some knowledge are doing an insurance business at twenty per cent less rates than the old-line companies. The average rate I think is about that, although some say it is thirty-three per cent.

It is impossible to fix an absolute rate for fire insurance. The great fires come, the conflagrations come, and companies must be strong enough to stand these extreme losses. We have many cases in which companies failed where extraordinary fires have taken place. Now if mutual companies are furnishing this fire insurance at from twenty to thirty per cent less than

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the old-line companies furnish it there is not a wide margin of difference left there. If the state of Ohio undertakes to control rates then I have no objection if that amendment of the committee carries.

Now the main point is not so much the premium charge as the expense of operation which the insurance department should have control of, and what is true of fire insurance is true also of life insurance. The abuses have grown up because of the expenses of operation, but the law is not undertaking to control these expenses of operation, and the Woods amendment to the original proposal would take care of that matter in both fire and life insurance.

In reference to life insurance—I think we all pay life insurance—we are all more or less acquainted with the rates and we are all in fraternal life insurance, and if the state went into the insurance business it would come into conflict with the fraternal orders of insurance and with the life insurance companies. You are acquainted with the rate you are compelled to pay in your fraternal insurance life companies. A large fraternal company in which I carried part of my insurance a few years ago was furnishing life insurance and it was being operated at cost. It was actually furnishing insurance to its members at cost, but it got into financial trouble and was compelled to advance its insurance rate until today I am paying practically what the old-line rates are. If the full monthly premiums were paid as they have been assessed it would be an old-line rate on \$3000 of insurance which I carry in that organization, but if the death rate is small enough and the premium receipts are sufficient there will be about two months a year that the premiums will be remitted. Do you mean that the state of Ohio would be put in competition with a fraternal organization that is carrying on business for the benefit of its membership at large? And what applies to this organization applies to every organization in the state of Ohio or doing business in the state of Ohio. Now when it comes to old-line life insurance rates I do not know how much those rates could be reduced. I am not an expert along those lines, but I do know about the fraternal organizations that have undertaken in the past years to furnish insurance at cost. When they established these extremely low rates which were attractive to many applicants and got them into membership as young men expecting it would be a provision for their old age and for accidents that might come to them, at a time when they could not get insurance in other companies, they found that those companies were failing them. Those companies have not been extravagantly managed for the reason that they were organized for the purpose of furnishing insurance at cost, and in the two fraternal organizations in which I carry insurance I know as clearly as I know anything that there has been no excessive cost of management, and yet both of these fraternal organizations have been compelled to raise their rates or quit.

Now with reference to the Armstrong investigation in New York, I don't know anything about it, but I want to call the attention of the members of the Convention to the fact that the great abuses in the management of the three large life insurance companies grew out of the deferred dividend policies which those companies instituted years and years ago. In other words,

the dividends were not to be paid until the maturity of the policy. A large part of the accumulations of those three large companies have grown out of the deferred dividend plan. One result of the Armstrong investigation was to do away with and prevent the company from writing this deferred dividend plan of insurance, and another result of the Armstrong investigation was to limit the volume of business that might be done by any company. But its particular application was to the three large companies in New York. A further result of that was to do away with certain forms of policies, one of which was the deferred dividend policy, and prevent the company from writing those policies hereafter.

Mr. STILWELL: What was the object of the Armstrong commission in limiting the amount of business that an insurance company could do?

Mr. HOSKINS: They were getting too big.

Mr. STILWELL: It was dangerous.

Mr. HOSKINS: Yes; I agree with you, but that is eliminated. So far as that is concerned the state of Ohio has no control over it.

You understand that every insurance company, every life insurance company, every fraternal company and every old-line company, must submit its rates to the insurance department of the state and the insurance department will not permit any company, under the present law, to write life insurance policies below certain rates and insists that the rate should be at a certain figure for the purpose of taking care of future losses of the company. If we give to the lawmaking power of the state a right—as I believe we ought to do—to regulate if there are abuses that creep into the insurance system—and I don't say there are any—to regulate the matter of rates and expenses, and, in other words, to give them full power over the situation in this state, we have gone as far as we ought to go.

While I am not familiar with it I think it will be conceded by those who are, that this proposition of putting the state into the insurance business is not a new one, but is an old one. It has been tried out time and again and has been found to be a failure in times past; so in the judgment of the committee we urge that the Convention reject the minority report and adopt the majority report with the provisions suggested.

Mr. STEVENS: You say that government insurance has been tried out and has failed. Where?

Mr. HOSKINS: In England.

Mr. STEVENS: Was not the state insurance proposition introduced in England by no less a person than William A. Gladstone, and is not that insurance in operation after fifty years?

Mr. HOSKINS: And it has proved to be an absolute failure and has gone down, down, down.

Mr. STEVENS: I understood you to say you thought that the insurance was being done at the lowest possible rate.

Mr. HOSKINS: Yes.

Mr. STEVENS: If you think so how do you account for the fact that in the ten year period the receipts were \$10,000,000 and the expenses were \$5,000,000, and another time the receipts were \$15,000,000 and the expenses \$5,000,000? Do you think the business is being done at a bare margin of profit? What becomes of that \$5,000,000?

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Mr. HOSKINS: You don't seem to remember that the companies are required to carry large reserves.

Mr. STEVENS: I am speaking of receipts and disbursements.

Mr. HARTER, of Stark: I do not believe that most of the members of this Convention have original minds. I know I have not. I reason by comparison. I had a little object lesson this morning and I learned something about insurance rates. I took out a policy today in one of the London companies. I don't know what company it was, but the insurance agent handed me my policy and the rate was six-tenths of one per cent for three years. That would be about \$5 a year, and if we could save thirty-three per cent on that it would be about \$1.60 or the premium would be \$3.40. So \$5 paid the insurance agent and the premium for one year and \$15 paid for three years. Now I doubt whether the state of Ohio could furnish insurance much cheaper than that. The best rates in this state are secured by the farmers. They have a good many mutual insurance companies among themselves, but they have the best line of risks. I do not believe that insurance could be done at much less rates than that for which I insured this property. I do not like to see the state go into all kinds of business. We have gone into the printing business and it was said that that measure was strictly legislative. I don't see why this matter of fire and life insurance should not be left to the legislature. Let us try the printing business out before we go into the insurance business. I think it is a dangerous experiment. I do not understand life insurance or fire insurance and I am not a stockholder in any of those companies. Yes, I believe I do own \$100 of life insurance stock in the state of Ohio. It is an Ohio corporation, but I don't make any fortune out of it.

Mr. STEVENS: Will you answer a question?

Mr. HARTER, of Stark: I don't know that I can answer it.

Mr. STEVENS: Do you know the fact that the fire losses of your Atlas Company were \$800,000 and that the single item of commissions to agents was \$360,000?

Mr. HARTER, of Stark: How many American millions did that insure?

Mr. STEVENS: I could not say.

Mr. HARTER, of Stark: They are represented by a great many agents and have to pay taxes, etc.

Mr. STEVENS: Then is your argument against this based on the fact that this company should be an eleemosynary institution?

Mr. HOSKINS: Do you conceive that mutual companies are being operated at cost?

Mr. STEVENS: No, sir.

Mr. HOSKINS: You think rates can be reduced?

Mr. STEVENS: Yes; I do.

Mr. HOSKINS: Then I have no further argument.

Mr. KRAMER: Just a word about the minority report. I would like to call the attention of the members to the fact that no man ever takes out insurance, especially life insurance, unless he is hounded to death. I believe in life insurance as much as I believe in anything. I carry a little life insurance and I should carry more, but I will never take out a dollar's worth more until I cannot refrain. I thought when I came down here I would escape the life insurance agent, and,

lo and behold, when I came into the Constitutional Convention I found I was still hounded by life insurance agents.

I tell you the state of Ohio will never make a success of this without having a horde of agents. That is what I want to call your attention to.

The member from Tuscarawas [Mr. STEVENS] is not fair. He knows that it costs an immense amount of money to get these life insurance agents and that in the expenditure of this vast sum of money he mentions, a great deal of it was given to the agents.

Mr. STEVENS: Can I ask a question?

Mr. KRAMER: No, sir. Not right now. You didn't show much courtesy to my friend back there [Mr. HALPHILL]. I say that the state cannot engage in the life insurance business without maintaining a vast horde of agents. Wouldn't it be a grand scheme for the state of Ohio to have eighty-eight agents in every county soliciting business?

Mr. ULMER: May I ask a question?

Mr. KRAMER: Yes; I yield to you.

Mr. ULMER: Does the minority report compel the state to go into the insurance business? It doesn't compel it. It is in the constitution, so that if there is reason for it to go into the business it can go in.

Mr. KRAMER: I am one of those persons who are not in favor of saddling responsibility upon somebody or something else. If I don't believe in a thing I am not willing to saddle the responsibility of engaging in it upon the legislature and whenever the time comes when the legislature or the state of Ohio should engage in the insurance business we will find ways and means to enable them to do so, but I am not willing to have the state of Ohio go into the insurance business when I know it cannot succeed to any extent without a horde of agents running over the state of Ohio and who possibly would not be interested, but might be used for something else. Just think how hard they would work! Why, they would become grayheaded in a year on account of the energy they would put into the business. I don't want any eighty or eight-eight thousand men running over the state spending their time electioneering. Then another thing, suppose we have a Titanic disaster or a Chicago fire or a San Francisco earthquake and have no reserve fund. Bless you, gentlemen, let us not adopt the minority report without mighty careful consideration.

Mr. DOTY: Suppose we did have some such disaster as you have referred to. Do you know of any combination of insurance companies that are financially able to stand as great a drain on their resources as the state of Ohio?

Mr. HARRIS, of Hamilton: How would the losses be paid, by taxes?

Mr. CAMPBELL: And under the one per cent limit, too?

Mr. KRAMER: I have said all I want to say on this matter. I think I can conscientiously vote for the majority report. This is not so dangerous, but let us keep away from this minority report.

Mr. STILWELL: Mr. President and Gentlemen of the Convention: Just a word relative to the members of the committee respectively that signed the majority report and the minority report. Two of the gentlemen

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who signed the majority report voted with the minority in committee and signed the majority report under a misapprehension of what it was, so that as a matter of fact the report that is in here as the majority report is really the minority report.

Mr. HOSKINS: I wish you would enlighten us on that subject. Mr. Eby signed both by mistake.

Mr. STILWELL: Mr. Eby voted with the minority in committee and because the majority report happened to be presented to him he signed the report thinking it was the minority. The same thing is true of Mr. Smith, of Geauga.

Mr. HOSKINS: We took a tally on it in the committee.

Mr. STILWELL: Just a little further reference to these reports. The Convention had no more than taken up the discussion of this question before they were urged to delay a hearing upon it in order that somebody might come from somewhere in order to represent the great insurance companies of America. There was a meeting held in this hall and somebody came from the East. I can't recall his name, but mark you this fact about his appearance here: He was not representing any particular insurance company, but he was representing a combination of insurance companies through their president because the Armstrong commission had limited the business of those great insurance companies as to the amount they could do, and, being limited, they have combined, and now they have their president and their accounting and their different departments of business united through a centralized office. As a matter of fact, they are doing all the business that they can do, and when the limit placed upon the insurance company is reached they will simply reach out and get one more company that is not doing any business and put it in the combination and they will be able to sell about \$3,000,000 more of their business, just a little personal business. I carry some insurance in two of those companies and I have carried it for some length of time. In one mutual company I am paying fifty cents and in one of the old-line companies I am paying three dollars.

Mr. MAUCK: Are you complaining about the rate in the mutual?

Mr. STILWELL: No.

Mr. MAUCK: Then we have adequate provision to fight the old-line companies under the law.

Mr. STILWELL: No, sir; it is not sufficient. The fact of the matter is that the regulation might have some effect upon the reduction of the insurance rate, but it has not been sufficient to put the proper leverage on the old-line companies to beat down the exorbitant charges that they are making at the present time. Why is it that out of the rates heretofore charged they have been able to build those skyscrapers in the East and pay their presidents enormous salaries and agents enormous commissions for writing policies. As the question of the gentleman from Lucas well indicated, this doesn't put the state in the insurance business. If the general assembly sometime in the future thinks the insurance companies could be better controlled by putting the state in the insurance business it might be done.

Mr. HOSKINS: A question of privilege. I want to know something about that correction of the number that signed in the committee.

Mr. STILWELL: I have given that.

Mr. HOSKINS: Didn't ten on the call of the roll answer for the majority report and seven for the minority report?

Mr. STILWELL: You must be mistaken. There were not seventeen present.

Mr. REDINGTON: There were just fifteen. There were eight for the majority and seven for the other side. The two who signed by mistake were Mr. Eby and Mr. Smith, of Geauga.

Mr. CROSSER: I have frequently noticed in what little experience I have had that when for any reason there is a reference to some special committee or back to a committee of a matter which has come up for discussion before the legislative body itself, there really is a great deal more trouble in passing it when it comes back. That has been my experience. When it goes to committees of which I have been a member, there are experts who come in and explain it all to us, how it happened and what should and should not pass. I am not enthused about the government operation of this thing, but I am in favor of the minority report for this reason: There are no better means of coercion than the power of the state to go into the business itself if it sees fit to. If this proposition proposed that the state should go into the business of insurance I would hesitate a great deal before I would give my vote for it, but when it says that the state may go into the business if in the wisdom of the legislature it should do so, that is another thing. I think the state should have the power to do so, because there will be no better plan or means of bringing down rates of the regular companies than this method. You can regulate all you please. You can have your commission regulate prices, just as your railway commissions and your public service commissions, but it won't amount to a hill of beans unless you have some means of combating with them.

They say we must have eighty thousand insurance agents to get the business. Is that reasonable? If there is any truth about what my brother from Tuscarawas says about rates they charge, if the state can split that rate do you think it is reasonable that you would pay five or six agents a half bigger price to come to you? No, the people would find where the cheap insurance is and when the cheapest insurance is with the state they will come to the state. Don't let us assume to ourselves that infinite wisdom that the majority report contemplates. Every time you put any addition in the constitution that says shall or shall not you impute infinite wisdom to us more than to the people that are to come after us.

Mr. ELSON: You would not contemplate the state sending out agents to write insurance?

Mr. CROSSER: I want the state to be empowered to write insurance and properly advertise the matter, but not solicit. I have confidence in the proposition and I have confidence that when men know that they can get it cheaper and better one place than another they will go there. Now I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on substituting the minority report for the majority report.

The yeas and nays were regularly demanded; taken and resulted—yeas 50, nays 47, as follows:

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Those who voted in the affirmative are:

Beatty, Morrow,	Harter, Huron,	Pierce,
Brown, Pike,	Hoffman,	Read,
Colton,	Hursh,	Riley,
Crosser,	Kerr,	Rockel,
Davio,	Kilpatrick,	Shaffer,
Donahey,	Kunkel,	Smith, Geauga,
Doty,	Lambert,	Stevens,
Dunn,	Leslie,	Stilwell,
Dwyer,	Malin,	Tannehill,
Earnhart,	Marriott,	Tetlow,
Elson,	Marshall,	Thomas,
Fackler,	McClelland,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Hahn,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Woods,
Harbarger,	Pettit,	

Those who voted in the negative are:

Anderson,	Hoskins,	Partington,
Antrim,	Johnson, Williams,	Peck,
Beatty, Wood,	Jones,	Peters,
Brown, Highland,	Kehoe,	Price,
Campbell,	Keller,	Redington,
Collett,	King,	Roehm,
Crites,	Knight,	Rorick,
Cunningham,	Kramer,	Solether,
Dunlap,	Lampson,	Stalter,
Evans,	Leete,	Stewart,
Fluke,	Longstreth,	Stokes,
Fox,	Ludey,	Taggart,
Halfhill,	Matthews,	Tallman,
Harris, Ashtabula,	Mauck,	Weybrecht,
Harris, Hamilton,	Nye,	Winn,
Holtz,	Okey,	

So the minority report was substituted for the majority report.

The PRESIDENT: The question is now on adopting the report of the committee as amended. This is a final vote.

DELEGATES: The report has not been agreed to yet.

The PRESIDENT: It is altogether as to how you regard that second vote when you voted to substitute. The chair will rule that the substitute being adopted it does not do away with the vote on the committee's report as amended, so we will put the question to a vote.

The committee's report was agreed to.

The PRESIDENT: Now the question will go upon the adoption of the proposal and the secretary will call the roll.

The question being "Shall the proposal pass?"

The yeas and nays were taken and resulted—yeas 54, nays 44, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Halenkamp,	Miller, Fairfield,
Beatty, Wood,	Harbarger,	Miller, Ottawa,
Brown, Pike,	Harter, Huron,	Moore,
Colton,	Hoffman,	Pettit,
Crosser,	Hursh,	Pierce,
Davio,	Kerr,	Read,
Donahey,	Kilpatrick,	Riley,
Doty,	Kunkel,	Rockel,
Dunn,	Lambert,	Shaffer,
Dwyer,	Leslie,	Smith, Geauga,
Earnhart,	Longstreth,	Solether,
Elson,	Ludey,	Stevens,
Fackler,	Malin,	Stilwell,
Farrell,	Marriott,	Stokes,
Fess,	Marshall,	Tallman,
Hahn,	Miller, Crawford,	Tannehill,

Tetlow,
Thomas,

Ulmer,
Wagner,

Walker,
Watson.

Those who voted in the negative are:

Antrim,	Holtz,	Okey,
Brown, Highland,	Hoskins,	Partington,
Campbell,	Johnson, Williams,	Peck,
Collett,	Jones,	Peters,
Cordes,	Kehoe,	Price,
Crites,	Keller,	Redington,
Cunningham,	King,	Roehm,
Dunlap,	Knight,	Rorick,
Evans,	Kramer,	Stalter,
Fluke,	Lampson,	Stewart,
Fox,	Leete,	Taggart,
Halfhill,	Matthews,	Weybrecht,
Harris, Ashtabula,	Mauck,	Winn,
Harris, Hamilton,	McClelland,	Woods,
Harter, Stark,	Nye,	

So the proposal, not having received the requisite number, failed to pass.

Mr. WOODS: I move that the vote whereby Proposal No. 51 was lost be now reconsidered.

The motion was seconded.

The PRESIDENT: The chair would inquire how the gentleman voted?

Mr. WOODS: I voted the right way to make the motion.

Mr. PECK: I move to lay that motion on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 36, nays 64, as follows:

Those who voted in the affirmative are:

Antrim,	Hoskins,	Okey,
Brown, Highland,	Jones,	Peck,
Campbell,	Kehoe,	Price,
Collett,	Keller,	Redington,
Crites,	King,	Roehm,
Cunningham,	Knight,	Rorick,
Dunlap,	Kramer,	Solether,
Evans,	Lampson,	Stewart,
Halfhill,	Matthews,	Taggart,
Harris, Ashtabula,	Mauck,	Tallman,
Harris, Hamilton,	McClelland,	Weybrecht,
Harter, Stark,	Nye,	Winn,

Those who voted in the negative are:

Anderson,	Harbarger,	Peters,
Baum,	Harter, Huron,	Pettit,
Beatty, Morrow,	Hoffman,	Pierce,
Beatty, Wood,	Holtz,	Read,
Brown, Pike,	Hursh,	Riley,
Colton,	Johnson, Williams,	Rockel,
Cordes,	Kerr,	Shaffer,
Crosser,	Kilpatrick,	Smith, Geauga,
Davio,	Kunkel,	Stalter,
Donahey,	Lambert,	Stevens,
Doty,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Tannehill,
Earnhart,	Malin,	Tetlow,
Elson,	Marriott,	Thomas,
Fackler,	Marshall,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Wise,
Hahn,	Partington,	Woods,
Halenkamp,		

So the motion to table was lost.

The motion to reconsider was carried.

Mr. WOODS: I now offer an amendment.

The amendment was read as follows:

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Strike out lines 14, 15, 16, and 17 and 18 and in line 13 after "state" insert "for profit".

Mr. WOODS: Gentlemen of the Convention: I am not here this morning because I like to be. I was for the Stevens amendment. I would like to have seen that proposition go into the constitution, not because I am a believer in the state going into the insurance business, but because I wanted the state to have that club over the insurance companies. However, we were only able to muster forty-six votes for the Stevens amendment.

Mr. STEVENS: Fifty-four.

Mr. WOODS: My idea is when we cannot get a whole loaf we had better get a half. I don't like to see this proposal killed. I don't want to see the amendment I offer to it killed. There is not a man in Ohio who owns property who does not carry insurance, and I think it is ridiculous that whenever a man who has any property insured before he can get it insured in an old-line company the board at Columbus fixes the rate he will have to pay. I do not care what the business is, when it comes to a point that you cannot get the necessities of life—and insurance is a necessity of life—without the companies binding you and making you pay their price because there is no competition in that business, it is time for the state to step in and say something about that price. I say to you, gentlemen, that the fire insurance companies of this state have gone into an agreement and they have a board here in Columbus and that board fixes the price that we all have to pay. I think the companies have a right to make profits, but not to make the profits that they are making now.

Mr. HOSKINS: Do you mean to strike out the last two lines or the last three words of lines 16, 17 and 18? That would destroy the original amendment in the minority report. I don't believe you mean that.

Mr. WOODS: The minority report, lines 14, 15, 16, 17 and 18.

Mr. HOSKINS: But you have added the Miller amendment at the end of the minority report, so that it is in lines 17 and 18, and it would strike out what Mr. Miller was after.

Mr. WOODS: What I was trying to do was to strike out the Stevens amendment.

Mr. HARTER, of Huron: How can the state compel insurance companies to accept the rates the state may make?

Mr. WOODS: They cannot do it. But if we put this amendment in the constitution and then the general assembly passes a law under it, the insurance companies will be regulated just the same as any other corporation.

Mr. MARRIOTT: They accept it or go out of the business.

Mr. DOTY: I move to lay the amendment of the delegate from Medina on the table and I call for a division on that.

The motion was carried.

Mr. MILLER, of Crawford: I offer an amendment. The amendment was read as follows:

Strike out all after the resolving clause and insert the following:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association, whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association.

Providing however; that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of the state or doing any insurance business in this state for profit.

Mr. DOTY: A point of order. The Convention has once within half an hour voted this very amendment down by a ye and nay vote and the only way to get at that is to reconsider it.

Mr. HOSKINS: When was that done?

Mr. DOTY: The minority report was substituted for the majority.

Mr. LAMPSON: It is true that that amendment was included in the majority report, but the question that was put was on substitution of the one report for the other and not upon the adoption of an amendment.

The VICE PRESIDENT: The chair will rule that the amendment being in the report the vote was not specifically on it, but the report simply included the amendment. This is in order.

Mr. DOTY: I move that we lay this on the table.

The VICE PRESIDENT: The chair cannot recognize the gentleman to make the motion. The chair was trying to recognize the delegate from Delaware.

Mr. MARRIOTT: I move to amend at the end of line 13 by adding the words "for profit".

Mr. MILLER, of Crawford: I want that included in my amendment; I accept that.

Mr. FACKLER: I do not believe any man or set of men is wise enough or good enough to be master of other men. I realize in the piling up of the tremendous fund that is now accumulating in the city of New York from the great insurance companies there is a real menace to the liberties of the people. The enormous amount of \$1,500,000,000 is represented by three of those companies and they are in a position to bring about any disaster to prosperity or any depression to business that they desire. That is not a healthy power. How can you remedy it? The state itself will be forced to take some action.

Mr. DOTY: Do you not know that the state of Ohio regulates the rates charged for life insurance?

Mr. FACKLER: They have not exercised any authority at all.

Mr. DOTY: Do you not know that a life insurance company cannot do any business unless they abide by the rates provided by the state of Ohio?

Mr. FACKLER: No, sir; I don't know that. I say the policy holders should be protected. I say that the

Regulating Insurance.

control of that vast amount of money I have mentioned is a menace to the whole nation and in the near future we shall know of it.

Mr. WOODS: Is it not a fact before a life insurance company can do business in this state they have to get a certificate showing it is a good company and it has never anything to do with the rate?

Mr. FACKLER: That is my idea. My colleague [Mr. Dory] was taking the part of an Ohio corporation. I don't understand that the state of Ohio has any control whatsoever over the rates charged by foreign insurance companies. Now I would not place the right of the state to engage in this business upon any desire for a regulation of the rates particularly. It is a broader right than that. Many insurance companies are furnishing insurance at the lowest rate they can furnish insurance, but this piling up of great amounts of money is a menace to the liberty of the country.

Mr. HALFHILL: Are you aware of the fact that there are common law insurance contracts, and are they not all absolutely in the control of the state?

Mr. FACKLER: No; there are no common law insurance contracts that I know of any place.

Mr. HALFHILL: I mean by that as distinguished from an ordinary contract?

Mr. FACKLER: I am not familiar with the insurance laws. Do you know that there is such a law?

Mr. HALFHILL: Yes; I do as a lawyer, and I also know something about life insurance and establishing rates and controlling rates. You could not do business unless you submitted to the rates.

Mr. FACKLER: Has the state control of the rates?

Mr. HALFHILL: Absolute control. Even the form of the contract.

Mr. FACKLER: That was copied after the Armstrong law.

Mr. HALFHILL: No, sir; it was not copied after that.

Mr. HARRIS, of Hamilton: Are you aware that one savings bank in the city of New York has something like \$200,000,000 in bank?

Mr. FACKLER: No, sir; what bank is it?

Mr. HARRIS, of Hamilton: The Bowery Savings Bank. Do you consider that a menace to the people of the state of Ohio?

Mr. FACKLER: No, sir. But whenever any three large institutions, with their various national banks and their various trust companies with which they are affiliated, are in a position to do as those three insurance companies are doing, we know that they can make everybody else tremble. You know that as a banker and as a broker.

Mr. HARRIS, of Hamilton: Your statement is not correct. I am not a banker nor a broker. I never have been and I never expect to be.

Mr. FACKLER: I am misinformed as to your business.

Mr. HARRIS, of Hamilton: As a matter of information, do you know that every investment of those three great life insurance companies is regulated by law?

Mr. FACKLER: That is what they say and still lend out large sums of money on call loans upon collateral, and the law does not prevent them from calling those

loans whenever they want to. It is the power to call loans that is the power to bring about panics.

Mr. WINN: There is another side of this question that we have not touched upon.

The delegate from Defiance here yielded to a motion to recess.

On motion of Mr. Doty the Convention recessed until 7:30 o'clock p. m.

EVENING SESSION.

The Convention met pursuant to recess.

Mr. WINN: I was about to say at the time we recessed for supper that there are some features of the question that have not been discussed, and I was about to call attention to the fact that until recently there were very few life insurance companies in this state. The Union Central Life Insurance Company, an Ohio corporation, has been in existence a good while. It is a splendid company, with a good many policy holders in the state; but within very recent years, in fact, within the last two years, two large insurance companies have been organized in Toledo and one or two in Columbus, and since the commencement of this year the Gem City Life Insurance Company of Dayton was authorized to do business; in fact, it has been authorized to do business within the last four or five weeks. I speak of that company because it so happens that those who have to do with the organization of it are acquaintances and friends of mine. Not long since I was shown a list of the stockholders and I find on that list quite a large number of very respectable citizens of Defiance, a large number in Van Wert, a very great number in Columbus and page after page of stockholders who live in Cincinnati and Montgomery and all over the state. There were, I was told by the president, fifty-four agents out selling stock in different parts of the state. The Gem City Life Insurance Company with \$100,000 capital and \$110,000 surplus is one of the most promising companies ever organized to open business in this or any other state.

What does this mean? If we are to say that Ohio is going into the insurance business in competition with Dayton and these two new companies in Toledo and two or three companies in other parts of the state, it is practically ruination to them. They cannot do business. These stockholders, running up to many thousands, will have to pay their money for their stock and get nothing because whenever it is known that the great commonwealth of Ohio is going to set up business in competition with its citizens it means ruination to the business of the citizens. That is not all. Even though the state shall never engage in business it will write that into the constitution, and if we write into the constitution a provision that the legislature may whenever it sees fit go into the insurance business in competition with existing companies, no company in Ohio will ever be organized as long as that constitutional provision exists. I venture the assertion that if that provision is written into the constitution there never will be attempted the organization of another life or fire insurance company in this state.

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Mr. LAMPSON: Do you think the Ohio Farmer's Fire Insurance Company could compete with the great state of Ohio in the insurance business?

Mr. WINN: I do not. In every locality there is a little insurance company. Over in my county there is a farmers' mutual. It has a right to do business in Defiance and part of Williams and part of Paulding. It is writing insurance in all that part of the country. What is the result? Immediately the state of Ohio goes into the insurance business and we put the state in competition with the farmers' mutual, or with any of these other mutuals with which my friends are connected, we array against all of the work we have been doing here not only thousands of policy holders of the Union Central Life Insurance Company all over the state of Ohio, but all of the policyholders of all other Ohio institutions.

Mr. WATSON: Will you yield for a question?

Mr. WINN: No; I will not.

The PRESIDENT: The time of the gentleman is up. The delegate from Mercer is recognized.

Mr. FOX: I notice that the delegates from the cities and everywhere are all interested in their homes. A number of delegates say, "This does not interfere with you, but it a great help to us," and they have asked me to assist them. Here is a proposition that comes from the rural districts. Mercer county is a county of farmers and we have in our county one township that has a large association, a farmers' mutual, mentioned by Mr. Winn. They have done business in the fire insurance line for over thirty years. They have protected the farmers' interests at less than one-half of the money that they would have had to pay to the old-line insurance companies. Then we have right close to us a settlement of people called the Dunkards and they also write a part of the country. They are located in Miami county. That company does a great deal of business in Mercer, Preble and Montgomery counties. I think it does some in Shelby also. These people have insured farmers and they also insure houses in villages, and I know their rates average from twenty-two to forty-eight cents per hundred less than those of the old-line companies and you know what a saving that is. We also have another company, the Minster Mutual. The company covers a good deal of territory. It extends to a number of counties, and I know about one-half of the people in our town are insured in this company. I have been insured with them for twenty-four years and as a mutual company it is the cheapest I have known. It is the cheapest insurance I have ever been in. They have done business for more than twenty years and since the decision of the attorney general that it would be illegal to insure school houses and other public buildings in a mutual company, outside companies have come in and are trying to do business on the strength of the attorney general's decision.

Mr. WINN: You understand that if the amendment offered by Mr. Miller is adopted it merely cuts out the state insurance proposition and leaves all the rest intact?

Mr. FOX: Yes; I was opposed to that. I was looking at the interest of our people. If that is inserted I am in favor of it.

Mr. WINN: We are in favor of that, but the Miller amendment is a substitute for the minority report.

Mr. KNIGHT: No; the majority report for the minority report.

Mr. WINN: All right.

Mr. FOX: I also object to the state going into business. It is not best. I would not favor the state launching into that, but otherwise I would like to see the proposal pass.

Mr. STEVENS: I want to make two motions—that is, that further consideration of the pending matter be deferred and that it be placed at the head of the calendar for tomorrow. Then I want to follow that with a motion to adjourn to Chillicothe. I now offer the first motion.

Mr. WINN: I move that that motion be laid on the table, and on that I call the yeas and nays.

The yeas and nays were regularly demanded; taken, and resulted—yeas 41, nays 39, as follows:

Those who voted in the affirmative are:

Beyer,	Hoskins,	Peters,
Collett,	Johnson, Williams,	Pettit,
Colton,	Jones,	Pierce,
Cordes,	King,	Riley,
Crites,	Kramer,	Rockel,
Cunningham,	Lambert,	Roehm,
Davio,	Lampson,	Rorick,
Donahay,	Leete,	Shaffer,
Halenkamp,	Leslie,	Smith, Geauga,
Halfhill,	Longstreth,	Stokes,
Harbarger,	Ludey,	Thomas,
Harris, Hamilton,	Okey,	Winn,
Harter, Huron,	Partington,	Woods.
Harter, Stark,	Peck,	

Those who voted in the negative are:

Baum,	Fox,	Price,
Beatty, Morrow,	Harris, Ashtabula,	Solether,
Beatty, Wood,	Hoffman,	Stalter,
Bowdle,	Hursh,	Stevens,
Cassidy,	Kilpatrick,	Stewart,
Cody,	Knight,	Stilwell,
Crosser,	Kunkel,	Taggart,
Dunlap,	Malin,	Tannehill,
Dunn,	Marriott,	Tetlow,
Dwyer,	Marshall,	Ulmer,
Earnhart,	McClelland,	Walker,
Fackler,	Miller, Crawford,	Watson,
Fluke,	Moore,	Wise.

So the motion was tabled.

Mr. STEVENS: I move that we adjourn to meet tomorrow at Chillicothe.

The PRESIDENT: The motion is out of order.

Mr. CORDES: I move the previous question on the Miller proposal.

The PRESIDENT: The chair wants to state for the benefit of the gentleman making the motion that there was a motion before the house.

Mr. STEVENS: I withdraw the motion to recess.

The main question was ordered.

Mr. STILWELL: I move to adjourn.

Mr. WINN: I demand the yeas and nays on that.

Mr. STILWELL: I second the demand.

The yeas and nays were taken, and resulted—yeas 38, nays 54, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Dunn,	Hahn,
Beatty, Wood,	Dwyer,	Halenkamp,
Cassidy,	Earnhart,	Harbarger,
Crosser,	Fackler,	Harris, Ashtabula,
Donahay,	Farrell,	Hoffman,

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Hursh,	Moore,	Tannehill,
Kilpatrick,	Price,	Tetlow,
Knight,	Solether,	Thomas,
Kunkel,	Stalter,	Ulmer,
Leslie,	Stevens,	Walker,
Malin,	Stewart,	Watson,
Marshall,	Stilwell,	Wise.
McClelland,	Taggart,	

Those who voted in the negative are:

Anderson,	Harter, Stark,	Miller, Fairfield,
Baum,	Henderson,	Okey,
Beyer,	Holtz,	Partington,
Bowdle,	Hoskins,	Peck,
Cody,	Johnson, Williams,	Peters,
Collett,	Jones,	Pettit,
Colton,	Kehoe,	Pierce,
Cordes,	Keller,	Read,
Crites,	King,	Riley,
Cunningham,	Kramer,	Rockel,
Davio,	Lambert,	Roehm,
Dunlap,	Lampson,	Rorick,
Fess,	Leete,	Shaffer,
Fluke,	Longstreth,	Smith, Geauga,
Fox,	Ludey,	Stokes,
Halfhill,	Matthews,	Tallman,
Harris, Hamilton,	Mauck,	Winn,
Harter, Huron,	Miller, Crawford,	Woods.

So the motion to adjourn was lost.

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 87, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Peck,
Baum,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pettit,
Beatty, Wood,	Hoskins,	Pierce,
Beyer,	Hursh,	Read,
Bowdle,	Johnson, Williams,	Riley,
Cassidy,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Collett,	Keller,	Rorick,
Colton,	Kilpatrick,	Shaffer,
Cordes,	King,	Smith, Geauga,
Crites,	Knight,	Solether,
Crosser,	Kramer,	Stalter,
Davio,	Kunkel,	Stevens,
Donahey,	Lambert,	Stewart,
Dunlap,	Lampson,	Stilwell,
Dunn,	Leete,	Stokes,
Dwyer,	Leslie,	Taggart,
Earnhart,	Longstreth,	Tallman,
Fackler,	Ludey,	Tannehill,
Farrell,	Marriott,	Tetlow,
Fess,	Marshall,	Thomas,
Fluke,	Mauck,	Ulmer,
Fox,	McClelland,	Wagner,
Hahn,	Miller, Crawford,	Walker,
Halenkamp,	Miller, Fairfield,	Watson,
Harbarger,	Moore,	Winn,
Harris, Hamilton,	Okey,	Wise,
Harter, Huron,	Partington,	Woods.

Those who voted in the negative are: Cunningham, Halfhill, Harris, of Ashtabula, and Price.

So the proposal passed as follows:

Proposal No. 51—Mr. Miller of Crawford. To submit an amendment to article VIII, section 6, of the constitution.—Relative to permitting public property being insured in mutual associations and companies.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the

constitution shall be submitted to the electors to read as follows:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association;

Providing however; that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

Mr. Lampson moved that the vote whereby Proposal No. 51 was passed be reconsidered.

Mr. Lampson moved that the motion to reconsider be laid on the table.

The motion to lay on the table was carried.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. Stilwell arose to a question of privilege, and asked that his vote be recorded on the motion to lay Proposal No. 16, by Mr. Elson, on the table. His name being called, Mr. Stilwell voted "no."

Mr. Winn arose to a question of privilege, and asked that his vote be recorded on the motion to lay Proposal No. 16, by Mr. Elson, on the table. His name being called, Mr. Winn voted "aye."

Mr. Hoskins arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Hoskins voted "no."

Mr. Halfhill arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Halfhill voted "no."

Mr. Marshall arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Marshall voted "aye."

The PRESIDENT: The president desires to call attention to the fact that he is not going to permit this any more. If the delegates are not here they will not be permitted to vote.

Mr. ANDERSON: The regular order.

The PRESIDENT: The next is Proposal No. 330.

The proposal was read the second time.

Mr. DWYER: I want to offer an amendment.

The amendment was read as follows:

In line 6 strike out the word "fifth" and in lieu thereof insert the word "fourth".

In line 8 strike out the word "fifth" and in lieu thereof insert the word "fourth".

Strike out lines 11, 12 and 13 and in lieu thereof insert the following:

Appellate Court Districts — Creating Office of Superintendent of Public Instruction.

"The counties of Delaware, Morrow, Richland, Ashland, Wayne, Stark, Tuscarawas, Holmes, Knox, Coshocton, Muskingum, Morgan and Perry shall constitute the fifth appellate court judicial district."

In line 17 strike out the comma and in lieu thereof insert the word "and" and strike out the words "and Washington".

In line 19 between the words "of" and "Franklin" insert "Licking, Fairfield."

Mr. DWYER: I will explain very briefly what the object of the proposal is so that you can understand it. Twenty-five years ago the state was divided into eight circuits. At that time we had about three million people in Ohio. Now we have nearly five millions, and we have the same eight circuits still. At the present time some of those circuits have too much work and the judges cannot do justice to the work they have to do. This circuit has eleven counties—Franklin, with a large city, Montgomery, with a large city, and Clark county with a large city. In addition to that the attorney general has a right to bring suits in this county from any part of the state, so that the circuit court of this county has more work than it can attend to and this circuit is overloaded. The lawyers in our county are complaining that the judges cannot give the time to the work that they should. They cannot give the cases the consideration that they should. Now, especially if we are going to make an appellate court a court of final jurisdiction, it will need more time. We want carefully prepared decisions by the appellate court hereafter if it is to be a court of final jurisdiction in most cases. It was to relieve that situation that I offered this proposal. This only affects the second circuit. For example, the proposition is to put seven counties into one circuit and call it the second circuit, and then the other four counties with two counties from the fifth circuit will make the tenth circuit. Judge Taggart says that this circuit has eighteen counties, that they have fifteen hundred cases on the docket and that the judges cannot get through with their work. The proposition is to take the two counties from that circuit and let them be thrown in with Franklin county and take Fairfield and Licking and put them in with these counties, which will make six counties in this circuit, and that will put seven in the Montgomery circuit. That is all the disturbance we make in this part of the state. Mr. Anderson has said that work in his part of the state is growing very rapidly and those counties up there have iron works and all that and are growing so rapidly that he says they cannot do the work in his district. He wants to divide that district. That is the whole proposition.

Mr. RILEY: This proposal was recommended by the Judiciary committee?

Mr. DWYER: Yes.

Mr. RILEY: Everybody is ready to vote on it I think.

Mr. PETTIT: I want to say a word. This is the first time that I have heard of judges being much overworked. Down in our district they are playing most of the time. In Adams county they didn't have a case last term. In Brown county they had one. At Portsmouth they have a little and at Ironton they have a little, and outside of that there is very little to do. I am opposed to making any more circuits.

Mr. PRICE: I move that the proposal and the amendment be laid on the table.

The motion was carried.

The PRESIDENT: The next is Proposal No. 96, which the secretary will read.

The proposal was read the second time.

Mr. FESS: I want the Convention to bear with me not over ten minutes.

Mr. PECK: That is a good while tonight.

Mr. FESS: I am running a great risk because eighteen men can defeat this proposal. I would very much rather not have it considered now, but I see the situation we are in and we must bring it to the test. I have been anxious that we should make the educational department of the state the most important thing next to the governor, as it really ought to be. I think there are no interests that are dearer to the state than the educational interests, and what I would like to make possible is to create a state department of education that would be ranked as it ought to be ranked. As it now stands everybody knows that the educational department of Ohio has no constitutional rating. It is not even mentioned in the constitution. It has no recognition so far as power is required. It is remarkable what the department has been able to do, but that is because of the devotion of the men who have been at the head of it. If the present commissioner had the power commensurate with the importance of educational work he could do so much more than is possible under the situation now existing. This is what I want to do, to make the head of the department of education an appointive officer, so that we can secure efficiency in the department. Give the power to the governor to appoint the head so that the educators of the state and other people can unite upon some leader and say to the governor that they would like to have this man. If the governor believes that the man is the person the teachers of the state can be heard in the matter. Then if the governor appoints him for four years, and he proves a good official, the governor can reappoint him. At present he is in politics, nominated at the tail end of the convention, when it is tired. The selection is often the result of geography. We want to take it out if possible. So I ask you men if you can see your way clear to do it to take this department out of politics so far as possible and put it within our power to secure a man like Superintendent Dwyer of Cincinnati or others who could not be induced to go into a political struggle. But if he could be appointed he could easily be secured. We cannot reach the rank in the educational work of Ohio we should have unless we can make some change. I am going to risk this. I am going to ask you to vote your confidence in a department of education so that we will be in the same position that Pennsylvania is. Twenty years ago a democratic governor appointed a democratic head of the educational department, and when that democrat was superseded by a republican the teachers united upon Dr. Shaffer, the incumbent, and he was reappointed. A second republican governor reappointed him, and a third, and a fourth, and a fifth. All of these reappointments came because he is a great educator. He never could have been continued in that position if the position had been elective. Make it possible for us to get a man like that and put him in office, not for the

Creating Office of Superintendent of Public Instruction.

sake of the politicians but for the sake of the schools of Ohio.

Mr. PETTIT: Does this do away with the state school commissioner?

Mr. FESS: The name is changed, but the same officer is provided with additional powers.

Mr. PIERCE: I was going to make the same inquiry. I want to know if it makes an additional officer?

Mr. FESS: No, sir.

Mr. FACKLER: I am for the proposal if it does not.

Mr. KING: Section 3 authorizes a school commissioner.

Mr. HARRIS, of Ashtabula: I was going to call attention to that.

Mr. FESS: There is only the one officer.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

Strike out the word "four" in the seventh line and insert the word "two."

The amendment was agreed to.

Mr. HOSKINS: I don't think changes should be made so fast unless they can show some reason for them. I don't much like this appointing power.

Mr. PRICE: It seems to me on this proposition there is room for radical difference of opinion. I don't see that we are going to keep it away from politics. I believe time will demonstrate if this man is appointed the head of the system that the office will drift into politics and we will have politics in the public schools.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 22, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Holtz,
Baum,	Farrell,	Jones,
Beatty, Morrow,	Fess,	Kehoe,
Beyer,	Fluke,	Kilpatrick,
Bowdle,	Fox,	King,
Cassidy,	Hahn,	Knight,
Colton,	Halenkamp,	Kramer,
Crites,	Harbarger,	Lambert,
Crosser,	Harris, Ashtabula,	Lampson,
Cunningham,	Harris, Hamilton,	Leete,
Davio,	Harter, Huron,	Ludey,
Dunn,	Harter, Stark,	Marriott,
Dwyer,	Hoffman,	Mauck,

McClelland,	Riley,	Tallman,
Miller, Crawford,	Roehm,	Tannehill,
Moore,	Rorick,	Tetlow,
Peck,	Shaffer,	Thomas,
Peters,	Smith, Geauga,	Ulmer,
Pettit,	Stewart,	Wagner,
Pierce,	Stilwell,	Walker,
Read,	Stokes,	Winn,
Rockel,	Taggart,	Woods.

Those who voted in the negative are:

Beatty, Wood,	Hoskins,	Malin,
Brown, Pike,	Hursh,	Marshall,
Cody,	Johnson, Williams,	Miller, Fairfield,
Collett,	Keller,	Okey,
Donahay,	Kunkel,	Price,
Dunlap,	Leslie,	Stevens,
Earnhart,	Longstreth,	Watson.
Halfhill,		

So the proposal passed as follows:

Proposal No. 96—Mr. Fess. To submit an amendment by adding section 4 to article VI, of the constitution.—Relative to the office of superintendent of public instruction.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VI.

SEC. 4. A superintendent of public instruction shall be included as one of the officers of the executive department to be appointed by the governor, for the term of two years, with such powers as may be prescribed by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. Harter, of Huron, arose to a question of privilege and asked that his vote be recorded on Proposal No. 272, by Mr. FitzSimons. His name being called Mr. Harter, of Huron, voted "aye."

Mr. Marriott arose to a question of privilege and asked that his vote be recorded on Proposal No. 15, by Mr. Riley. His name being called, Mr. Marriott voted "aye."

Leave of absence for Thursday was granted to Mr. Stilwell, Mr. Walker and Mr. Tetlow.

On motion of Mr. Lampson the Convention adjourned.

SEVENTY-SECOND DAY

AFTERNOON SESSION.

CHILlicothe, O., THURSDAY, May 9, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Howard B. Cooper, of Chillicothe, Ohio.

The journal of yesterday was read and approved.

Mr. DOTY: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called when the following members failed to answer to their names:

Brown, Lucas,	Harris, Hamilton,	Stilwell,
DeFrees,	Malin,	Tetlow,
Donahey,	Norris,	Walker,
Farnsworth,	Smith, Hamilton,	Worthington.
FitzSimons,		

The PRESIDENT: There are one hundred and six members present.

Mr. DOTY: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. DOTY: I have a resolution that is necessary for the conduct of our future business, and I would like to dispose of that before we go any farther.

The resolution was read as follows:

Resolution No. 124:

Resolved, That when the Convention adjourns at Chillicothe, May 9, 1912, it be to meet in the hall of the house of representatives, in the state house, in Columbus, Ohio, at the time regularly set.

The PRESIDENT: The question is, Shall the rules be suspended and this resolution be considered at this time?

The rules were suspended.

The PRESIDENT: The question is now on the adoption of the resolution.

The resolution was adopted.

Mr. KERR: I desire unanimous consent to offer a resolution at this time.

The PRESIDENT: Will the member withhold the resolution for a moment?

Mr. KERR: Yes.

The PRESIDENT: Chillicothe, the first capital of Ohio, was founded in April, 1796, by Nathaniel Massie, of Virginia. In 1800 it became the capital of the Northwest Territory.

Chillicothe grew rapidly, and in 1798 the honorable, the court of quarter sessions, authorized Thomas Worthington and others, designated "gentlemen", to buy a site and build a court house. This was the old stone square state house, which stood on the site of the present Ross county court house. It was the first public stone building in the territory. The territorial legislature met in it in 1801, and here, on Monday, November 1, 1802, met the first constitutional convention, authorized by the enabling act passed by congress, April 30, 1802. The first state assembly met here in April, 1803. The first

constitutional convention, was composed of thirty-four members and was in session twenty-nine days. The members were:

Adams county—Joseph Darlington, Israel Donalson, Thomas Kirker.

Belmont county—James Caldwell, Elijah Woods.

Clermont county—Philip Gatch, James Sargent.

Fairfield county—Henry Abrams, Emanuel Carpenter.

Hamilton county—John W. Browne, Charles Willing Byrd, Francis Dunlavy, William Goforth, John Kitchel, Jeremiah Morrow, John Paul, John Reily, John Smith, John Wilson.

The grandson of Jeremiah Morrow is with us today, and he bears the same name. I ask him to arise.

[The gentleman indicated arose.]

Jefferson county—Rudolph Bair, George Humphrey, John Milligan, Nathan Updegraff, Bazaleel Wells.

Ross county—Edward Tiffin, Michael Baldwin, James Grubb, Nathaniel Massie, Thomas Worthington.

There are descendants present of two of Ross county's delegates to this first convention. The great-grandson of Edward Tiffin is here and I ask Hon. Robert W. Manley to arise. [The gentleman indicated arose.]

The grandson of Nathaniel Massie, the Hon. D. M. Massie, is also present, and I will ask him to arise. [The gentleman indicated arose.]

Trumbull county—David Abbott, Samuel Huntington.

Washington county—Ephraim Cutler, Benjamin Ives Gilman, John McIntire, Rufas Putnam.

Edward Tiffin was president and Thomas Scott, secretary, both of Chillicothe. The Convention was in session only twenty-nine days, for on November 29, 1802, the first constitution was signed.

The old state house stood until 1852, when it was torn down to make way for the present court house. The fence in front of the jail, on Main street, is part of the original fence around state house square.

Chillicothe remained the state capital until 1810, and again from 1812 to 1816. From the old town came the following governors: Edward Tiffin, 1803-'07; Thomas Worthington, 1814-'18; Duncan McArthur, 1830-'32; William Allen, 1874-'76.

The great-grandson of Governor McArthur and grandson of Governor Allen, in the person of William Allen Scott, is here today, and I ask him to arise. [The gentleman indicated arose.]

A plaster medallion of Edward Tiffin is above my head. An oil portrait of Governor St. Clair is beneath the medallion of Tiffin. Over the door to my right is a picture of Governor Allen. On the wall to my right is an oil painting of Nathaniel Massie. Over the door to my left is a portrait of Governor McArthur. On the wall to my left is a portrait of James Ross, the pioneer whose name Ross county bears. Before me is the constitutional convention table, the old journal, the weather vane and the bell of the first capitol building of Ohio.

The president recognized the member from Ashtabula [Mr. LAMPSON].

Mr. LAMPSON: As you were reading this most interesting bit of history, I was reminded of the fact that

Resolution of Thanks to Citizens of Chillicothe.

this section of Ohio is sometimes called the "Southern Reserve." There are many delegates of this Convention who come from the Western Reserve, and as you read that Chillicothe was first settled in 1796, it reminded me of the fact that the first settlement in the Western Reserve was in my county of Ashtabula in the same year of 1796. Eighty-four years after the first constitutional convention of Ohio was held in this city I served in the general assembly of Ohio with the representative from this county, John C. Enriken, who was then speaker of the house of representatives. It was my fortune to succeed him as speaker of the house of representatives. As you read further along I was agreeably reminded of the fact that Senator D. M. Massie, who was mentioned in your report and who arose on the right of the hall, also served with me in the senate of Ohio. So while the Western Reserve and the Southern Reserve of Ohio are widely separated, after all we have been most closely associated in building up one of the greatest states of our great republic.

Since we came into your beautiful city today we have been many times reminded of the fact that Chillicothe is all right, and the first thing that impressed me with that feeling was the happy, hearty welcome that was extended to us by innumerable school children, indicating conclusively that in the creed of Chillicothe there is no place for race suicide. And it is in these innumerable school children that the hope, not only of our great commonwealth, but of our great republic rests.

Mr. STOKES: Mr. President: This Convention should not recess until it is satisfied that it has treated every individual and every proposal and the work of every committee with absolute fairness. I voted yesterday morning to table the proposal of the gentleman from Athens [Mr. ELSON] feeling that the majority of the Convention was against the proposal; and because we had so much to do, I thought it was proper to dispose of the proposal in that way. Since that time I have regretted my vote, and for the purpose of placing this Convention absolutely right before the people and so we can go from here without a single regret, I move that the vote by which the proposal was laid on the table be reconsidered.

Mr. DOTY: I make the point of order that the motion to reconsider such a motion is out of order.

The PRESIDENT: The point is well taken.

Mr. WOODS: I move that the Elson proposal be taken from the table.

Mr. DOTY: That motion is out of order at this time. I call for the regular order.

The PRESIDENT: Resolution No. 118—Mr. Lampson, is the regular order.

Mr. KERR: I offered a resolution a while ago and withdrew it at the request of the president. It will take only a moment to dispose of it.

The PRESIDENT: Does the member from Ashtabula yield?

Mr. LAMPSON: Yes.

Mr. KERR: I offer a resolution.

The resolution was read as follows:

Resolution No. 125:

WHEREAS, The table upon which the first constitution of the state of Ohio was signed by the members of the constitutional convention in 1802

is yet in existence and in possession of Mr. Frederick A. Stacy at Chillicothe; therefore, be it

Resolved, That Mr. John L. Baum, delegate to this Convention from Ross county, be appointed a committee of one to procure, if possible, the loan of said table for the purpose of signing thereon by the members of this Convention the fourth constitution of the state of Ohio.

Mr. KERR: I move that the rules be suspended and that the resolution be considered immediately.

The motion was carried.

The PRESIDENT: The question now is on the adoption of the resolution.

The resolution was adopted.

Mr. CRITES: I offer a resolution:

The resolution was read as follows:

Resolution No. 126:

Be it resolved by the Fourth Constitutional Convention of the state of Ohio, assembled this ninth day of May, 1912, on the historic site on which the first constitution of the state was drafted and amid surroundings reminiscent of the great men of the past who have helped to lay broad and deep the foundations on which the free institutions and prosperity of our state have been erected,

That, in token of our appreciation of the hospitality this day extended to us, we tender our sincere thanks to the citizens of Chillicothe for their kind invitation to visit a city which has played so important a part in the history of our state and for the royal manner in which we have been entertained by them.

We congratulate them on the many evidences of enduring prosperity which are apparent on every hand and we hope that Chillicothe, which has in the past produced so many whose names are blazoned forth on the pages of our nation's history, may continue to be the mother of statesmen among the cities of Ohio.

We desire especially to emphasize our thanks to Colonel Enderlin and the ladies of Chillicothe for the bountiful and delicious luncheon with which they provided us. By their presence and efforts they have done much to add to the enjoyment of this happy occasion and to render our session here an event to which we, one and all, will look back with pleasure.

Mr. CRITES: I move that the rules be suspended and the resolution be considered at once.

The motion was carried.

Mr. FESS: Mr. President and Gentlemen of the Convention: I think we ought to express the unanimous appreciation of the Convention of this great courtesy which has given us so much pleasure. I am sure there is not a member here, no matter how much he feels the honor of being a member of the Convention, who does not feel a still greater honor in sitting in this place. Therefore, I hope the roll will be called and that all of us may be found on the roll answering in favor of the resolution.

The question being "Shall the resolution be adopted?"

Form of Ballot Submitting Amendments to the People.

The yeas and nays were regularly demanded; taken and resulted—yeas 106, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Nye,
Antrim,	Harris, Ashtabula,	Okey,
Baum,	Harter, Huron,	Partington,
Beatty, Morrow,	Harter, Stark,	Peck,
Beatty, Wood,	Henderson,	Peters,
Beyer,	Hoffman,	Pettit,
Bowdle,	Holtz,	Pierce,
Brattain,	Hoskins,	Price,
Brown, Highland,	Hursh,	Read,
Brown, Pike,	Johnson, Madison,	Redington,
Campbell,	Johnson, Williams,	Riley,
Cassidy,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Collett,	Keller,	Rorick,
Colton,	Kerr,	Shaffer,
Cordes,	Kilpatrick,	Shaw,
Crites,	King,	Smith, Geauga,
Crosser,	Knight,	Solether,
Cunningham,	Kramer,	Stalter,
Davio,	Kunkel,	Stamm,
Doty,	Lambert,	Stevens,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stokes,
Dwyer,	Leslie,	Taggart,
Earnhart,	Longstreth,	Tallman,
Eby,	Ludey,	Tannchill,
Elson,	Marriott,	Thomas,
Evans,	Marshall,	Ulmer,
Fackler,	Matthews,	Wagner,
Farrell,	Mauck,	Watson,
Fess,	McClelland,	Weybrecht,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Halfhill,		

The PRESIDENT: The yeas are 106, all of the members voting in the affirmative, and the resolution is adopted.

Mr. DOTY: Do I understand that Mr. Brattain even voted in the affirmative?

Mr. BRATTAIN: Yes, and I voted for other good things too.

RESOLUTIONS LAID OVER.

The PRESIDENT: The order of business is Resolution No. 118. The member from Ashtabula [Mr. LAMPSON] is recognized.

The resolution was read.

Mr. LAMPSON: I shall occupy but a very few moments. A few days ago I introduced Resolutions Nos. 118 and 119, suggesting plans of ballots for the submission of the work of the Convention. Since that time Mr. Donahey has introduced a further resolution upon the same subject. My idea in introducing these resolutions was simply to get before the delegates of the Convention a basis upon which to construct some plans for the submission of our work. The first plan of ballot will be found on page 4 in the journal. You will notice that there is a circle at the top of the ballot, "To vote for all the amendments mark X within the circle." If a voter desires to vote for all the amendments he can mark an X in the circle. If he desires to vote for nearly all of them, it would be easier to mark within a circle and then go down the column and mark a cross in the square against those that he didn't want to vote for.

Mr. HOSKINS: Are you working on Resolution No. 118 or Resolution No. 119?

Mr. LAMPSON: No. 118. Now, I am committed personally, but I am not going to make any sort of argument for or against any of these different plans. I will say first that the committee on Arrangement and Phraseology, of which I am a member, has agreed to report the titles as indicated here as far as they go. Of course this only goes down to title No. 9. The first proposal, amendment No. 1, is an amendment to article I, section 5, "Reform of the Civil Jury System." That is the title the committee has agreed to recommend for that amendment, and it connects up with what precedes the ballot in the printed part of the resolution, the idea being that preceding the resolution finally, when we come to agree upon all of our work, will be all of the amendments in one grand review, as Mr. Doty expresses it here, so that the resolution that is adopted, if one should be adopted on this plan, will be referred back to all the amendments, put upon one piece of paper and then entered up with the resolution, "Article I, section 5, Reform of the Jury System," will be a sufficient description to connect it with the amendment in detail as it appears, my idea being that every delegate will sign a piece of paper having all the amendments we adopt certified to by the president and secretary.

In this first ballot the affirmative and negative are printed, the negative immediately following the affirmative, and there is an opportunity for any one who desires to vote against any amendment or all amendments to do so by placing an X in the space before the word "against," but the affirmative has somewhat the advantage, the voter being able to vote for all the amendments at once by simply making one mark and the advantage might very likely belong to the affirmative. The presumption might be fairly said to be that the work of the Convention was going to be approved, and if anyone was opposed to it he should be put to a little more trouble to vote against all amendments than if he wanted to vote for all. That is the theory of that ballot.

The next ballot contains simply the titles, "Reform of the Civil Jury System." This ballot was not completed when sent to the printer. Instead of using "for" and "against" the words "yes" and "no" are used; the idea being to put a cross mark before the word "yes" if you desire to vote for it, and before the word "no" if you desire to vote against it.

While we have been laboring under the impression that the ballot would be very long, as a matter of fact it will not be very long, even with the titles of all our proposals printed upon a single ballot.

The other plan, which is in Resolution No. 119, involves double columns with a circle at the head of each column, with the affirmative in the first column and the negative in the second column, and opportunity to vote for all the proposals by putting a cross mark in the circle at the head of the first column and also opportunity to vote against all proposals by putting a cross mark in the circle at the head of the second column. Having placed a mark in the circle at the top of the first column, if the voter desires to vote against some one or two amendments, he can go over to the second column

Form of Ballot Submitting Amendments to the People.

and place his cross mark before the word "against" in the space provided for it there, just as you do with the two-party ticket. If you have a republican and democratic ticket and you want to vote largely for the democrats you mark in the circle, and then if you want to vote for a few of the republicans, you go over and go down the column and mark opposite the name you desire to vote for.

There is opportunity on either of these ballots, as far as that is concerned, for every voter to vote his choice.

Now I do not desire to take up much of the time, because the best way to understand these ballots is for the individual delegates first to read the resolution to see what is aimed at and then examine carefully the ballot.

Mr. ANTRIM: How many people in the state of Ohio would vote against the whole forty-two amendments we have adopted?

Mr. LAMPSON: I would not think very many intelligent voters would vote against all.

Mr. ANTRIM: For that reason I think only one circle would be necessary. I do not think even Mr. Brattain would vote against all of them.

Mr. BRATTAIN: I promise not to vote against all of them.

Mr. PECK: I desire to make a suggestion for the benefit of the committee and the Convention. It is primarily for the committee. Perhaps it might be a good idea to print this ballot in the form of a pamphlet, the first page to be the ballot and the remaining pages to contain the constitution with all the amendments so that every man who votes for it will vote for the constitution before him.

Mr. LAMPSON: That is a good suggestion. My purpose is that the two resolutions I have introduced and the one by Mr. Donahey may all go to the committee on Submission, but I do not want to cut off anybody from expressing an opinion.

The PRESIDENT: The member moves that these ballots, together with the suggestion from Mr. Peck, be referred to the committee on Submission and Address to the People.

Mr. LAMPSON: If any delegate wishes to make any remarks or ask any questions I shall be glad to hear him.

Mr. KING: I think the resolutions should be referred, but perhaps the Convention might avoid getting in a snarl by giving instructions that the blanks should be filled with the words, "September 14, 1912."

Mr. DOTY: I make that motion, only I believe I would rather have it "September 6, 1912."

Mr. KING: Do you want it on Friday?

Mr. DOTY: No.

Mr. EARNHART: A number of us—at least in my case—in campaigning for election to the position we occupy, expressly promised that the much mooted liquor question should be offered in a separate amendment and on a separate ballot. That was incorporated in the proposal as the proposal passed. It is also in the woman's suffrage proposal.

Mr. CROSSER: I rise to a point of order. It does not strike me that matter is up for consideration. It must be referred to the committee.

The PRESIDENT: The question is debatable and the member from Warren has the floor.

Mr. EARNHART: I move that as provided in the Donahey resolution, the liquor license proposal and the woman's suffrage proposal shall be separate from the others. My reasons for that are, as I commenced to state before I was interrupted, that in the Convention and before the election to the Convention, when these matters were being discussed, it was the opinion and understanding and desire, so far as I could find out, that these matters should be submitted separately.

Mr. LAMPSON: I rise to a point of order. The question of amending these resolutions is not now up.

The PRESIDENT: The point is well taken and the motion is not in order.

Mr. EARNHART: I fully believe we should give this matter a little more consideration. I am only actuated by a desire to secure the approval of our work here.

Now let us be fair with ourselves and let us be fair with the people. I believe if we put the circle at the top whereby we can vote for the whole thing and do not put a circle at the top whereby we can vote against every thing, the newspapers will come out and say we are seeking to take undue advantage. You know in the debate that followed the matter of exemption of bonds from, or rather the restoration of bonds to, taxation, it was asserted, and truthfully so, that the people were tricked in the matter of exempting bonds from taxation because of the fact that the parties had indorsed it and the people voted for the exemption without any knowledge of what they were doing. Now let us be fair with the people and with ourselves, and let us submit at least those two separately. The rest I do not care for.

Mr. PRICE: I think we are at liberty to make a suggestion now, and I suggest that when the committee takes the matter under consideration that the time for opening and closing the polls, 5:30 o'clock a. m. and 5:30 o'clock p. m., be changed to 6 o'clock as the statute fixes now. I suggest that that be considered. Quite a number of us have discussed the matter and have another suggestion. We think that all of the circles should be kept off the top and that each one of these amendments should be voted on separately. I do not think there should be any circles on the top at all. I think every man who votes should vote for or against a particular amendment.

Mr. NYE: I would like to have our work approved, but if this is submitted so that a voter can vote for all of the amendments by making one cross mark, it seems to me an equal right should be given to vote against all by making one cross mark. If you wish to submit so each voter must vote for or against each proposition, I am content with that, but it seems to me it would not be fair to the voters of the state to permit them to make a cross mark in the circle to vote for all the propositions and not allow the same privilege in the way of voting against the propositions by one cross mark. The same right should be extended in the one case as in the other.

Mr. MARRIOTT: May I inquire whether the Convention will or will not have a right to consider all of these matters when the committee reports back, and is there any necessity that we take up the time now on this matter?

Form of Ballot Submitting Amendments to the People—Petitions and Memorials.

Mr. NYE: Certainly, but I understood that suggestions were in order.

Mr. HOSKINS: Just a matter of information to find out where we are. As I understand it, there is a motion pending to insert a date, September 6 or 7.

Mr. DOTY: That was out of order.

Mr. HOSKINS: I didn't know you ever did anything out of order.

Mr. DOTY: I did this time.

Mr. HOSKINS: To what committee is this question of fixing the date or reporting it out to the Convention to be assigned?

The PRESIDENT: The committee on Submission and Address to the People.

Mr. HOSKINS: Another question: Is that committee to take care of the question as to when these different amendments will go into effect?

The PRESIDENT: No; the committee on Schedule will attend to that.

Mr. HOSKINS: For instance, I am concerned about the question of the election of common pleas judges. Will the committee on Schedule report the time and manner of that amendment's going into effect?

The PRESIDENT: Yes.

Mr. DOTY: If I may give some information that will help the committee on Phraseology, we are to have a joint meeting of the committees on Arrangement and Phraseology and Schedule and Submission to the People, so we can do our work together and submit the reports to the Convention.

Mr. HOSKINS: I want some information on that because some of the amendments that we have adopted conflict with existing provisions.

Mr. DOTY: That is always the case and that will be provided for by the Schedule committee.

The chair recognized the gentleman from Greene [Mr. Fess].

Mr. ELSON: The chair recognized me.

The PRESIDENT: The chair recognized the gentleman from Greene [Mr. Fess].

Mr. FESS: We can not do anything here except simply refer these resolutions to the committee and let the committee bring them back. Then we can amend any way we wish. I therefore move the previous question on this matter.

Mr. MILLER, of Crawford: I believe the president recognized the gentleman from Athens [Mr. ELSON].

The PRESIDENT: The question is, Shall debate close?

Mr. EBY: I rise to a point of order, or rather to ask for information. If this goes to that committee, is the committee bound by the three suggestions only?

The PRESIDENT: No.

The main question was ordered.

The motion to refer was carried.

Mr. COLTON: I ask unanimous consent to make a brief statement.

The PRESIDENT: The member from Portage will make a statement unless there is objection.

Mr. COLTON: Upon solicitation of the committee on Arrangement and Phraseology it was thought best to state to the delegates the manner in which we proposed to submit our reports to the people for considera-

tion, as that report will be one of the main things before you after you come back from recess. We propose when you come back to have a book containing all of the proposals that have been passed. The proposals will be arranged in the order submitted, and each proposal will be printed on white paper as passed by the Convention. Then following that, on a different colored paper, will be our report, containing every suggestion we make, which will follow line for line the engrossed copy, and following that on a different colored paper still, so that you can distinguish them readily, will be the proposal as it will appear if the suggestions of the committee on Arrangement and Phraseology are approved. We hope in this way to put the matter before you so you can decide easily whether our changes are proper or not, and we hope also that you will be able after the first meeting of the Convention to study beforehand and be ready to approve or disapprove when the matter comes before you.

The PRESIDENT: The president will ask Judge Dennis Dwyer, the senior member of the Convention, to take the chair.

Mr. Dwyer thereupon took the chair as presiding officer.

The PRESIDENT PRO TEM: Gentlemen of the Convention: I express to the president and to you my hearty thanks for the honor you now confer upon me. It is really gratifying to occupy a chair in the city where the first constitutional convention in the state of Ohio was held. My age gives me this honor and I am proud of my age and I am proud of the honor, and I am glad to meet you all and be here in the city of Chillicothe where the first convention was held. I thank you, gentlemen, for the courtesy you have extended me.

Mr. LAMPSON: I suggest that before we adjourn we unite in singing "America", and I ask Mr. Stewart and Mr. Redington and any other good singers to lead.

VOICES: Mr. Campbell.

Messrs. Stewart, Redington and Campbell came forward and led in the singing of "America", which was joined in by the entire Convention and visitors.

PETITIONS AND MEMORIALS.

Mr. Bigelow presented the petitions of the Rev. J. F. Olmstead and ninety-two other citizens of Columbus; of J. E. Parker and one hundred other citizens of Cleveland; of E. R. Handley and two hundred ten other citizens of Mt. Vernon; of S. D. Phillips and fifty other citizens of Toledo; of Henry Pieper and sixteen other citizens of Wheelersburg; of R. L. Turner and one hundred sixty other citizens of Logan county; of R. J. Bartlett and fourteen other citizens of Jackson Center; of Geo. A. Keppler and ninety other citizens of Hamilton; of F. H. Henderson and forty other citizens of Zanesville; of L. D. Gallion and nineteen other citizens of Killbuck; of Albert E. Blakeslee and twenty-six other citizens of Oakwood; of L. Lehman and thirty-five other citizens of Dayton; of R. H. Patterson and fifty-four other citizens of East Liverpool; of W. H. Sander and one hundred other citizens of Ravenna; of I. C. Jaynes and twenty-five other citizens of Grogan; of W. J. Gerst and thirty-three other citizens of Fulton

Petitions and Memorials

county; of B. J. Ferciot and forty other citizens of Canton; of A. M. Nicholas and twenty other citizens of Toledo; of L. R. Williams and twenty-five other citizens of St. Marys; of D. D. Miller and forty other citizens of Tuscarawas county; of J. B. Hagmann and thirty other citizens of Lorain county; of E. H. Peabody and other citizens of Polk; of E. H. Gyde and fifty-five	other citizens of Oak Harbor; of A. E. Rolls and twenty-five other citizens of Coshocton; of G. G. Williamson and fifty other citizens of Defiance; of E. B. Carnes and twelve other citizens of Mansfield; protesting against the passage of Proposals Nos. 65 and 321; which were referred to the committee on Education. On motion of Mr. Fess the Convention adjourned.
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SEVENTY-THIRD DAY

AFTERNOON SESSION.

WEDNESDAY, May 22, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Knox, the Rev. Mr. McClelland.

The journal of Thursday, May 9, was read and approved.

Mr. TAGGART: Mr. President: Just a brief word of explanation. In order to expedite business, it is the desire of the committee on Schedule that a certain proposal be introduced in order that it may be engrossed and printed and be referred back to the committee. While it is not in form, we desire to have it printed to get the matter in shape.

By unanimous consent the following proposal was introduced and read the first time:

Proposal No. 340—Mr. Taggart. To submit an amendment to schedule No. 4.

Mr. Colton submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 174—Mr. Mauck, having had the same under consideration, reports it back, and recommends its indefinite postponement for the reason that the substance thereof has been incorporated in Proposal No. 72.

Mr. COLTON: By unanimous consent I want to make a brief statement explaining. The committee on Phraseology was at work steadily here during last week the entire time until Thursday night, reviewing the proposals, and a subcommittee was at work from that time until now reviewing the proof from the printer. The result of the work is embodied in the books on your tables. If you will turn to the first page you will find a list of the proposals on which we have reported. There are eleven reports found in this book. We were not ready to report all this afternoon, but will promise the others later. This report consists of three parts. You will find the subject of Proposal No. 24, the first one passed, on white paper. It is the engrossed proposal as it passed this Convention. Following this, on pink paper, you will find the report of the committee, referring to the engrossed proposal by lines and suggesting certain changes. Following this, on buff paper is the proposal as it will appear if the amendments suggested by the committee are incorporated in it. So it will be fairly easy for the members to make comparison and determine whether the amendments are proper or not. We have done the work with a great deal of care and we have read and reread the proof again and again, but we can hardly hope to have detected every possible inaccuracy or error. We have done our work as carefully and as well as the time permitted.

Mr. MAUCK: I think it is apparent that the provisions of Proposal No. 72 and Proposal No. 174 should be incorporated in one proposal and I consent that Proposal No. 174 be indefinitely postponed, calling attention to the fact that Proposal No. 72 as reported by the

committee needs further amendment than that submitted by the committee on Arrangement and Phraseology. I merely call the attention of the committee to it because the last sentence in the amended Proposal No. 72, being that part of Proposal No. 174 that has been drawn from Proposal No. 72, "laws may be passed regulating the sale and conveyance of other personal property," is in effect an article wholly devoted to corporations, and if the ordinary rule of construction of a constitutional or statutory provision should prevail that would be construed in pari materia—if the member from Highland [Mr. Brown] will excuse the latin expression—and it would probably be held that this provision only applies to the sale and conveyance of personal property belonging to corporations. If that sentence is amended that laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, partnership or individual, the purpose of both proposals I think will be effectually expressed.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report of the committee was agreed to and Proposal No. 174 indefinitely postponed.

Mr. COLTON: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 72—Mr. Stokes, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title change "8" to "2".

Strike out all after the dash in the title and insert: "Regulation of corporations and sale of personal property."

In line 4 change comma to period and strike out "Section 2".

In line 5 before "Corporation" insert "Sec. 2".

In lines 6 and 7 eliminate paragraph.

In line 9 change "stock" to "stocks".

In line 10 change "stock" to "stocks".

After "law," in line 11 add: "Laws may be passed regulating the sale and conveyance of other personal property".

The PRESIDENT: The question is on agreeing to the report of the committee.

The report of the committee was agreed to.

Mr. DOTY: I move that the proposal be engrossed with the line numbers in accordance with the buff printed form and that it be read the third time tomorrow.

Mr. HARRIS, of Ashtabula: This refers to Proposal No. 72?

Mr. DOTY: That is all.

The motion was carried.

Mr. NYE: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 209—Mr. Tetlow, having had the same under

Reports of Standing Committees.

consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment by adding section 37 to article II, of the constitution.—Eight hour day on public work."

Strike out lines 4 to 9 and insert:

ARTICLE II.

"Sec. 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for laborers engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract, or otherwise."

Mr. THOMAS: I think the language in line 7 should be changed to "laborers and mechanics," adding the words "and mechanics". "Laborers" might be construed to mean only those who do common labor.

Mr. DOTY: If this proposal is agreed to at this time it will go upon the calendar for tomorrow, which will give the member a chance to prepare any amendment he desires.

The report was agreed to.

Mr. DOTY: I move that the proposal be placed on the calendar and be read the third time tomorrow.

The motion was carried.

Mr. FESS: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 24—Mr. Cordes, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert: "To submit an amendment by adding section 35 to article II, of the constitution.—Workmen's compensation."

In line 5 change "Section 33" to "Sec. 35."

In lines 5 and 6 strike out "from a state fund".

In line 8 strike out "and administered by the state and".

In line 8 insert "state" between "a" and "fund".

In line 9 after "employers" strike out the semi-colon and insert: "and administered by the state,".

In line 10 insert a comma after "therefrom".

In line 11 strike out the third "e" in "employees".

In line 12 strike out "es" in "employees".

In line 14 strike out the third "e" in "employees".

In line 11 insert a semi-colon after "employers".

In line 16 change semi-colon to comma and insert "to".

In line 17 strike out "the general rule of" and insert "such".

In line 17 insert a comma after "classification".

In line 18 insert a comma after "fund".

The PRESIDENT: The question is on agreeing to the report of the committee.

The report of the committee was agreed to.

Mr. LAMPSON: I move that the proposal be engrossed and placed upon the calendar for third reading tomorrow.

The motion was carried.

Mr. Halfhill submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 236—Mr. Worthington, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out, in the title, all after dash and insert: "Investigations by each house of general assembly."

In line 2 strike out "Section 8 of Article II of".

In line 5 change "Section" to "Sec."

In line 9 strike out "other" and strike out the comma after "safety".

In line 11 insert a comma after "contemplation".

In line 11b insert a comma after "members".

The PRESIDENT: The question is on agreeing to the report of the committee.

The report of the committee was agreed to.

Mr. COLTON: I move that that proposal be engrossed and placed upon the calendar for a third reading tomorrow.

The motion was carried.

Mr. ANTRIM: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 100—Mr. Fackler, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title strike out all after the dash and insert: "Abolition of justices of the peace in certain cities."

In line 5 change "Section" to "Sec."

In line 7 change the period to colon and change capital "P" to lower case "p".

In line 8 strike out "there shall be" and change "justices" to "justice" and after "peace" insert "shall be elected."

In line 8 change "where" to "in which."

In line 9 insert commas after "is" and after "be."

In line 10 strike out "are given" and insert "have."

In line 10 change the second "justices" to "justice."

In line 11 insert commas after "have" and after "exercise".

The PRESIDENT: The question is on agreeing to the report.

The report was agreed to.

Mr. ANTRIM: I move that the proposal be engrossed and placed on the calendar for third reading tomorrow.

The motion was carried.

Mr. LAMPSON: I offer a report from the committee on Arrangement and Phraseology.

Reports of Standing Committees.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 241—Mr. Dwyer, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert:

To submit an amendment by adding section 38 to article II, of the constitution.—Removal of officials.

Between lines 3 and 4 insert sub-head ARTICLE II.

In line 4 change "Section 24a" to "Sec. 38."

In line 6 change capitals "G" and "A" to lower case "g" and "a".

In line 8 strike out "provided" and insert before the period, "authorized by the constitution."

The PRESIDENT: The question is on agreeing to the report.

The report was agreed to.

Mr. LAMPSON: I move that this proposal be engrossed and placed upon the calendar for third reading tomorrow.

The motion was carried.

Mr. LAMPSON: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 118—Mr. Lampson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title strike out all after dash and insert: "State bond limit for good roads."

In line 5 change "Section" to "Sec." and strike out "(Public Debt)."

In lines 8 and 13 change "G" and "A" to lower case "g" and "a".

In line 12 change period to colon.

In lines 12 and 13 eliminate paragraph.

In line 13 change capital "P" to lower case "p".

In line 15 strike out "of" and change "millions" to "million."

In line 16 insert "rebuilding" after "constructing."

In line 16 insert "repairing and" after "improving" and strike out the comma after "maintaining."

Strike out "repairing and" at the end of line 16.

In line 17 strike out "rebuilding."

In line 18 change semi-colon to a period and change "not" to "Not".

In line 18 change "millions" to "million" and strike out "of".

In line 18 change "in" to "of".

In line 20 strike out comma.

In line 21 strike out comma and insert "to" before "provide".

In line 21 strike out "final".

In lines 22 and 23 eliminate paragraph.

Strike out comma at the end of line 23.

Strike out all of line 24 after "cost" and insert: "of constructing, rebuilding, improving, repairing and maintaining the same shall be paid by the state."

In lines 24 and 25 eliminate paragraph.

The PRESIDENT: The question is on agreeing to the report.

The report was agreed to.

Mr. LAMPSON: I move that the proposal be engrossed and placed on the calendar for third reading tomorrow.

The motion was carried.

Mr. ELSON: I offer a report from the committee on Arrangement and Phraseology.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 122—Mr. Farrell, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended.

Strike out the title, and insert: "To submit an amendment by adding section 34 to article II of the constitution.—Welfare of employes."

Between lines 3 and 4 insert ARTICLE II.

In line 4 before "Laws" insert "Sec. 4."

In line 5 insert a comma after "wage".

The PRESIDENT: The question is on agreeing to the report.

The report was agreed to.

Mr. KNIGHT: I move that the proposal be engrossed and placed upon the calendar for tomorrow for its third reading.

The motion was carried.

Mr. ANTRIM: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 166—Mr. Stilwell, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert: "To submit an amendment by adding section 33 to article II of the constitution.—Mechanics' and builders' liens."

Between lines 3 and 4 insert sub-head "ARTICLE II."

In line 4 change "Section" to "Sec."

In line 4 insert a comma after "laborers".

In line 6 after "or" insert "for which they have".

The PRESIDENT: The question is on agreeing to the report.

The report was agreed to.

Mr. ANTRIM: I move that the proposal be engrossed and placed on the calendar for its third reading tomorrow.

The motion was carried.

Reports of Standing Committees—Invitation to Convention to meet at Cincinnati.

Mr. FESS: I offer a report relative to Proposal No. 54.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 54—Mr. Elson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after dash in title and insert: "Reform of civil jury system."

In line 5 change "Section" to "Sec."

Strike out the semi-colon in line 5 and all of the remainder of line 5 and all of lines 6 and 7, and insert:

"except that, in civil cases, the general assembly may authorize the rendering of a verdict by not less than three-fourths of the jury."

Mr. LAMPSON: I want to call the attention of the committee on Phraseology to the fact that the committee voted to change that word "reform" in the title to "change", not to use the word "reform," that being a word rather indefinite in meaning.

Mr. DOTY: That is all right.

Mr. LAMPSON: We changed that.

Mr. KNIGHT: I move that that be withdrawn from the Convention and referred to the committee to permit the committee to correct it.

Mr. DOTY: It is easy to correct it on third reading.

Mr. NORRIS: When are these reports open for discussion? As they are called up?

The PRESIDENT: Yes. The question is on agreeing to the report.

The report was agreed to.

The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. DOTY: If there are no further reports, I move that the rules be suspended and that Proposal No. 340 be referred to the committee on Schedule. This is the proposal introduced this afternoon, and the plan is to refer it back to the committee so that the committee may make its report and save time.

Mr. PECK: What is it about?

Mr. DOTY: Schedule.

Mr. PECK: That doesn't tell us anything.

Mr. ANDERSON: I received a telephone call from Mr. Campbell stating that by reason of illness in his family he cannot be here today or tomorrow and requesting leave of absence.

Leave of absence was granted.

Mr. DOTY: The proposal introduced by Mr. Taggart is a proposal affecting the schedule. This has been introduced and read the first time, and under the rules it could not be referred until tomorrow. To expedite business I desire to have this proposal submitted to the committee on Schedule at this time.

The motion to submit was carried.

Mr. KILPATRICK: I offer a resolution.

The resolution was read as follows:

Resolution No. 127:

Resolved, That the services of the sergeant-at-arms, J. C. Sherlock, be and are hereby continued

for the period of ten days after the adjournment of this Convention for the purpose, and he is hereby instructed to procure boxes and all necessary material for packing and shipping the personal effects of the members; that he be and is hereby authorized to retain from the present force, the necessary help required not to exceed five persons; that said sergeant-at-arms and the persons so retained by him shall receive for such service the same per diem as is now being paid them by this Convention; that the president of the Convention is hereby authorized and instructed to sign vouchers therefor and for necessary material and express charges.

Mr. KILPATRICK: You have accumulated while here quite a good deal of property by way of proposal books and other things of that kind and it has been the custom in sessions of the legislature to have all these things boxed up and sent to our respective homes. It is necessary to have a resolution of this kind to have that done, and for that reason I would ask that the rules be suspended and the resolution be put on its passage.

Mr. DOTY: I agree with the general substance, but there is one word that may have to be changed. There is no hurry and I prefer to have it go over.

The PRESIDENT: Then the resolution goes over under the rule.

Mr. DOTY: I would like to state that the committee on Arrangement and Phraseology has made all the reports it is ready to make, and we expect to have all the rest or nearly all the rest reported tomorrow morning, which we think, with the proposal to be put upon the calendar tomorrow, will make a full day for tomorrow. There will be perhaps a few that we will have to report on Friday, but we can report every proposal by Friday morning, and perhaps by tomorrow afternoon they will be put in this book in numerical order, not in the order in which the proposals were passed, and thereby we can turn to them more readily. I therefore move that we adjourn until 9:30 tomorrow morning—no, I will withhold the motion to adjourn as Judge Peck has something to be offered at this time.

Mr. PECK: I take pleasure in presenting the following communication:

The Business Men's Club Co.

May 20, 1912.

Hon. HERBERT S. BIGELOW,

President of Ohio Constitutional Convention—
Columbus, Ohio.

Dear Mr. Bigelow:

The board of directors of the Business Men's Club of Cincinnati extend a most cordial invitation to all of the members of the Constitutional Convention now in session at Columbus to meet at a dinner to be given in the club house of our organization some evening in the near future convenient to your body. We shall be delighted to receive an early acceptance of this invitation and hope as many members as possible of your distinguished body will find it convenient and agreeable to accept this invitation.

Very sincerely yours,
The Business Men's Club Co.

Invitation to Convention to Meet in Cincinnati.

Mr. PECK: This is just what it purports to be, an invitation to dine with the Business Men's Club if you choose to do so, and to hold a meeting there. My idea is that it would be a graceful thing to hold our last meeting there. They are in earnest. They want to see you. They have nothing to ask, no axe to grind. It is simply a social matter. They want you to come to Cincinnati to enable them to show you how nicely you can be entertained there and how glad they will be to see you all. I hope the committee will be appointed and fix a date. They asked me to fix it when I was there and I said, "If you extend an invitation you had better leave it to the Convention to fix the day as no one knows when they can come." You observe the tone of the letter on that subject. My idea would be to consult with them and have the last meeting of the Convention there.

Mr. PRICE: I move that the invitation be received and that we take it up for consideration now.

The motion was carried.

Mr. DOTY: In order that we may have something to discuss I move that the invitation be accepted, but I want to call your attention to this situation: The chairman of the committee on Arrangement and Phraseology has said the committee on Arrangement and Phraseology has been very busy working while the rest of the Convention has been away, for the sole purpose of making it possible to have an early adjournment; not with any idea of undue haste, but to make it possible to adjourn next Tuesday. Now if this Convention make up their minds to work until next week and stay here and begin early Monday morning, it is possible for us to do our work, as I think, and the members on the committee on Arrangement and Phraseology think, it will be possible for us to adjourn the Convention by Tuesday night, or at the very latest by Wednesday. The reason I have stated this is because of this invitation. If that program were carried out, it makes it possible, if we desire to conclude our work by Tuesday night, to then accept the invitation of the member from Hamilton [Mr. PECK] and to hold our last session in Cincinnati on Wednesday. That is the only way that I can see where we can get through at this time and be reasonably sure in accepting the invitation.

Mr. HARRIS, of Ashtabula: Be through here Tuesday?

Mr. DOTY: It is my guess. I have not fixed it positively.

Mr. HARRIS, of Ashtabula: Why suggest that?

Mr. DOTY: It is possible to get through Tuesday if we work all of the time until Tuesday, but if we recess Thursday we will not get through until June.

Mr. HARRIS, of Ashtabula: Following the reasoning of the gentleman from Cuyahoga [Mr. Doty], if we accept that invitation we must necessarily compress the work into the time between now and then.

Mr. DOTY: Yes; perhaps between now and Monday we can come to a definite conclusion. I do not contend that we can get through on Tuesday, but if we are not going to work on Saturday and Monday the chances are very much against our getting through on Wednesday.

Mr. HARRIS, of Ashtabula: I want to call the attention of the member to the fact that we have found

it exceedingly difficult to hold a quorum here on Friday and to hold this whole Convention over Sunday seems to be a large undertaking, even if they agree to stay.

Mr. DOTY: That is the reason I am telling them. If they don't desire to stay they can govern themselves accordingly.

Mr. HARRIS, of Ashtabula: I dislike to get this thing in shape to be compressed. The invitation is fine, but I dislike to make that the closing day and fix the date.

Mr. DOTY: I just made the motion so as to have something discussed; not what is absolute but what is possible, and at any rate to continue up to Wednesday night.

Mr. PECK: The invitation is not conditioned upon anything. It is not conditioned upon the fact that you hold the last meeting there or that you fix the time to go. They will be glad to see you any time.

Mr. LAMPSON: Apropos of what the gentleman from Cuyahoga [Mr. Doty] has been saying, I would call attention to the fact that next Thursday is Decoration day. A great many delegates have engagements for that. If we could get through before that we would have opportunity to fill engagements. The following week the state conventions of both parties are held, so that if we don't get through by Wednesday of next week it looks as though we might be here two or three weeks without accomplishing very much. I think every delegate in this Convention ought to make a sacrifice, to give attention to the business of this Convention now so that we can close it up in an orderly manner by Wednesday of next week.

Mr. HARRIS, of Ashtabula: I conclude that the argument of my colleague, if it means anything, means a Saturday session. My attention has been called to the fact that there are seventy county conventions held next Saturday. In the face of that what is the use of this talk?

Mr. DOTY: Those are partisan conventions.

Mr. HARRIS, of Ashtabula: They are political conventions.

Mr. DOTY: Yes, and this is not a political body.

Mr. HARRIS, of Ashtabula: No. And there are no candidates here and nobody cares anything about their political future either!

Mr. PRICE: I move to receive and discuss this matter now because this is about as good a time as any other time. So far as working Saturday is concerned, I don't think that cuts any figure. I do not think any man can say how long we are going to be here since accepting these reports, and I think the regular thing to do is to adjourn Friday and come back here regularly next week and then fix the time and go to Cincinnati. I have been down to that town and my experience was such that I would like to go back.

Mr. KING: All that is before us is to accept or decline the invitation. We are now approaching the first of June, and I am certainly in favor of working not only days but nights and Sundays if necessary.

DELEGATES: No, No.

Mr. KING: It is nonsense to stand here and talk about the county conventions of political parties. We have forty-two proposals. Let us go to work and dispose of them. It should not take the Convention beyond

Invitation to Convention to Meet in Cincinnati—Reform of Jury System.

the date suggested by the member from Cuyahoga [Mr. DOTY], if we work at it. I want to work at it and I want to get to the last of this Convention just as soon as we can do it. I do not want to hurry, but I am in favor of working until we finish.

Mr. HARRIS, of Ashtabula: I expect to be here Saturday myself. I am entirely willing to work Saturday. I have heard the same line of argument as advanced by the gentleman from Erie a half dozen times and I have been here Friday and Saturday and I have seen how it works out. I will be as glad to get through this as any one, but I want to look at the case as it is, in the light of our experience.

Mr. WINN: I am in favor of the adoption of the resolution by this Convention providing that from this time until the conclusion of the sessions there shall be no leaves of absence granted except by unanimous consent, and if anybody shall absent himself from the Convention without its consent he shall forfeit twenty dollars a day. I started to prepare such a resolution and I shall prepare it and offer it at the earliest possible moment. I am opposed to the acceptance of that invitation to visit Cincinnati. I am opposed to it because it has no place in a constitutional convention. I do not say that for this Convention to adjourn and hold a session in Cincinnati will discredit it. I mean it would not be a discredit to the Convention because the visit is to Cincinnati, but I say it will discredit this Convention to adjourn to meet any place except the place where it holds its sessions under the law. We are going to have enough when we get before the people in September—or whenever we appeal to them for approval or disapproval of our work—we are going to have enough to do if we succeed in obtaining the approval by the electors of the state of what we are doing, and every time we indulge in any frivolities we just simply drive off a certain number of votes. That is certain. There is no person here who would not be pleased to accept the invitation of Judge Peck to visit Cincinnati, not only because it comes from that great city, but because it comes from one of our most distinguished and honored members; but we cannot afford, gentlemen, to do anything else here except attend to our business, if we expect to avoid criticism of the people of Ohio. I should like to make a trip to Cincinnati some day myself. I am going down there at the first real good opportunity. I would like to have all the members there and I would like to have a big dinner.

Mr. PECK: What is the objection to doing it now?

Mr. WINN: My objection is this: We were elected and sent here to perform a certain duty.

Mr. PECK: Suppose we go after our work is done?

Mr. WINN: If you will accept the invitation to be dined by that club some day in June, July, August, or September, after we conclude our work and have gone back home, where we belong, I shall vote to accept the invitation, but let it be after we have concluded our work, so that we shall not go as a Convention.

Mr. FESS: As a citizen living very near to Cincinnati, I should like to see this invitation accepted if we could do it. It seems that it will take a little time after we do accept it for them to prepare. We can not accept it today and go tomorrow. That would not be fair, and since we have so very much work—I have been thinking how long it will take to read the forty-two proposals.

It will take a day to do that and a good deal of the time in calling the rolls, and there are some questions that are bound to be discussed that are of great importance to the committee on Submission. We are bound to consume some time. I agree with everybody that has spoken that we should stay here and get through with this work as soon as possible. If we could do that and have a session at Cincinnati I would be delighted to vote for it, and I therefore move that this matter be referred to the committee on Rules so they can arrange the time and conditions and report later on. I think in that way we do not jeopardize any of the work of the Convention.

The motion was carried.

Mr. LAMPSON: I move that the rules be suspended and that we take up now for consideration Proposal No. 54, by Mr. Elson:

The motion was carried.

The proposal was read the third time.

The delegate from Marion was here recognized.

Mr. DOTY: Before the member starts in debate, I would like to have settled the question as to how much time debate shall occupy?

Mr. WINN: I rise to a point of order. The member from Marion [Mr. NORRIS] has the floor.

Mr. DOTY: The member from Marion might be allowed to take care of himself.

The PRESIDENT: The gentleman from Marion has the floor.

Mr. NORRIS: I want to be fully heard. I have not occupied ten minutes of the time of this Convention in speaking so far, and I want to be heard fully now.

Mr. DOTY: I have no desire or power to interfere with your rights now in any way, but I think it is time to bring up the general question before we get into anything like a general debate, as to what time shall be allowed.

Mr. LAMPSON: I suggest to the members that the member from Marion [Mr. NORRIS] has occupied very little time, and I suggest that the motion be withheld until he gets through.

Mr. Norris moved to amend Proposal No. 54 as follows:

Strike out all after the word "inviolable" in line 5 insert a period and strike out the remainder of line 5 and all of lines 6 and 7.

Mr. NORRIS: With all due respect I deny that this Convention has the authority to invite the people of Ohio to surrender, or to authorize the legislature to surrender, the right of a citizen to submit his controversy, triable to a jury in a court of record, to other than a common law jury, or to accept in determination of his rights a verdict other than the united conclusion of the twelve jurors.

And I assert that the proposed amendment now before this Convention is inimical to the compact of the ordinance of 1787 relating to trial by jury and judicial proceedings according to the course of the common law, as adopted by our present state constitution and the constitution of 1802, and that it is not within the legal power of this Convention to submit it, and not within the province of the people of Ohio to adopt it and accept it as a part of the organic law of this state.

On page 78 of the journal of this Convention, under date of January 24, appears Resolution No. 42. By that resolution a committee is appointed by this body to ex-

Reform of Jury System.

amine and report as to the binding effect of the ordinance of 1787 upon us, and the relations of that ordinance and its compacts to the constitution that may be proposed by this Convention.

In obedience to that authority the standing committee on Judiciary and Bill of Rights submitted its report, declaring that the ordinance of 1787 has been suppressed by the assent of the states to the federal constitution and by the action of the supreme court of the United States, and that it only remains to complete the destruction of that great charter that the people of Ohio ratify the action of this Convention in declaring it abrogated and so cast it into oblivion. The report may be found under date of February 15 on pages 197-200 of the journal of this Convention.

This report has been received by this Convention, printed by its authority, awaits the further action of this body and finds lodgement with this proposal as a brief in its support; wherefore, with all deference to the learning and research and integrity of my colleagues of the Judiciary committee, I may take issue with them and express incidentally my unfaith in their conclusion, of which this report is the evidence.

Of all the dangers which this Convention could invite there can be nothing so fatal as the menace that slumbers in this report. It is a gratuitous and unnecessary and uncalled for, and I trust, unintentional, attempt to surrender that which belongs to posterity; an attempt to surrender that which, unless abrogated by the authority that created it, in manner provided by its terms, will endure as long as the people of Ohio, and of the states that were the Northwest Territory, shall love their country and have the spirit and courage to defend it. But once that compact is abrogated, nothing can recall that abrogation; once suppressed, as that report declares it, nothing can rehabilitate or resurrect it.

It matters not that we may now be unsuccessful in our assault upon it and that for all of this report and its attack that great charter will still live on, yet, if this report be the view of this Convention, as expressive of its willingness and wish, we then leave in the record here of the acts of men gathered by the people to make organic law that from which courts in the far future, disposed to be not jealous of the people's rights, can quote and draw conclusions, and that with which men seeking to subvert the institutions of their country can slap posterity in the face.

And all this; without demand, without requirement, without necessity and without reason.

I expect to show by the authorities cited in that report that the compacts of the ordinance of 1787 are not suppressed and not stamped out and not ended. But at farthest, when adopted by the constitution of a state of the Northwest Territory, as its compacts are and ever have been adopted by the constitution of Ohio, these compacts, thus adopted, then as a part of the ordinance, stand in abeyance and in temporary inactivity only, and do await the violation of them by the state which has thus adopted them to become reintegrate and to spring into quick life.

There is not a clause in the compacts of that ordinance that is not, either in letter or in spirit, written into the present constitution of Ohio, as they were in our consti-

tution of 1802, and there is nothing in either of those instruments repugnant to those articles of compact.

So that except where held in abeyance by substantive articles of the federal constitution for federal purposes and to assist federal government and to guard the rights of states, which affect not the proposal here, that compact and all of it is through our state constitution in full force now. And if every state except Ohio would consent to sweep the federal constitution and its beneficent provisions out of existence, and would enact a thousand pages of tyranny in its stead, Ohio, not consenting, because of this compact, would not be bound, and could seek refuge behind and in this mighty charter.

Let us see what this ordinance is that this Convention is advised to view with cold, oblique regard as one of the many mistakes our fathers made and which I plead here in bar to this proposed amendment to the constitution of this state.

The ordinance of 1787, and the wisdom of it and in it, is admired by the statesmen of the world as the greatest charter of liberty that ever was produced. Aided perhaps by the great men of that time, it was written by either Thomas Jefferson or Nathan Dane, both of whom are even now thought by many to have been men of at least fair intellect and to a degree somewhat patriotic. That ordinance dissipated the jealousies that had arisen between the colonies immediately following the Revolutionary War, which threatened the direst calamity, and smoothed the road and made it possible for those independent nations to form of themselves the Great Republic.

Jealousy and bitterness had arisen between the colonies. The act of confederation, sometimes called the first constitution of the United States, went into effect on the 9th of July, 1778, in the midst of the revolutionary struggle. While the citizens of the respective colonies possessed certain privileges and immunities under it, yet the act of confederation was not operative proximately upon the inhabitants, either individually or collectively, but, for the purposes therein named, only upon the states. So that citizenship as we know citizenship under the federal constitution, to which every inhabitant is a party, did not then exist. (Cooley's General Principles of Constitutional Law, 26-28; 1 Wharton, 304-324. 6 Wharton, 264-413.)

And while the continental congress had jurisdiction to settle differences between the colonies and power to make provision for carrying on the war, yet, as a government, the colonies thus confederated together, were a government without citizens; it had no executive head, no courts, and no method of enforcing the ordinances of its congress other than by argument and persuasion and appeal.

This confederacy was not a nation as this report declares it. It was a league of friendship, each with the other, says the third article of the act, for their common defense, the security of their liberties and their mutual general welfare. They were bound to assist each other against all attack from any source, on any pretense whatsoever, and to effect this the union was perpetual. Each state retained its independence and its every power and jurisdiction and right which were not expressly delegated by that confederation, to effect the purposes of that union.

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It was an alliance offensive and defensive between independent nations, and the delegates in the continental congress bore to each other more the relation of ambassadors from independent powers than otherwise. Such was the confederacy and its character, which up to the end of the Revolutionary War had been held together by common danger and by the cohesive power of common defense. The war had ended. No longer facing a common enemy and having time to contemplate it, they were astounded by the enormous debt which their victorious war had created.

This vast indebtedness was to be defrayed out of a common treasury, which was to be supplied by the respective states. All the colonies were poor. Their resources were exhausted by nearly eight years of continuous war. The vast debt to the payment of which they stood bound, and the manner of its apportionment among them and the manner of its exaction, gave promise to most of them of years of taxation and poverty and toil and final bankruptcy.

Let us see the method of taxation by which these people were being destroyed; for there is nothing new under the sun. I quote from the articles of confederation:

All charges of war and all other expenses that shall be incurred for the common defense and general welfare, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all lands within each state, granted to or surveyed to any person, as such land, and the improvements thereon shall be estimated, and the taxes for the paying of that portion, shall be laid and levied by the legislature of the several states.

Do you recognize this method of sapping and destroying the energy and strength of a people? It savors of the single tax which has admirers here. Why, the act of confederation even provided the recall. Men wiser than we, under the old union, before the adoption of the federal constitution, which is a radical departure from it, had tested out to the verge of ruin the dangerous fads and fancies which in this twentieth century and here so strangely challenge our approval.

Let us see the condition of the old union and the colonies after they had tried these heresies and weighed them in the balance and found them wanting. I read from a letter of Alexander Hamilton of date of December 1, 1787, fifteen months before the federal constitution went into effect, and thirteen months before the ordinance of 1787 and its compacts were read into and made a part of Virginia's corrected deed of cession of the Northwest Territory. This was the situation:

We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride, or degrade the character of an independent people, which we do not experience. Are there engagements, to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper

or satisfactory provision for their discharge.*** We have neither troops, nor treasury, nor government.*** Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us: Our ambassadors abroad are mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of public and private confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit a friend and patron of industry? The most useful kind which relates to borrowing and lending, is reduced within the narrowest limit, and this still more from an opinion of insecurity than from a scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes? ***

In our case, the concurrence of thirteen distinct sovereign wills is requisite under the confederation, to complete execution of every important measure that proceeds from the Union. It has happened, as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the states have, step by step, matured themselves to an extreme, which has at length arrested all the wheels of government, and brought them to an awful stand. Congress at this time scarcely possesses the means of keeping up the forms of administration, till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified, produced at first only unequal and disproportionate degrees of compliance with the requisitions of the Union. The greater deficiencies of some states furnish the pretext of example, and the temptation of interest to the complying or at least delinquent states. Why should we do more in proportion than those who are embarked with us in the same political voyage; why should we consent to bear more than our proper share of the common burthen? These were suggestions which human selfishness could not withstand, and which even speculative men who look forward to remote consequences could not, without hesitation, combat.

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Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruin. (Federalist, pages 139, 140, 186.)

The wealth and resources of the colonies lay in the unoccupied lands. The colonies, except Virginia, North Carolina, South Carolina and Georgia, possessed little, if any, ungranted territory. Virginia owned an empire. The Northwest Territory concededly belonged to her. She had in it, title and possession. She owned it, water, air, earth and sky. All that vast territory, now the states of Ohio, Indiana, Illinois, Michigan, Wisconsin and Minnesota east of the Mississippi River and north of the Lake of the Woods. This territory Virginia had conquered at her own expense and with her own troops.

And this was the voice of Virginia to her sister republics: Our confederacy is going to pieces, shattered by the hardships and poverty of vast indebtedness. Let us form of ourselves the Great Republic. I will open the road; I will smooth the way; I own an empire; I will so cede it by treaty and concession that its boundless wealth may be devoted to lifting from us the burden that is crushing us, and to no other purpose whatsoever.

Then followed Virginia's deed of cession. And then the ordinance and compacts of July 13, 1787. Then the submission of the ordinance and its compacts to the Virginia legislature in 1788. Then its acceptance by the people of Virginia on the 30th of December, 1788. And then the corrected deed of cession into which by its terms the ordinance is read. (60 U. S. 503.)

And so born into the world to bless mankind was that great charter of human liberty, the ordinance of 1787.

Let me read the six articles of compact by which I claim we are bound, and which bar the submission of this proposed amendment to the people of this state. If ever writing was divinely inspired, that writing was divinely inspired:

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of states and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with general interest:

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to-wit:

Article 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiment in said territory.

Article 2. The inhabitants of the said territory shall always be entitled to the benefits of the writs

of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offenses where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishment shall be inflicted; no man shall be deprived of liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements, bona fide and without fraud previously formed.

Article 3. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. * * *

Article 4. The said territory, and the states which may be formed therein shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. * * * The navigable waters leading into the Mississippi and St. Lawrence and carrying places between the same shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy without any tax, impost or duty therefor.

Article 5. There shall be formed in the said territory not less than three nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to-wit: * * *

And whenever any of the said states shall have 60,000 free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government; provided, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles. * * *

Article 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. * * *

The words, "the inhabitants shall always be entitled to the benefits of trial by jury and of judicial proceedings according to the course of the common law," do not find place in that compact as mere verbiage and interpolation, but they are classed with the greatest principles of civil

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and political liberty. Let us see in what light the federal courts view them. I read from *Spooner vs. McConnell*, 1 McLean, 364. In speaking of the ordinance, the court says:

Then followed the articles of compact, six in number, guaranteeing, in the most solemn and impressive forms of expression, the great principles of civil and political liberty, namely, the toleration of freedom of opinion in matters of religion; the benefits of the writ of habeas corpus; of trial by jury; and of judicial proceedings according to the course of the common law; the encouragement of schools, and the means of instruction, etc,

Then follows with the other compacts. So that these words speak of the most sacred of human rights, held under the substantive guarantees of that compact to be yielded up only in accordance with its terms.

But this report declares that the assent of the states to the federal constitution is the assent to the suppression of the ordinance by that constitution, and that the states generally in ordaining the federal constitution, says the report, have consented to the abrogation of the ordinance; and then the report, in glib and graceful cadence; labels its conclusion as "dry logic too reasonable for the purposes of productive litigation." Let us see about how much logic of any kind there is in this opinion.

The federal constitution went into effect on the 4th of March, 1789, three months after Virginia had accepted the ordinance and changed her deed of cession. The federal constitution was reported by the convention on the 17th of September, 1787, two months after these independent states had met in the congress of the Confederation and created the ordinance. Many members of the convention which framed the federal constitution had been members of the continental congress. Many members of the continental congress were members of the first congress under the federal constitution. Eighteen members of the first congress under the federal constitution had been members of the convention which framed the federal constitution, and that convention was in session when the ordinance was created. So it would not be violent presumption to conclude that the men who were building the great republic, holding fresh within their view these two great charters, the ordinance and the federal constitution, understood, or thought they understood, their relations one to the other.

The United States, under the articles of confederation, was for the purposes named in that act, a perpetual union. In no less than six instances in the articles is it so declared. It was a government whose constitution had been ordained by the states and not by the people. Its powers were vested in a congress consisting of delegates from independent states. It was a government of but a single department, having neither an executive, a judiciary nor a citizen. For the government of an alliance of states at peace with the world and with each other, or as a foundation upon which to rest a suitable government, it had failed.

From the act of confederation to the federal constitution was not merely a new dynasty, succeeding another in an established government. It was a new government, radically different from the old. It was a new

union, inheriting only the perpetuity of the union which preceded it. They had the perpetual union, which had been formed by the states under the Confederation. But it was necessary, in order to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessing of liberty to themselves and their posterity, to form a more perfect perpetual union. Not by a constitution ordained by the states, as this logical report declares it; if ordained by the states, it would still remain a mere confederacy. But in order to form a more perfect union, we—not the states—but we, the people of the United States, do ordain and establish this constitution for the United States of America. And it was adopted by the people through delegates elected for the express purpose of considering and deciding upon it; and the people of the states, as well as the states themselves, became parties to it. And it became operative upon all the people, individually and collectively, within the sphere of its power, as well as upon all the states. (Cooley's Principles of Constitutional Law, 26-27-28; 1 Wheaton, 304-324; 6 Wheaton, 264-413.) And so, when the iron tongue of midnight tolled off the last second of March 3, 1789, there appeared on earth for the first time an American citizen, and the Great Republic then first took its place among the nations of the earth.

But what became of the ordinance of 1787 which this report declares was suppressed by the birth of the Great Republic? Let us see. Such of the compacts of the ordinance as are necessary to guarantee the rights of states, and such as are necessary to protect the federal government and secure the rights of citizens of the United States—for under the federal constitution, all the citizens of all the states became citizens of the United States—such of the compacts as were thus necessary are adopted by the federal constitution for federal purposes. On September 25, 1789, the ten amendments constituting the federal bill of rights were submitted to the states by the first congress; nine were borrowed from the ordinance. Also the right to benefits of the writ of habeas corpus, trial by jury, inviolability of contracts, sacredness of private property, and so on, down to the first of February, 1865, when the thirteenth amendment to the constitution of the United States, prohibiting slavery, exactly as therein written, were borrowed from the ordinance, all borrowed from the ordinance of 1787, the clauses of which so adopted are not postponed in their application to the states and the inhabitants of the states in the Northwest Territory, except in so far as their exercise thus would conflict with the federal government and its jurisdiction and its authority and its prerogative.

It is a well settled principle that it is not the mere existence of federal power which precludes a state from exercising the same power. But it is the exercise of that power by the federal government which so precludes the state from exercising it; and that without this, subject to federal exercise of the same power in the same sphere, any state may at any time exercise such power. (Cooley's Principles of Constitutional Law, 35; *Golden vs. Price*, 3 Wash. C. C. 313; 3 Dallas, 386; 21 Howard, 506; 13 Wallace, 397-406; *Sturges vs. Crowninshield*; 4 Wheat, 122-196.)

Not suppressed, not abrogated, mark you, but held in

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abeyance, with the federal constitution, the proximate instrument to which we must look for immediate effect as to rights that call for exercise of federal power.

Suppressed by the assent of the states to the federal constitution! The assent of the states to the federal constitution was by the states' formal acknowledgement of the validity of the ordinance, and formal and solemn acceptance and adoption of its compacts, and its terms under the new government. Sections 1 and 2 of article VI of the federal constitution recognizes its validity, as a part of the supreme law of the land. I read from article VI of the federal constitution:

Section 1. "All debts, contracts and engagements, entered into before the adoption of this constitution shall be as valid against the United States under this constitution, as under the confederation.

Section 2. This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made [all treaties then made had been made under the confederation], or which shall be made under authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The ordinance of 1787 with its compacts is not mere congressional legislation. But it is a treaty, with all the solemnity and force of a treaty, a treaty made under the Confederation, and adopted by the federal constitution; and adopted and adapted by the first congress on the 7th of August, 1789, within five months after the federal constitution went into effect. And I am not without authority upon this proposition. I quote from Scott vs. Sanford, 60 U. S. 503, 522, 523:

North of the Ohio, Virginia conveyed the lands, and vested the jurisdiction in the thirteen original states before the constitution was formed. She had the sole title and sole sovereignty, and the same power to cede, on any terms she saw proper, that the king of England had to grant the Virginia colonial charter of 1609, or to grant the charter of Pennsylvania to William Penn. The thirteen states, through their representatives and deputed ministers in the old congress, had the same right to govern that Virginia had before the cession. (Baldwin's Constitutional Views, 90.) And the sixth article of the constitution adopted all engagements entered into, by the congress of the Confederation, as valid against the United States; and that the laws made in pursuance of the new constitution, to carry out this engagement, should be the supreme law of the land, and the judges bound thereby. To give the compact, and the ordinance, which was a part of it, full effect under the new government, the act of August 7, 1789, was passed, which declares: "Whereas, in order that the ordinance of the United States in congress assembled, for the government of the territory northwest of the river Ohio, may have full effect, it is requisite that certain provisions should be made, so as to adapt

the same to the present constitution of the United States."

It is then provided that the governor and other officers should be appointed by the president, with the consent of the senate; and be subject to removal, and so forth, in like manner as they were by the old congress, whose functions had ceased.

By the powers to govern, given by the constitution, those amendments to the ordinance could be made, but congress guardedly abstained from touching the compact of Virginia, further than to adapt it to the new constitution. * * *

As to the Northwest Territory, Virginia had the right to abolish slavery there; and she did so agree in 1787, with the other states in the congress of the Confederation, by assenting to and adopting the ordinance of 1787 for the government of the Northwest Territory. She did this also by an act of her legislature, passed afterwards, which was a treaty in fact [her second deed of cession].

Before the new constitution was adopted, she had as much right to treat and agree as any European government had. And, having excluded slavery, the new government was bound by that engagement by article VI of the new constitution.

This ordinance was addressed to the inhabitants as a fundamental compact, and six of its articles define the conditions to be observed in their constitution and laws. These conditions were designed to fulfill the trust in the agreements of cession, that the states to be formed of the ceded territories should be "distinct republican states." This ordinance was submitted to Virginia in 1788, and the fifth article embodying as it does a summary of the entire act was specifically ratified and confirmed by that state. This was an incorporation of the ordinance into her act of cession.

This report argues from the false premise that there was but one party to the compact originally, and that party was the general government, the nation, and quotes from Judge Grimke to that effect in *Hutchins vs. Thompson*, 9 Ohio, 62.

That ill-considered remark of Judge Grimke he takes back in the next twenty lines of that decision. I read from the case:

I have called this part a compact, because it is so termed in the instrument; but if it were not for some things which have since taken place, there might be great difficulty in regarding it in that light. There was in reality but one party to it originally, and that was the general government. But when application for admission into the Union was made by the people, inhabiting the eastern part of the territory, modifications in several parts of the ordinance were asked for, and were granted by the United States as one party, and Ohio, so far, treated the articles of compact as of perpetual obligation. The alterations proposed were with a view to the immediate

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formation of a state constitution, and were of no importance, if the state should have a right to annul the ordinance the moment it assumed that condition. The state may thus, by its own act, have converted that into a compact which was before only a fundamental act of congress.

The ordinance provides that so far as it can be consistent with the general interest of the Confederacy such admission shall be allowed at an earlier period and when there may be a less number of free inhabitants in the state than sixty thousand. (Ordinance, article 5.)

And it was in relation to modifications under this clause of the ordinance, which were requested and assented to, and not as to any of the compacts.

The nation originally the only party to the ordinance and its compacts! Why, under the Confederation, when the ordinance was adopted by the state, there was no nation. The government was an offensive and defensive alliance between independent nations, and as such each state spoke for itself in the continental congress. I quote:

The declaration of independence was not, says Justice Chase, a declaration that the united colonies jointly in a collective capacity were independent states; but that each of them was a sovereign and independent state; that is, that each of them had a right to govern itself by its own authority, and its own laws, without any control from any power on earth. (3 Dallas, 199; 4 Cranch, 212; 60 U. S. 502.)

As to how Virginia looked upon the Confederation, as well as that she fixed and dictated the terms of cession and the purposes for which cession was made, as one of the high contracting parties, I quote from her deed of cession, 1 U. S. L. 417:

That all lands within the territory so ceded shall be used as a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation, or federal alliance, of said states, Virginia inclusive; according to their usual respective proportions in the general charge and expenditure, and shall be faithfully, and bona fide disposed of for that purpose, and for no other purpose or purposes whatsoever.

And I again repeat that the ordinance was submitted to Virginia, and on the 30th of December, 1788, was specifically ratified and confirmed by Virginia, and that the ordinance was incorporated in her deed of cession. (1 U. S. L. 481; 60 U. S. 503; Ordinance, article 5.)

Before the federal constitution was adopted she had as much right to treat and agree, particularly with all of her sister states, each becoming a party to the agreement, as any European government had; and her acceptance of the ordinance and her deed of cession, of which the ordinance became a part, was a treaty in fact.

Each of the original states was and is a party to the ordinance and its compact, Virginia in the dual relation of grantor and a participant in the proceeds arising from the vast body of land. In fact, every state then and now in the federal union is a party to that compact;

but be that as it may, each of the states formed from the territory became a party to it, and each inhabitant thereof a party to the ordinance and its compacts. I quote from *Spooner vs. McConnell*, 1st McLean, 344, 373:

The compact was formed between political communities and the future inhabitants of a rising territory, and the states which should be formed within it. And all who became inhabitants of the territory became parties to the compact. And this compact, so formed, could only be rescinded by the common consent of those who are parties to it.

And I quote from 60 U. S. 504. The court in speaking of the ordinance says:

The consent of all the states represented in congress, the consent of the legislature of Virginia (1 U. S. L. 481), the consent of the inhabitants of the territory, all concur to support the authority of this enactment. And it is apparent in the frame of the federal constitution, that the federal convention recognized its validity and adjusted part of their work with reference to it.

I also quote from 60 U. S. 512:

The ordinance of 1787, depended upon the action of the congress of the Confederation, the assent of the state of Virginia, and the acquiescence of the people; and the federal government accepted the ordinance as a recognized and valid engagement of the Confederation.

So that we have other parties to the ordinance than the nation, which then had no existence.

Of the vast wealth which Virginia so generously ceded, the states became and were the recipient. Of the compacts of the ordinance, which breathe every principle of human liberty, the inhabitants and states formed in the territory were and are the thrice blessed beneficiaries.

This report claims that the states and the nation, through the supreme court of the United States, assent to the suppression of the ordinance.

"Shall be considered as articles of compact between the original states, and the people and states in said territory, and forever remain unalterable unless by common consent," says the ordinance.

The consent of the original states or any state is not created either by the dicta or the decision of federal courts. The compact cannot be abrogated by implication.

The United States can only consent to the abrogation of the compact through the states in congress assembled. I quote *Spooner vs. McConnell*, 1 McLean, 344:

It is a well established principle that no political change in a government annuls a compact made with another sovereign power, or with individuals. The compact is protected by that sacred regard for plighted faith, which should be cherished alike by individuals and organized communities. A disregard of this great principle would reject all the lights and advantages of civilization, and throw us back to an age of vandalism.

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In this same case which I have quoted, which was under the fourth article of the ordinance, in relation to the navigable waters in said territory and the power of the state concerning them, the court says:

All were interested in this provision, since all might have occasion to navigate the rivers referred to. Is it rational to conclude that congress intended to surrender a right so solemnly secured, so important in its character, and so extensive in its operation? And is such intention to be predicated on any action, short of an express declaration to that effect? If an ordinary act of legislation cannot be repealed without the observance of the forms and solemnities requisite in its enactments, a compact declared on its face to be "unalterable, unless by common consent," cannot be abrogated by mere implication.

The Congress of the United States as the representative of the people of the United States is a party to the compact, and as much bound by its stipulations as the states individually. (1 McLean, 370, 375, 379.)

In *Hogg vs. Zanesville Canal and Manufacturing Co.*, 5 Ohio, 416, Judge Hitchcock says, as to article IV of the compact, relating to navigable waters leading into the Mississippi and the St. Lawrence:

This portion of the ordinance of 1787, is as much obligatory upon the state of Ohio as our own constitution. In truth it is more so; for the constitution may be altered by the people of the state, while this compact cannot be altered without the assent both of the people of this state and of the United States through their representatives. It is an article of compact, and until we assume the principle that the sovereign power of the state is not bound by compact, this clause must be considered obligatory.

And that court further says on page 423, 5 Ohio:

The right to navigate the rivers is a right secured to the citizen by the ordinance of 1787. It is a right of which he cannot be deprived unless by agreement between the people of the United States through their representatives in congress, and the people of Ohio, through their representatives in the general assembly.

I also cite *Hutchins vs. Thompson*, 9 Ohio, 52; *Cochran's Heirs vs. Loring*, 17 Ohio, 409, 424, 425; *Ohio vs. Boone*, 84 O. S. 357 (in which the court quotes from these opinions, and declares that the foregoing quotations remain as the unmodified expressions of this court upon this subject. This case was decided in 1911), and 84 O. S. 359.

Only the parties which establish the compact can annul or modify, and then only in accordance with its stipulations. (*Georgetown vs. The Alexandria Canal Company*, 12 Peters, 91, and authorities heretofore cited.)

The federal cases cited in this report go to the verge of federal assault upon the ordinance and its compacts. And at farthest it can only be gathered from the federal

cases so cited, nor can it be found anywhere otherwise than that the ordinance is held in abeyance by the federal constitution and the constitution of the state, in so far only as those constitutions respectively adopt the articles of compact. If that be true, they are then enforceable through those latter instruments, such of them as are so adopted, and not proximately so long as thus held in abeyance. If the cases cited in this report be binding authority even to that extent, that conclusion must be gathered from expressions of opinions by the court which are not applicable to the fact upon which the cases rest. Let us see what those cases include and conclude.

The first case cited is the *Escanaba Company vs. Chicago*, 107 U. S. R. 678. The fourth article of the ordinance provides—

That the navigable waters leading into the Mississippi and St. Lawrence and carrying places between the same shall be common highways and forever free as well to the inhabitants of said territory, as well to the citizens of the United States, as those of any other states that may be admitted into the confederacy, without any tax, impost or duty therefor.

This case was decided in 1881. The *Escanaba Company* was a corporation, chartered under the laws of Michigan, and engaged in water navigation. The state of Illinois had authorized the city of Chicago, within the city limits, to straighten and deepen and widen the Chicago river, whose waters reach the St. Lawrence through the Great Lakes. And had further authorized the city to erect bridges over the stream to facilitate commerce. To meet the necessities of traffic, the bridges were closed at certain times and for certain periods of time. This the plaintiff claimed interrupted the navigation of the river, was not consonant with federal authority over navigable waters and was forbidden by the compact of the ordinance which I have just quoted. This report states the dicta in these cases and not the decision.

It is conceded doctrine, though obiter in these cases, that the federal constitution, as well as the constitution of a state in the Northwest Territory where the constitution had adopted a clause of the ordinance of 1787, holds the clause in abeyance so long as the clause remains a part of the constitution which adopts it.

It is undisputed that a state being admitted into the Union upon equal footing in all respects with the original states, is entitled to exercise all the sovereignty of a member of the Union. This latter doctrine has meaning, however, which the mere declaration of it does not convey.

The court in the *Escanaba* case declares that, independent of any constitutional right or restriction, the state has the power to arrange that concessions be made for the harmonious pursuit of all occupations, so that one might not invade the rights of the other, and so that facilities be given to all kinds of commerce, with the least obstruction to either; that, to effect these ends, bridges might be rightfully built across a navigable stream, where the structure is made and used so as least to interfere with commerce on the stream; and that the city of Chicago, in exercising the authority over the

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Chicago river delegated to it by the state of Illinois had complied with all these requisites; that widening, deepening and straightening the Chicago river, was not obstructing a navigable stream or making the river less navigable; and that the facts showed that in all that had been done there had been no discrimination against citizens of other states, that it was done in the endeavor to meet the wants and necessities of commerce of the citizens of other states as well as of the citizens of Chicago and the state of Illinois.

And the court affirmatively finds that the facts show no violation of the clause of the ordinance, and a condition not repugnant to its inhibitions but in compliance with them. And so the court declares:

We do not see that the clause of the ordinance materially affects the question before us, because the navigation of the Chicago river is free, and its character is not affected by the fact that it is crossed by bridges and used as described. (107 U. S. 447; *Palmer vs. Commissioners of Cuyahoga county*, 3 McLean, 226; *Spooner vs. McConnell*, 1 McLean, 370, et seq., 379.)

The next case cited is *Huse vs. Glover*, 119 U. S. 543, decided in 1886. This case arose because of the building of locks and dams in the Illinois river and in streams tributary to it. And the same questions and the same state of facts were present as obtained in the *Escanaba* case, with the additional proposition that the company which had made these improvements by the authority of the state, charged tolls for passing through the lock and dam. Quoting with approval the *Escanaba* case, and after having concluded, as to the ordinance, the same clause of which was sought to be interposed in that case, and after having remarked upon the well settled rules as to the dominion and sovereignty of a state when admitted into the Union, etc., the court declares:

Independently of these considerations, the terms of the ordinance were not violated; because navigable streams are subject to that which might be required by public convenience under reasonable conditions, and so as not to unnecessarily obstruct them to a degree inconsistent with their free navigation.

Then the court goes on and quotes from *Palmer vs. Cuyahoga county*, 3 McLean, 226, 227, and approves and confirms the doctrine:

This provision of the ordinance does not prevent a state from improving the navigableness of its waters, by removing obstructions, or by dams and locks, so increasing the depth of the water and that what was done in that behalf could not be considered in the nature of obstruction, prohibited by the ordinance.

And the court then declares that tolls are to reimburse the expenditure for the improvement and are not a tax.

In *Sands vs. The Manistee River Improvement Company*, 123 U. S. 226, this case is cited in that report, and was decided in 1887. The Manistee River Improvement Company obtained authority from the state of Michigan to clean out and make more navigable the Manistee river.

Sands was a lumberman and rafted logs down this stream, for which, after it had been thus improved by the defendant, the company charged him toll. It was in a suit to collect the toll that the case reached the supreme court of the United States. In deciding the case the court quotes and approves the *Escanaba* case, and the case of *Huse vs. Glover*, and is careful to declare:

Independently of the consideration there is nothing in the language of the 4th article of the ordinance respecting the navigable waters of the territory emptying into the St. Lawrence, which, if binding upon the state would prevent it from authorizing the improvement made in the navigation of the Manistee river. And the court further says, as we said in *Huse vs. Glover*, 119 U. S. 543, decided at the last term, the provisions of the ordinance that navigable streams shall be highways, without any tax, impost or duty, has reference to their navigation at a natural state. It did not contemplate that such navigation should not be improved by removing obstructions and deepening and widening.

And the court declares that by "tax, impost, and duty, mentioned in the ordinance is meant a charge for use of the government, and not compensation for improvements."

The report cites the case of *Coyle vs. Oklahoma*, 221 U. S. 563, decided in 1911. In that case the court says:

The question reviewable under this writ of error, if any there be, arises under the claim that the act of the state of Oklahoma providing for the immediate location of the capitol at Oklahoma City was void, as repugnant to the enabling act of congress under which the state was admitted.

The enabling act provided that the state capitol should remain at Guthrie, and not be removed therefrom, after the state was admitted, for a period named in the enabling act. As soon as the state was admitted the authorities of the state took measures to remove the capitol to Oklahoma City. Coyle sought to enjoin the removal, pleading this clause of the enabling act as bar to the removal.

And the court declares that it was no part of an act of congress for the admission of a new state to locate the capitol of a new state. And held that part of the enabling act for the admission of Oklahoma ultra vires, and not within the power or capacity of congress to require it. But that it was distinctively the business of the state to locate and fix the location of its own seat of government, and that therefore that portion of the enabling act was void; that congress may embrace in its enabling act conditions relating to matters wholly within its control, but not matters wholly within state control. (221 U. S. 566.)

The court then reads into its decision the definition of a state:

The definition of a state is found in the power possessed by the original states which adopted the federal constitution.

And in the very language of the ordinance, which was the first open door to the Union, the court declares that

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the power given to congress by section 3 of article IV of the federal constitution is to admit new states into this Union "on an equal footing with the original states in all respects whatsoever." (221 U. S. 559). This doctrine is as old as the ordinance which declares it; for until written into the compacts of the ordinance of 1787, man had never written it before.

And that very case of *Coyle vs. Oklahoma* recognizes and distinguishes between compacts made between the states sanctioned by the federal constitution, or which are the legitimate subject of congressional action, and so binding on the states, and the act then sought to be enforced at the bar of that court, which found no sanction in the federal constitution, and was so repugnant and incongruous as to defeat the ends in view, the formation of new states and their admission into the Union on a footing of equality with the original states.

In the case of *The City of Cincinnati vs. The Louisville and Nashville Railroad Company* decided by the supreme court of the United States, October, 1911, the opinion cites the cases I have here cited and is no broader than are those cases and goes no farther. Across certain real estate which was dedicated to, and accepted by the town of Cincinnati in 1789, defendant in error sought to condemn a right of way. The plaintiff in error, with other defenses, claimed that the "public exigency" contemplated by the provisions of article 2 of the ordinance of 1787, that allowed the appropriation of property for a public use, was not present in this instance; that article 2 of the ordinance being read into the contract of dedication no condemnation could be made. Upon this feature of the case the court held that eminent domain and under it the right to appropriate private property to public use, is an incident of sovereignty; that every contract is subordinate to it, and that article 2 of the ordinance properly interpreted does not forbid an appropriation such as is here involved. So that the court in fact finds in this case and in its subject matter nothing repugnant to the terms of the ordinance.

The ordinance of 1787 has the sanction of the constitution of the United States, and is and has been the subject of congressional action binding the states. The ordinance itself was the solemn enactment of all the states in congress assembled. It is a treaty. (60 U. S. 522, 523, 503, 502, 504.)

It was adopted by the constitution of the United States, article VI, section 1 and 2.

August 7, 1789, the first congress adopted the ordinance and adapted it to government of the Northwest Territory under the federal constitution. On the 30th of April, 1802, congress recognized its validity, and directed the creation of the state of Ohio, and that its government and constitution be not repugnant to the ordinance of the 13th of July, 1787, between the original states and the people and states of the territory northwest of the river Ohio. And the same act recognizes the compact as binding even as to boundaries of the new state. (Also see article 5, Ordinance.)

On March 3, 1803, congress refers to its act of April 30, 1802, as valid and supplements it.

On the 9th of February, 1803, congress recognizes the state as a member of the Union, and declares that the constitution and government of Ohio are in conformity

with the enabling act and so are not repugnant to the compacts of the ordinance of 1787.

May 20, 1812, in marking the western boundary of Ohio, congress again refers to the ordinance for its authority.

On the 29th of November, 1802 "the people of the eastern division of the territory northwest of the river Ohio, having the right of admission into the general government, as a member of the Union," says the constitution of 1802, "consistent with the constitution of the United States, the ordinance of congress of 1787," and the law of Congress April 30, 1802, to enable the people of the eastern division of the territory of the United States, northwest of the river Ohio, to form a constitution and state government, and for admission of such state into the Union, on an equal footing with the original states, and for other purposes; in order to establish justice, promote the welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government. "That the great and essential principles of liberty and free government may be recognized and forever unalterably established, we declare." Then follows the bill of rights of our constitution of 1802, all borrowed from the ordinance. I quote from McLean, 368, 369:

In April, 1802, upon the application of the people of that part of the territory northwest of the Ohio, now embraced within the limits of the state of Ohio, congress passed a law to enable them "to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes." This act provides, among other things, for holding a convention of the people of that part of the territory; and authorizes such convention to form a constitution and state government, provided, the same shall be republican and not repugnant to the ordinance of the 13th of July, 1787. This provision is adverted to as evidencing that the congress of 1802, most distinctly recognized the obligatory character of the ordinance, and as containing an unequivocal expression of the opinion that no state within the territory could be organized, and admitted into the Union, with a constitution "repugnant" to that instrument. That body did not consider itself as vested with the power to absolve the state of Ohio from the obligations created by the compact. * * *

It is also clear that the people of Ohio in calling a convention and adopting a constitution under the act of congress of April 13, 1802, recognized the ordinance as affording a paramount rule for their guidance. This is deducible from the fact that in the preamble to their constitution, the right of the state to admission into the Union is based upon the ordinance, the constitution of the United States, and the act of congress just referred to.

And as late as 1851, "We, the people of the state of Ohio," were still grateful to Almighty God for our freedom; and we adopted the present constitution with no departure from the compacts of 1787.

Recognized as the great and valid charter of our liberty

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by congress and conventions and constitutions, state and federal, a treaty, the compacts of which could only be held in abeyance when adopted by an instrument equally solemn—with this within their view, it is not strange that the judges in the Coyle case distinguished between a compact and an act of congress which was ultra vires.

What is meant by admission of a state upon equal footing with the original states in all respects whatsoever? This report, this "dry logic too reasonable for productive litigation" as the makers of it declare, defines it as follows:

All the states of the Union are equal, but this equality would be destroyed if the inhabitants of one state had more privileges, guarantees and immunities than the inhabitants of another state, or were bound by more prohibitions than the inhabitants of another state. Hence the national government cannot admit of a document transcending the one which is the basis of its own existence.

I would rather depend upon the explanation and definition of Justice McLean of the supreme court of the United States, and Justice Leavitt, sitting in the circuit court of the United States, in the case of Spooner vs. McConnell, 1 McLean, 344-349 (the opinion of Justice McLean) and 370-1-2-3-4 (opinion of Justice Leavitt):

The terms "sovereign power of a state" are often used without any very definite idea of their meaning and they are often misapplied. Certain objects on which the sovereign power may act are by its own consent, withdrawn from its action. But this does not divest the state of any attribute of its sovereignty.

A state cannot divest itself of its essential attributes of sovereignty. It cannot enter into a compact not to exercise its legislative and judicial functions, or its elective rights, because this would be to change the form of government, which is guaranteed by the federal constitution. Does this provision mean that the new state will exercise the same power and in the same modes as are exercised by any other state?

Now this cannot be the true construction of the provision, for there cannot be found perhaps any two states in the Union whose legislative, judicial and executive powers are in every respect alike. If the argument be sound that there is no equal footing short of exact equality in this respect, then the states are not equal. But if the meaning be that the people of the new state, exercising the sovereign power which belongs to the people of any other state, shall be admitted into the Union, subject to such provisions in their fundamental law as they shall have sanctioned, within the restrictions of the federal constitution, then the states are equal, equal in rank, equal in their power of sovereignty; and only different in their restrictions which in the exercise of those powers they may have voluntarily imposed upon themselves.

The sixth article of the compact prohibits slavery. The constitution of the state also pro-

hibits it. Now, notwithstanding this inhibition in the constitution, the people of the state in convention, might so alter the constitution so as to admit slavery. But does not the compact prevent such an alteration without the consent of the original states? The provision of the compact in regard to slavery rests upon the same basis as that which regards the navigable waters within the state. They are both declared to be unalterable except by common consent.

I might here remark that the compact regarding navigable waters is not adopted in terms by our constitution, but is written into it because of the fact that there is nothing in the state constitution repugnant to that compact. This being true, how much more plainly do the compacts as to slavery and trial by jury and judicial proceeding according to the course of the common law stand forth as unalterable.

In the same case Judge Levitt says, 1 McLean, 327:

To entitle a state to the character of sovereignty, it is not regarded as essential that she should possess in equal degree the same powers over all subjects that may be possessed by other states. In any other aspect of this subject, no one of the federal states formed within the territory, northwest of the Ohio river, has been admitted into the Union, on a footing of equality with some of the original states. The institution of slavery existed in many of the original states at the period of adoption of the ordinance, and in several of them it continues to exist. [This case was decided in 1838.] Yet, the ordinance expressly inhibits the introduction of slavery in any of the states to be formed within the territory. And these states have made this provision of the ordinance a part of their constitution. In this case then, it is clear that some of the original states possessed rights and exercised jurisdiction which is prohibited to Ohio and other states. And yet, can it be maintained that the latter states are not equal in sovereignty with the former?

It may be well on this point to refer to the language of the ordinance to ascertain in what light this subject was viewed by those who framed and passed it. To suppose them ignorant of the political rights and relations of the state, or that they misconceived the powers with which they were clothed, would be doing them great injustice. Under a form of government in which the congress represented the state in their sovereign capacities, it may be safely inferred that the rights of the states were not only well understood, but scrupulously guarded.

The inference is, therefore, irresistible that the intelligence and sagacity of that body did not lead to the suspicion that the compact detracted in any degree from the sovereignty of the state that might be admitted into the confederacy in virtue of the ordinance and 84 O. S. 359

So it may be seen that the provision that a new state shall be admitted into the Union on an equal footing with the original states carries with it a meaning which

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mere reading of the sentence does not fully convey, and which the "dry logic" of this report does not comprehend, and that the report is as far from the law in this respect as it is in the respects I have mentioned and will mention.

The report declares that the ordinance is only binding between the original states and the people and states in the Northwest Territory. It makes very little difference whether this be a fact or otherwise. If it be a fact, then Ohio is one of the states in said territory and is bound. But it is not a fact. When Ohio entered the Union and ranged herself with her sister states she as a state was doubly bound. Not only as a new state admitted from the Northwest Territory, and bound by the compact, by the compact itself and by her constitution, adopted by her in consonance with the terms of the compact, but bound as a state of the Union, having assumed upon her admission to the Union all of the obligations of the original states, equal to them in sovereignty and equal in obligation. And so were and are her people bound. And I am not without authority on this point. I quote from 1 McLean, 344, 373:

This compact was formed between political communities and the future inhabitants of a rising territory, and the states which should be formed within it. And all who became inhabitants of the territory made themselves parties to the compact. And this compact so formed could only be rescinded by the common assent of those who were parties to it.

Again, by the terms of the ordinance, the states admitted into the Confederacy thereupon became parties to the compact. It has already been remarked, that the congress of 1802, in providing for the admission of Ohio, and the convention of that state in adopting the constitution, and submitting it to congress, distinctly recognized the obligatory character of the ordinance. The state became a voluntary party to the articles of compact which it contained. And having assented to it, and acknowledging its binding character, she is concluded from taking the ground that it imposes no obligation upon her.

So Ohio as a state of the Union assumed all the obligations imposed upon a state by the constitution of the United States and the laws of congress. (Authorities above and fourth article of ordinance.)

Each case cited in the report as to the ordinance of 1787 is dictum, and makes no pretense of meeting the question squarely, but sidesteps and avoids and goes obiter and by the way. I venture to say that not otherwise are any of the cases examined by gentlemen, except it be the Spooner and Palmer cases, and they both, going up from Ohio, with the ordinance and the constitution of this state in the eye of the court, cross swords with the opinion of Justice Roger Brook Taney, upon whose dicta the dicta of these modern opinions rest. You may find the shadow of all these opinions in the Dred Scott case. (Dred Scott against John F. A. Sanford.) Not only the shadow, but the substance of the opinions cited, can be found in the nine separate opinions in that case; seven with the majority, and two, Justices McLean and Curtis, dissenting. That case, the Scott case, coupled

with cases preceding it, decided by the same judges, is the case in point. It has often been referred to and quoted here. It was said here by Mr. Roosevelt that the Dred Scott decision was recalled, and he smiled as he referred to it, as if recollection of the episode of that recall amused him.

The ordinance of 1787, and later, with the Missouri Compromise passed in 1820, kept the states at peace with each other for seventy-four years.

It had been long in view that the institution of slavery was the rock upon which the American Union would split into fragments. The federal constitution recognized slavery and made provision for it and for the fostering of it in the states that existed when it was framed. In its very first article is this provision to be found.

The same instrument invites new states to enter the Union on an equal footing with the original states in all respects whatsoever. The ordinance of 1787 declares as one of its compacts, that shall forever remain unalterable and binding upon the states and the people of the Northwest Territory thus invited to enter the Union upon an equal footing of the original states in all respects whatsoever, that slavery shall never exist in said territory, nor in the states formed in said territory, nor involuntary servitude otherwise than in punishment of crime whereof the party shall have been duly convicted.

This clash between those great charters provoked the assault upon the ordinance in the cases which lead up to this great case, the Scott case, hoping to find some vulnerable point by which its destruction in the interests of slavery might be effected.

With the object in view to render less implacable the slave states it was sought to nullify and take from congress the power to prohibit slavery in the territories of the United States.

When the state of Missouri was admitted into the Union in 1820, as a slave state, congress, as a compromise measure and to appease the North, by the same act which authorized Missouri to enter the Union declared that north of latitude 36 degrees and 30 minutes and west of the Mississippi, excluding Missouri, the institution of slavery should not exist. This bill was passed by a vote of one hundred and thirty-four to forty-two. The compromise had existed up to 1854, when it was supplanted by the Kansas and Nebraska bill, by which the question of slavery in the states created in said territory was left to the states themselves. But mark you, these measures had been all congressional action. The power to allow or prohibit slavery in the territories had been assumed and exercised by congress, and until the decision of the Dred Scott case it had never been questioned that the states and the people of the United States in congress assembled might not control within the territories of the United States that institution which had made enemies of the two sections of the Great Republic. But the time was ripe, and so the supreme court of the United States, by the most arrant dictum that ever was uttered, so far as concerns the proposition decided, declared that congress had not the power to prohibit slavery in the territories of the United States, and (the very words of the court) that the Missouri compromise was unconstitutional, null and void. Before this decision, in 1854, the Missouri Com-

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promise had been practically repealed. The Scott case was heard in March, 1856, and decided in April, 1857.

Dred Scott was a negro slave. He claimed manumission because of the fact that he had lived with his master at Fort Snelling, in the territory west of the Mississippi river, to which the Missouri Compromise applied, and at Rock Island, Illinois, to which the ordinance of 1787 and the constitution of that state, both prohibiting slavery, applied. The period of his residence in free territory covered a number of years. He had a wife and two daughters in like condition of servitude. Dred Scott claimed by thus residing in a territory in which slavery was not tolerated by law he had (I use the language of one of the justices) acquired property in himself; that he owned his own body; and that his body was not the property of John F. A. Sanford. And he claimed the same for his wife and daughters. The case was brought in the circuit court of the United States for the district of Missouri and carried by writ of error to the supreme court of the United States. To give the circuit court jurisdiction Scott declared that he was a citizen of Missouri and that Sanford was a citizen of the state of New York. The judgment of the circuit court was against Scott and in favor of Sanford.

The supreme court of the United States declared that the record showed that Scott was a man without a country; that being a slave he was neither alien nor citizen; that he had no right in any forum. And the court said he possessed no right which a white man was bound to respect; and found that the circuit court had no jurisdiction to entertain the case; and that the supreme court of the United States had no jurisdiction of the subject matter; and its judgment was that the case be remanded for dismissal for want of jurisdiction.

But notwithstanding this, that court claimed the right to investigate the false grounds upon which the circuit court had entertained the case, and to substantively make findings and decisions upon them. And so the supreme court of the United States built up the Dred Scott decision, and by it those judges destroyed the power of congress to prohibit slavery in the territories so far as their decision reached it. That case might have been decided against Scott without attacking the power of congress upon the provisions in both the ordinance and federal constitution relating to fugitives from service, but the power of congress as to slavery in the territories was the object of attack.

But what did the court with the ordinance of 1787, that which, when the federal constitution, which provided for slavery and provided for the importation of slaves on payment of \$10 duty on each person imported, and which invited new states to range themselves in the Union beside their sister states, and partake of this blessing of sovereignty upon an equal footing in all respects whatsoever—what did they with this compact that arose above the federal constitution, and said to the states of the Northwest Territory, "Thou shalt not"; and forbade that they adopt the institution of slavery or suffer it within their border; and enjoined upon them that they shun it forever as the destroyer of their country's peace? There was still part of the Northwest Territory not erected into states. What did they with the ordinance? That ordinance was an act of congress which forbid slavery in the Northwest Territory, and the Missouri

Compromise was an act of congress which forbid slavery north of 36-30. How did they reconcile the destruction of the power of congress as to one and not the other? They viewed and measured that great charter, which has the strength of a fortress formed by nature's hand, and discovered that it possessed qualities other than mere congressional legislation; that it was a compact, a treaty; that its abrogation depended, not as do the destruction of most treaties, upon the will of but one of the high contracting parties, but that to destroy it required the common and concurrent assent of all the parties to it; that the federal constitution had adopted it, and declared of it in its sixth article that it should be taken and held, and the principles in it, wherever they may be found, and adopted as the supreme law of the land; and that the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. And seeing it thus beyond their power to destroy and invulnerable to their assault, they smote it and cast their javelins against it, and turned themselves to the destruction of the power of congress to make free states in the territory we had acquired of France and Mexico, west of the Mississippi. To perpetuate slavery they destroyed as far as they could destroy. And so ended the first lesson.

This case was blessed in the South, and in the North the air trembled with the curses of it. I have been told by authority that I would not gainsay that that opinion was thus strained and distorted and warped, and the case decided thus, hoping by it to put off the day all dark and drear that then and long had threatened. But the effect was exactly the opposite. It lighted into flame the smoldering embers of discord, and the recall of the Dred Scott decision of which Mr. Roosevelt here smilingly reminded us was at hand. Within forty-nine months after that decision the signs in the sky so long portending evil to our country, stood forth in the realities of grim-visaged war. The earth shook with the tramp of contending armies.

Virginia, the peacemaker, that had ceded an empire to allay the jealousies of her sister states and helped them in their need—the streets of her cities were swept with hissing bullets; on every hill the fires of ruin glowed. Her valleys were plowed and torn with shot and shell; her soil was steeped with the blood of her sons, and on every hand within her border stalked the hideous form of death.

For fourteen hundred miles spread the battle front, all given to tumultuous carnage. The nations of the earth were sickened with the horror of it. Civilized man shuddered as the sounds of that grapple to the death between brethren smote the palpitating air. And there was no ear upon the earth so savage or remote that was not bent in listening fear at the sullen muttering of that mighty conflict. Until finally, when the greatest war of the nineteenth century ended at Appomatox, there had been given to slaughter and to death mightier hosts than had pursued Dred Scott and haughtier names than that of John F. A. Sanford. And that case and its teachings as to slavery had been washed from the rolls with American blood—the blood of Mr. Roosevelt's countrymen. Yet he smiled, did that man, that inimitable smile, which cometh in such questionable shape that we do misdoubt us whether it be wicked or charitable, and

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laughed as he bethought him here of that recall and the reeking horror of it!

Is it true that we view those years of terror and despair as merely one of the useless lessons of the past? I hope not. I trust not. It was not the end of the story with us, thank God. Yet it was but history repeating itself. History that is strewn with the wrecks of dead republics; each ruin a monument to the period of that country's life, when its institutions became not sacred to its people and when its citizens, lured by the voices of its demagogues pitched to the music of patriotism, trampled their own liberties under their own feet.

In each of the federal cases cited in this report the courts repeat in almost exact words, "Independently of the consideration as to whether the clauses of the ordinance are valid or invalid, the facts show no violation of their provision. There is in the acts of the parties nothing repugnant to the terms of the ordinance, wherefore the clauses of the ordinance do not materially affect the question before us."

So that the cases cited are dicta, in so far as the ordinance and the compacts of it are concerned, and are not decision. What is the federal rule as to dictum?

The opinion of a court cannot be relied upon as binding authority unless the case (not the briefs, not argument of counsel), unless the case calls for its expression. (*Re City Bank N. O.*, 3 Howard, 392; *Carroll vs. Carroll*, 16 Howard, 287; 123 Federal 502; 178 U. S. 524; 157 U. S. 429.)

The positive authority of a decision is co-extensive only with the facts upon which it is made. (4 Wheaton 122; 12 Wheaton 213.)

General expressions of an opinion, which are not essential to the disposition of the case, cannot control the judgment in subsequent suits. (*Hariman vs. Northern Securities Co.* 197 U. S. 244.)

An opinion in a particular case founded on special circumstances is not applicable to cases under circumstances essentially different. (*Brooks vs. Marbury*, 11 Wheaton, 98; 24 Howard 553; 6 Wheaton, 264; 10 U. S. 615; 110 U. S. 608; 16 Howard 287; 6 Wheaton, 399; 96 U. S. 211; 135 U. S. 135; 169 U. S. 679; 197 U. S. 291.)

But suppose the federal cases be not dicta, but decision? Every case concerns only the tangible and physical things which are within the power and dominion and sovereign control of a state—waterways, navigable streams, bridges, roads, commerce, property, navigation—and deal not with the inherited liberties of the citizen, and not with the inalienable rights of the people. You may say the *Dred Scott* case sounds of human liberty; not so. *Dred Scott* and his wife Harriet, and his two little daughters, Lizzie and Eliza, inherited no liberties. They had no inalienable rights. They were slaves; they were articles of commerce and of barter. They were chattels.

Human rights and commerce do not stand on the same footing under the compacts of the ordinance of 1787, and are not so to be viewed. And I am not without authority on this point. (*Spooner vs. McConnell*, 1 McLean 366, 367.) I quote:

In looking into the ordinance, it is obvious that all the provisions of the articles of compact, are

not to be viewed as standing precisely on the same footing. The guaranties for the security of the great principles of liberty, which lie at the foundation, and constitute essential elements, of all true republican governments, are obviously to be regarded in a different light from those which pertain merely to the right and possession of property, and its advantageous enjoyment. The distinction seems to have been recognized by the framers of the constitution of Ohio, and to have exerted an influence upon them, in framing that instrument. They evidently acted under a belief that the fundamental law of the state must conform, in all its leading features and principles, to those of the ordinance of '87. But, while they were careful to impress those features upon, and incorporate those principles into the constitution of Ohio, they did not deem it necessary or proper to treat all the provisions of the ordinance as entitled to the same high consideration. Hence no reference is made in the constitution to the provision of the ordinance relating to the navigability of water courses; and for the plain reason that this was not necessary, in order to give to the constitution a republican character, and make it conform to the great principles declared in the ordinance.

How does the supreme court of Ohio view the compacts of the ordinance of 1787? After having quoted from all the decisions of the courts of this state upon that subject, and declaring that they remain as the, unmodified expression of this court upon this subject, the court says, in *Ohio vs. Boone*, 84 O. S. 359:

We have thus briefly indicated the reason for our belief that the great charter of the Northwest Territory is still under and above and before all laws or constitutions which have yet been made in the states which are part of that territory.

And in this opinion all of the judges concur, and such is the voice of your highest tribunal as late as 1911.

But suppose all that has been said falls to the ground, and that my argument so far is without foundation or weight. In obedience to the compact and to the act of congress which directs Ohio to become a state, and which provides that her constitution shall not be repugnant to the ordinance, Ohio adopts its compacts, both in letter and in spirit, both in its constitution of 1802 and the present constitution, so that in neither of these instruments is there anything repugnant to the ordinance. And having entered the Union with these earnestness of her faith in those compacts she cannot now recede from them.

One of the chiefest and most binding and most valuable articles of that compact, which shall forever remain unalterable except it be changed in accordance with the terms of the compact itself is "that the inhabitants shall always be entitled to the benefits of trial by jury, and to the benefits of judicial proceedings under the course of the common law."

What is a trial by jury under the course of the common law? A jury, under the common law, consists of twelve men. A verdict, under the course of the common law, is the united conclusion of twelve jurors. A trial by jury is a proceeding which results in the verdict of

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the jury and later in a judgment on the verdict. The finding of nine men out of twelve is not a verdict. And without a verdict there is no jury trial.

Our constitution provides that the right of trial by jury shall be inviolate, following the compact of the ordinance and the constitution of 1802. I quote from "Words and Phrases Judicially Defined," and cite 48 A. D. 178; 4 O. S. 167, 177; 25 O. S. 91, 102; 174 U. S. 1, 43; 19 S. C. 580-585.

The provision of the constitution which says that the right of trial by jury shall remain inviolate, means that the right shall in all cases where it was enjoyed when the constitution became binding and obligatory, continue unchanged. The term "shall be inviolate" does not merely imply that the right of jury trial, shall not be abolished or wholly denied, but means that it shall not be impaired. The word "inviolate" is defined by approved lexicographers to mean, unhurt, uninjured, unpoluted, unbroken. Inviolat, says Webster, is derived from the Latin word "inviolatus" which is defined by Ainsworth to mean not corrupt, immaculate, unhurt, untouched.

"Remain inviolate" as used in article I, section 6 of the constitution of Tennessee, providing that the right of trial by jury shall remain inviolate, means that it shall be preserved as it existed at common law, at the time of the adoption of the constitution. (Gibbs vs. Wilson, 49 S. W. 736; 101 Tenn. 612.)

The right to trial by jury is not a trivial right. It is the most sacred right of an American freeman. See how it is valued in our great charters. In the Declaration of Independence, where our fathers avowed that a decent respect to the opinion of mankind required that they should declare the causes which impelled them to that separation, assigned as one of the causes, "For depriving us in many cases of the benefits of trial by jury."

And hear the compact: "And for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in said territory;" and which forever shall "remain unalterable unless by common consent," solemnly declares as one of those principles that the inhabitants of said territory shall always be entitled to the benefits "of trial by jury," and "of judicial proceedings according to the course of the common law."

In our constitution of 1802, "the right of trial by jury shall be inviolate", which provision means as the trial by jury then existed, at that date, November 29, 1802, when that constitution adopted that compact. It shall be inviolate and not be changed.

In our present constitution is the same provision, in exact words, which retains and keeps unchanged, in obedience to the adopted compact, the common law jury.

And in the federal constitution, article VII of the amendments, which was submitted on the 25th of September, 1789, as a part of the federal bill of rights, we find a similar provision:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Such men were then on this earth, signing federal constitutions and making laws in the congress of the United States, as George Washington, Benjamin Franklin, Roger Sherman, Daniel Carroll, Alexander Hamilton, Robert Morris, Thomas Fitzsimons and others like them. Those men looked upon trial by jury and judicial proceedings, according to the course of the common law, as the most excellent and most complete machinery ever devised by the wisdom of man for the freedom of a people and for the safety of a state. And they were right, for with this weapon a common man may defend himself and his property and throttle arbitrary power.

And Ohio having adopted the compact cannot recede from its obligation by any act of Ohio not affirmatively assented to by all the states in congress assembled. (Spooner vs. McConnell, 1 McLean, 344, 353, 369, 370, 375, 379; 5 O. 416, 423; 84 O. S. 355, 356, 357, 358, 359; 7 O. 62.)

It will not answer this argument to say that the constitutions of other states of the Northwest territory, upon which those states were admitted into the Union, followed less jealously the compacts of 1787 than does our constitution of 1802, the contract upon which Ohio was admitted. The decisions of the courts of those states are not explanatory of our situation. This is Ohio; this Convention is acting for the people of Ohio. These Ohio decisions which I have here and elsewhere cited are the declarations of the supreme court of Ohio, referring primarily to Ohio, in solemn affirmation of those articles of compact and the obligations of them.

We should be thankful that we cannot recede and withdraw from the compacts and obligations of that ordinance other than in manner fixed by its terms; for that great charter has afforded us and pointed out to us the best form of government ever enjoyed by man.

I agree with the truth uttered here by Mr. Roosevelt when he declared "that justice and liberty have been more perfectly realized in this country and under this form of government than ever before." Of course, the sentiment was absolutely inconsistent with everything else he said, and he took it back twenty times during his speech, but in so declaring he spoke the truth nevertheless. And I do not understand why we should be so desirous of freeing ourselves from the binding effect and from the protection of our bill of rights, and our charters and liberty. I do not see why we should view them as threats and menaces. I do not see why we should look with such stony horror on our form of government. I do not understand why we should be so charmed and hypnotized by every pretender who takes for his text and preaches into our ears of the rights of man and of his mountebank discoveries in that well-explored field. Yet it seems that we deem as sacred as the truths of holy writ every utterance which spits on the past and slanders the present and paints fantastic and nondescript pictures of the future.

It has been said from this rostrum by those invited to

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teach us here, and oft repeated on the floor of this Convention, that representative government is a failure; that under it there is no safety for the rights of man; that representative government is not sufficiently progressive to keep pace with the rights of man. It has been even here suggested that that shibboleth of the rights of man, "as it was in the beginning, is now, and ever shall be, world without end," should be indefinitely postponed and relegated to innocuous desuetude.

There are no new discoveries to be made in the rights of man. The rights of man are the same now as when the morning stars sang together. There is no progression in the rights of man. They were the gift of God at the creation of the world. They have not grown; they have not diminished. They were implanted in the human breast by Him who is the Universe. And locked in men's hearts, they have followed down through every adversity and crash and cataclysm. The rights of man are not prompted by conditions. The rights of man have always existed, and men knew them at all times and in all ages. The fathers who builded this republic knew them and knew them well. And they builded well. They gathered from the centuries of war and strife, which we call history, the principles of liberty, that, as we have them now, are the realized hopes for which men had shed their blood through the ages past. And in instruments that will never die, they, the ablest men who ever inhabited the earth, not excepting the committee on Judiciary of this Convention, have handed down to us our inalienable rights as trustees in trust for future generations. From those rights there is no severance.

They knew full well that a government of the character of the one they were then constructing, while the crash of overthrow might suddenly come, was never destroyed by a sudden and successful revolution; but that its destruction was accomplished by changes so gradual as to escape detection and challenge; changes yielded by the people themselves, until finally, when the people awakened, the liberties they had inherited were gone and the things that had been were not.

With wisdom almost divine, they would save us from our very selves. They knew that no country was ever more in danger than when the talent that should be consecrated to peace and the good of the people has no occupation but political intrigue and personal advancement. And they knew full well, did the fathers, the dangers that would assail us—avarice, directed by political sagacity; ambition, coupled with ability and armed with popular support; all educated in craft; all versed in the black grammar of politics; all playing for high stakes; all ready to sacrifice anything not their own to forward their own interests. They could hear as we have heard, advisers, counterfeiting the dulcet voice of progression and reform, telling of untried better things that should supplant the things which had been tried and have never failed us; all aimed at the very structure itself, often from men of honest opinion, but most frequently from men whose motives rest neither upon ignorance nor upon integrity.

The fathers of this republic were not oblivious to the fact that the spirit of unrest at times takes possession of a nation, unrest akin to religious frenzy. They knew that then is greatest peril to a people's liberty and to a nation's life.

They knew the history of the world right well, did those men. They knew of upheavals, and of conquests, and convulsions, and revolutions. They knew of Roman and of Greek; they knew of Copt, and Tartar, and Saracen, and Turk, and Goth, and Vandal, and Hun. They knew that the story of the Anglo-Saxon race was not free from trouble. They had heard of the Johns, and the Henrys, and the Edwards, and the Richards; they knew of Lancaster and of York; they knew that the Charles whose last word was "Remember" had his Cromwell. They had just then, at that very time, but to look across the water and behold their recent ally, the flower of the Latin race; fast whirling into the vortex of the French Revolution, for all this was before that little second lieutenant of artillery, who answered to the name of Napoleon Bonaparte, had stepped into the streets of Paris with his whiff of grapeshot; of which Mr. Carlyle tells. They knew, above all things, did those men, the causes that had impelled them into the struggle in which they had but just triumphed. And they knew that Almighty God had placed in their hands the material with which they were to construct that which man had hoped for, but which man had not yet seen upon the earth.

And so directed by wisdom divine they builded, and they builded strong. And with such strength did they build that four score and seven years after, not long, to be sure, in a nation's life—eighty-seven years—Lincoln, who has been so often misquoted in these degenerate days, Lincoln, haggard and sad and worn with care, his presence a prophesy, and his face a prayer that the cup might pass from him. Yet his voice was mightier than the thunder of that awful battle which had scarcely then ceased to reverberate down the valleys of Pennsylvania when Lincoln declared on the red field of Gettysburg to heroes living, and to the shades of heroes dead, and to all the earth, and to all the people that walk upon the earth, and to all posterity, and to us, that the fathers had builded a government of the people, by the people, and for the people, under which, if preserved, liberty could not perish from the earth, and that he dedicated himself, as millions of others had dedicated themselves, to the preservation of that government, under which, if preserved, liberty could not perish from the earth. And, thank God, he succeeded.

And such was the strength of the government the fathers had made for us that after over four years of assault, armies unsurpassed for bravery and discipline and generalship that did beat against it, rolled back from the onslaught baffled and destroyed.

My fellow citizens from over the sea, had that vast force, with its bravery and numbers and discipline, its commanders and resources and intelligence; had the Southern people, with their army and resources, been set down in the heart of Europe as they were situated here, they would have carved out an empire with the sword, and the world would have resounded with the crash of falling thrones. Yet this government lives to bless us, thank God. It withstood the tempest's breath, and the battle's rage, and the earthquake's shock. And such is the government and its character that we have invited you here to enjoy and help us preserve. Frowning battlements, yes! moated gates, yes! But remember that fortress was reared that within it may rest in safety, for

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the first time since the flight of years began, the ark of the covenant of liberty, there to be defended against all who may come to pollute or destroy it.

They not only builded strong, but they were tender and careful of human rights, were the fathers. Look at that compact of 1787. High and low, rich and poor alike; life, liberty, property, religion, morality, knowledge—each citizen secure, so that he and his may stand forth with safety in the glad light of day or in the darkness of night may watch with peace the glories of the sky.

The Man of Sorrow must have directed them. The Man of Sorrow who knows so well the needs of poor humanity, and who did solve for us the silent riddle of death; the beneficent spirit of the Christ must have possessed them, as those mighty men wrote the rights of their fellowmen and their posterity in those mighty charters, not the least of which this report attacks and spits upon.

And in such manner did our fathers build that if we destroy that upon which proximately and next nearest, rest our repose and safety—the constitution that we now have in Ohio, and puncture and riddle it, and tear it into shreds; under it, and the foundation of it all, like the tables of Sinai, stands this great compact to confront us and to halt us and to save us. Why should we be willing to destroy that, the like of which man never beheld since first light gladdened the earth? Why should we attempt to surrender up that which we would sacrifice our best blood to recover when once it is gone? Why leave here in this record that behind which tyranny may entrench itself?

As it is, the federal constitution cannot be amended so as to destroy that compact without our consent. If the federal constitution were swept away by consent of all the states, except Ohio, we could turn to that compact and it would speak to us of our liberty in the voice of Him who created man and endowed him with inalienable rights.

Every clause of that compact is adopted by our present constitution, as it was by the constitution of 1802, in terms or in spirit. And when we depart from our present constitution, and away from any clause of that compact, which we have thus adopted and thereby agreed to keep, by that act, that clause is reintegrate and restored. By that act it is awakened into quick life, and we do but invoke the power of such clause by that very act which violates it. And we should thank God it is thus. We should bow to Him in humblest gratitude that He did so endow our fathers with His divine wisdom.

Mr. DWYER: In support of the report of the committee on Judiciary and Bill of Rights I desire to submit the following:

After the formation of the confederacy of states in 1778, difficulties arose regarding the western lands, portions of which were claimed by the states of Virginia, Connecticut, Massachusetts and New York, the other states claiming that these lands should be held and disposed of for the common benefit of all. The matter became so serious that congress appealed to each of the four states claiming these lands to surrender their claims by acts of cession to the United States for the common benefit of all.

To bring this result about, in the year 1780 congress passed a resolution containing a pledge that the lands

when ceded to it should be disposed of for the common benefit of the whole United States, to be sold and formed into distinct states with suitable extent of territory, and to be admitted members of the federal union with the same rights of sovereignty, freedom and independence as the other states.

On this assurance New York and Massachusetts ceded their claims without any conditions except the assurance contained in the pledge made in the resolution of 1780. Connecticut followed suit, but would reserve certain territory. Virginia did likewise, and in its act of cession provided that the territory so ceded should be laid out and formed into states containing a suitable extent of territory, not less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances would permit, and the states so formed to be distinct republican states, and admitted members of the federal union, having the same rights of sovereignty, freedom and independence as the other states, and referred especially to the resolution of congress of 1780, which was declared to be the condition of the deed. Under the act of congress of 1780 these lands when ceded became a trust on the part of the United States to be carried out according to the acts of cession, and these acts provided that the states when formed out of the territory should be admitted into the Union on an equal footing in all respects with the original states.

It was also provided that the lands should be disposed of for the common benefit of all the states, and that the manner and conditions of their disposition should be regulated by congress. In 1785 congress passed an ordinance for the future survey and sale of the domain in the west. All this was done prior to the ordinance of 1787.

From the foregoing it will be seen that the original states in their acts of cession, were careful to provide that the states to be carved out of the territory northwest of the river Ohio should be admitted into the Union with all the rights of sovereignty and authority of the original states. The ordinance of 1787 for the government of the Northwest Territory was not their act. They had no hand in it. It was solely an act of congress, and I claim that it had no longer any binding force on the states when admitted into the Union, except as to such matters as would be of national character, as the regulation of the navigable waters for the purpose of commerce.

The ordinance of 1787, as we know, provided for the writ of habeas corpus and trial by jury and judicial proceedings according to the course of the common law. Under this ordinance the first territorial government was formed at Marietta, Ohio. This government, when formed, paid very little attention to the provisions of the ordinance of 1787. It did not strictly confine itself in its legislative authority as provided for by the ordinance. When they could not find laws of the original states to suit their condition, they supplied their wants by enactments of their own. By the ordinance of 1787, when the territory should contain a population of five thousand free male inhabitants of full age, as the ordinance provided for, on proof to the governor, the territory should be authorized to elect representatives to the territorial legislature. By territorial laws passed these provisions were confined to freeholders of fifty acres in fee simple

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within the district, and only freeholders in fee simple of two hundred acres were eligible as representatives, and ten freeholders of five hundred acres each were to be selected, five of which the president was to appoint as his legislative council.

The two bodies were to make laws. The governor possessed a negative on all legislative acts, which he exercised without stint in vetoing bills.

The foregoing method of legislation did not show much spirit of republicanism notwithstanding the ordinance of 1787 provided for a government republican in form.

Article 5 of the ordinance of 1787 fixed the boundaries of the eastern state, now the state of Ohio, but congress changed it subsequently, against the protests of many of the people, who claimed it a violation of the ordinance of 1787. Because of their protests congress made some modifications of the boundaries to satisfy the people. This exercise of authority by congress in changing the boundaries, notwithstanding the so-called compact between the states in the ordinance of 1787, shows how congress viewed it, as being within its power to change or abrogate, as it did in the admission of new states. As showing what action was taken by congress in organizing territorial governments and states out of the Northwest Territory, and as to what action was taken on their admission into the Union as states, and the action taken by the highest courts of record of these states, as to what effect, if any, the ordinance had in controlling their action, I desire to present the following:

First, as to the state of Ohio: On April 13, 1802, an enabling act was passed by congress with the provision that said state when formed should be admitted to the Union on the same footing with the original states in all respects whatsoever. The only reference it made to the ordinance of 1787 is that the state should be republican and not repugnant to the ordinance of 1787, between the original states and the people of the states northwest of the river Ohio.

The preamble to the constitution of Ohio adopted in 1802 pursuant to the foregoing enabling act recites that "the people of the eastern division of the territory of the United States, northwest of the river Ohio, having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of 1787, and of the law of congress, entitled 'An act * * * for the admission of such state into the Union on an equal footing with the original states and for other purposes, * * *, do ordain' this constitution, etc.

On the 19th of February, 1803, congress passed an act recognizing the state of Ohio as one of the states in the federal Union, but made no reference therein to the ordinance of 1787. Neither did the new constitution adopted in 1851, under which we have ever since been living, make any reference to the ordinance of 1787.

Passing from Ohio, I will next consider what action was taken by congress in reference to the territory and state of Indiana. On the 19th of April, 1816, congress passed the enabling act for the admission of Indiana into the Union as a state. The fourth section of the act recites:

The representatives of the people shall form a state government, "provided that the same whenever formed shall be republican and not repugnant to those articles

of the ordinance of the 13th of July, 1787, which are declared to be irrevocable between the original states, and the people and states of the territory northwest of the river Ohio."

On the 29th day of June, 1816, by resolution, the representatives of Indiana in convention assembled accepted the terms of the enabling act, but no mention therein was made of the ordinance of 1787.

On the 29th day of June, 1816, the constitution of the state of Indiana was formed. In the preamble it recites:

We, the representatives of the people of the territory of Indiana, in convention met, at Corydon, on Monday, June 10, 1816, * * * having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of 1787, and the law of congress "An act to enable the people of the Indiana Territory to form a constitution and state government, and for the admission of such state into the Union (being the enabling act) on an equal footing with the original states * * * do ordain and establish the following constitution * * *

Congress on December 11, 1816, adopted a resolution reciting:

Whereas in pursuance of an act of congress * * * the people of said territory did form for themselves a constitution and state government which constitution and state government, so formed, is republican and in conformity with the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven.

Resolved by the Senate and House of Representatives of the United States of America in congress assembled, That this state of Indiana shall be one, and is hereby declared to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever.

February 10, 1851, the state of Indiana adopted another constitution, which is still in force, in which no mention is made of the ordinance of 1787.

In considering the proceedings had between congress and the state of Ohio on its admission into the Union as compared with the proceedings had in reference to the state of Indiana on its admission into the Union, it will be seen that Indiana would be more forcibly bound by the articles of the ordinance of 1787 than would the state of Ohio. Yet we find from the decisions of the courts of the state of Indiana that the state did not regard itself as in any way bound by the terms of the ordinance. In the case of *Beauchamp vs. The State* (6 Blackford's Reports, 302), the supreme court of Indiana says:

The legislative authority of this state is the right to exercise supreme and sovereign power subject to no restrictions except those imposed by our own constitution, by the federal constitution, and by the laws and treaties made under it.

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In support of the foregoing we cite the following cases:

Lafayette, Muncie & Bloomington Railroad vs. Gieger, 34 Ind.
Fry vs. the State, 63 Ind., 558.
McComas vs. Krug, 81 Ind., 327.
8 Blackford, page 11.

In the case of Vaughan vs. Williams, 3 McLean's Reports, page 532, Judge McLean says:

When the people of Indiana came into the Union as a state, they were as much bound by the constitution of the United States as the people of any other state, and any and every part of the ordinance which conflicts with the constitution of the Union, so far as the state of Indiana is concerned, was consequently annulled. The common consent required to annul such part of the ordinance is found in the formation of the constitution and consent to come into the Union by the people of Indiana and the acceptance of the constitution and recognition of the state by Congress.

Again, citing 6 McLean's Reports, page 212, Columbus Insurance Company vs. Curtenius, the court says:

It was never doubted but that any provisions of the ordinance which were contrary to the constitution of the United States and the laws passed pursuant thereof, or to the constitutions of the states formed out of that territory were abrogated, because the common consent mentioned in the ordinance was then presumed.

The territory of Illinois was formed February 3, 1809. Section 2 of the act of congress provides that there shall be established within said territory a government in all respects similar to that provided by the ordinance of congress of July 13, 1787. April 18, 1819, congress passed an enabling act for the admission of Illinois, authorizing the state to be admitted on a footing with the original states in all respects whatsoever. Section 4 of the act provides that the state when formed is to be republican and not repugnant to the ordinance of July 13, 1787, between the original states and the people and states of the territory northwest of the river Ohio. On April 18, 1818, Illinois accepted the enabling act as passed by congress. No reference is made to the ordinance of 1787. In 1818 Illinois established a constitution, the preamble of which is as follows:

The people of the Illinois Territory, having the right of admission into the general government as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of 1787, and the law of congress approved April 18, 1818—do by their representatives in convention, ordain and establish the following constitution.

In 1818 congress passed a resolution admitting the state of Illinois into the Union, in which it recites in substance as follows:

Whereas, pursuant to an act of congress, the people of said territory did form a constitution, which is republican in form and in conformity

to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed July 13, 1787; said state is therefore admitted and declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

In 1870 Illinois adopted a new constitution. No mention is made of the ordinance of 1787.

As to how the ordinance of 1787 was regarded in Illinois by the decisions of its supreme court, I quote the following: Phoebe vs. Jay, 1 Breese Illinois Reports, page 268. The court in deciding the case says:

Congress, however, admitted this state into the Union with this constitutional provision and thereby I think gave their consent to the abrogation of so much of the ordinance as was in opposition to our constitution. [The question was on the introducing of negroes and mulattoes into the state.]

In the case of People vs. Thompson, 155 Illinois Reports, page 452, in the syllabus of the case, we find:

The ordinance of 1787 passed by the congress of the federation for the government of the Northwest Territory, has no force in Illinois, except so far as its principles are embodied in the state constitution.

On January 11, 1805, congress passed an act organizing the territory of Michigan.

Section 2 of the act provided, "There shall be established within said territory a government in all respects similar to that provided by the ordinance of congress passed July 13, 1787, for the government of the territory northwest of the river Ohio."

June 15, 1836, congress passed an enabling act for the admission of Michigan as a state.

Section 2 of said act provides that—

The constitution and state government which the people of Michigan have formed for themselves be; and the same is hereby, accepted, ratified, and confirmed; and that the said state of Michigan shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original states, in all respects whatsoever.

Section 3 provides—

As soon as the assent herein required is given, the president of the United States shall announce the same by proclamation, and thereupon and without any further proceedings on the part of congress, the admission of said state into the Union as one of the United States of America on an equal footing with the original states in all respects whatever shall be considered as complete—

Nothing is said about the ordinance of 1787.

January 26, 1837, an additional act was passed by congress reciting:

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That the state of Michigan shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatsoever.

No mention is made of the ordinance of 1787.

In 1835 Michigan adopted a new constitution. The preamble recites:

We, the people of the Territory of Michigan, as established by the act of congress of the 11th of January, 1805, in conformity to the fifth article of the ordinance providing for the government of the territory of the United States northwest of the river Ohio, believing that the time has arrived when our present political condition ought to cease and the right of self-government be asserted, and availing ourselves of that provision of the aforesaid ordinance of the congress of the United States of the 13th day of July, 1787, and the acts of congress passed in accordance therewith, which entitled us to admission into the Union upon a condition which has been fulfilled, do by our delegates in convention assembled mutually agree to form ourselves into a free and independent state, by the style and title of the state of Michigan.

In 1850 Michigan adopted another constitution, but nothing is said of the ordinance of 1787.

On the foregoing the courts of Michigan have held, in the case of The La Plaisance Bay Harbor Company vs. The Common Council of the City of Monroe, Walker Chancery Reports, 155, that "the ordinance of 1787 for the government of the territory of the United States northwest of the river Ohio is no part of the fundamental law of this state since its admission into the Union. It was then superseded by the state constitution, and such parts of it as are not found in the federal or state constitutions were then annulled by mutual consent."

In 1836 the territory of Wisconsin was established. Section 12 of the act provided:

The inhabitants of the said territory shall be entitled to and enjoy all * * * the rights, privileges and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the government of the said territory, passed on the 13th of July, 1787; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of said territory.

August 6, 1846, congress passed an enabling act which provided the territory of Wisconsin be and is hereby "authorized to form a constitution and state government for the purpose of being admitted into the Union on an equal footing with the original states in all respects whatsoever, by the name of the state of Wisconsin."

No mention is made of the ordinance of 1787.

The constitution of Wisconsin was adopted February

1, 1848, in which no mention is made in any way of the ordinance of 1787.

May 29, 1848, congress ratified this constitution, and the act recites:

That the state of Wisconsin be and is hereby admitted to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original states in all respects whatever.

No mention is made of the ordinance of 1787.

With reference to any binding effect of the ordinance of 1787 on the state of Wisconsin, I herewith cite from the decisions of its supreme court as follows:

In the case of the Connecticut Mutual Life Insurance Company vs. Crothall, 18 Wisconsin 109, in the syllabus, the court says:

The adoption of the constitution of this state by the people thereof, and the assent of the government of the United States thereto, and the subsequent admission of the state into the Union, are effectual to abrogate the ordinance of 1787 for the government of the territory northwest of the river Ohio, in so far as the provisions of that ordinance conflict with those of the state constitution.

Again, in State ex rel. Attorney General vs. Cunningham, 81 Wisconsin, page 441, in the syllabus, the court says:

The ordinance of 1787 and the organic act of the territory of Wisconsin became obsolete upon the admission of the state into the Union, but they may be regarded as in pari materia and helpful and of historical value in construing the sections of the constitution, which took the place of any of their provisions.

The court also cites Pollard's Lessee vs. Hagan, 3 Howard, in support of this decision.

In view of the foregoing decisions of the states of Indiana, Illinois, Michigan and Wisconsin, it appears to me that any decision made by the supreme court of Ohio in conflict therewith would be outweighed by the decisions of the other four states, all having been, like Ohio, carved out of the Northwest Territory.

In addition to the federal authorities cited in the report of the committee, I desire to call special attention to Coyle vs. Smith, 121 U. S. 855, and to quote the second proposition of the syllabus of said case, as any national question or question requiring judicial interpretation of the ordinance of 1787 between the original states and the United States would have to be ultimately and finally settled by the United States supreme court:

The constitutional duty of guaranteeing to each state in the Union a republican form of government, gives congress no power to impose restrictions in admitting a new state into the Union which deprive it of equality with other states.

Mr. Doty moved that further consideration of Proposal No. 54 be postponed until tomorrow and that it retain its place at the head of the calendar.

Resolution Limiting Debate.

The motion was carried.

Mr. DOTY: I offer a resolution.

The resolution was read as follows:

Resolution No. 128:

Resolved, That debate upon proposals upon their third reading shall be limited to ten minutes for any member upon the main question and five minutes upon any amendment or other subsidiary

motion; upon all other questions the debate shall be limited to five minutes. Time of debate shall not be extended except by unanimous consent.

The PRESIDENT: The resolution will lie over.

Leave of absence was granted to Mr. Campbell.

Mr. DOTY: I move that we adjourn until 9:30 o'clock tomorrow morning.

The motion was carried and the Convention adjourned.

SEVENTY-FOURTH DAY

MORNING SESSION.

THURSDAY, May 23, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Holmes [Mr. WALKER].

The journal of yesterday was read and approved.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 129:

WHEREAS, The contract of the official reporter was not made with any idea of night sessions other than Monday nights, and

WHEREAS, The Convention has held and intends to hold other night sessions; therefore

Be it resolved, That the official reporter be and is hereby allowed the additional sum of thirty dollars for each night session, other than Monday nights.

The PRESIDENT: The resolution will go over under the rule.

Mr. DOTY: I desire to make a statement to the members on that side of the house. You will find the green bound book is missing. The reason for that is the force has worked on it all night and they are working on it now, but they will not be able to have your books back on your desk until the noon recess. It was simply a physical impossibility. I would state further that the committee on Arrangement and Phraseology is now ready to make reports upon all of the remaining proposals, but until these books are upon your desks we will not make further reports because there is plenty of work upon the calendar for at least until late this afternoon. We will not make any reports until tomorrow morning, although if it is necessary to keep the Convention in work we may make some this afternoon. The members on this side of the house will be very glad to lend their books to members on that side for use this morning's session. Now I desire to call up at this time Resolution No. 128.

The PRESIDENT: The question is on the adoption of Resolution No. 128.

The resolution was again read.

Mr. DWYER: Before that question is put I would like to say a word. There is a matter pending before the body on an amendment or motion of Judge Norris upon which an argument was made by the judge yesterday afternoon, and I would like very much to have a short time to present an argument on the other side and I cannot do it in ten minutes because it is a constitutional question that may take half an hour.

The PRESIDENT: If the rule is adopted the way is open to change the rule by unanimous consent.

The resolution was adopted.

THIRD READING OF PROPOSALS.

Proposal No. 54—Mr. Elson, was taken up.

The PRESIDENT: The question is on the adoption of the amendment offered by the delegate from Marion.

Mr. ELSON: It seems to me that we should not spend any more time in debating this question. If there is any one thing that we have done since the sessions of this Convention began that has brought forth expressions of approval from the people of the whole state and nation it is this proposal. I think we are generally agreed upon that. It was passed by a vote of ninety-four to twelve and it seems to me that we can dispense with further debate, and so far as this amendment is concerned I move that the amendment be laid on the table.

Mr. MARRIOTT: In view of the statement made by the member from Montgomery who desires to be heard on that amendment I suggest that the gentleman withhold that motion to lay on the table.

Mr. ELSON: If it is the sense of the Convention that I should do so I have no objection.

The PRESIDENT: The member from Montgomery announces his opposition to the amendment and if it is laid on the table it will save that much time.

The motion to table was carried.

The PRESIDENT: The question is on the adoption of the proposal.

Mr. ELSON: I wish to offer an amendment.

The amendment was read as follows:

In line 6 after "cases," strike out "The general assembly may authorize the rendering of a verdict" and insert "a verdict may be rendered".

Mr. ELSON: I will explain this amendment. It takes from the legislature the right to make the provision. As it reads it says that the legislature may provide a rule of this kind and the legislature might or might not do it. As I said before, the proposal has been very favorably received and I think we should not leave it to the legislature, but should make it mandatory.

Mr. MARRIOTT: I agree with the professor that there is no proposal that has been introduced and passed by this Convention that has met with as much expression of approval from the people of the state as this proposal, and I am in favor of its adoption just as the committee reported it and I move to lay this amendment on the table.

The motion was carried.

Mr. BROWN, of Highland: I offer an amendment.

The amendment was read as follows:

At the end of line 7 add: "Whenever, after a jury is impaneled in a civil case, a vacancy or vacancies shall occur in the panel through the death or discharge by the court on account of sickness or other cause of one or more of said jurors, not exceeding three in number, the trial shall proceed, notwithstanding such vacancy or vacancies, to the remaining jurors who shall be competent to return a verdict upon the concur-

Reform of Jury System—Regulation of Corporations and Sale of Personal Property.

rence therein of a number not less than three-fourths of the original jury."

Mr. DOTY: I move that that amendment be laid on the table.

The motion was carried.

Mr. CASSIDY: I offer an amendment.

The amendment was read as follows:

Strike out all after the word "cases," in line 6 and in lieu thereof insert the following:

"laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

Mr. CASSIDY: The committee on Arrangement and Phraseology in almost every proposal changed the language "general assembly may" to "Laws may be passed," but for some reason that was not done here. It was overlooked and this amendment restores that. Then this amendment adds "by the concurrence of". The other way it might be construed that if a jury were selected and one or two were absent or sick still a verdict might be rendered by a concurrence of not less than three-fourths.

Mr. PECK: I want to say that this amendment was prepared by Mr. Cassidy and myself yesterday afternoon after consultation. We were not satisfied with the language of the committee on Phraseology and we thought it open to the very criticism that Mr. Cassidy makes, that three-fourths might apply to the number of jurors present instead of to the number participating in the verdict. The language now proposed removes that. It also provides for the other matter, that "laws may be passed," instead of empowering the "general assembly" to pass laws.

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 96, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Miller, Crawford,
Antrim,	Harris, Hamilton,	Miller, Fairfield,
Baum,	Harter, Stark,	Miller, Ottawa,
Beatty, Morrow,	Henderson,	Moore,
Beatty, Wood,	Hoffman,	Nye,
Beyer,	Holtz,	Okev,
Bowdle,	Hoskins,	Peck,
Brown, Highland,	Hursh,	Peters,
Brown, Pike,	Johnson, Madison,	Pierce,
Cassidy,	Johnson, Williams,	Read,
Cody,	Jones,	Redington,
Collett,	Kehoe,	Riley,
Colton,	Keller,	Rockel,
Cordes,	Kilpatrick,	Roehm,
Crosser,	King,	Rorick,
Davio,	Knight,	Shaffer,
Doty,	Kramer,	Smith, Geauga,
Dunlap,	Kunkel,	Smith, Hamilton,
Dwyer,	Lambert,	Solether,
Eby,	Lampson,	Stamm,
Elson,	Leete,	Stevens,
Evans,	Longstreth,	Stewart,
Farnsworth,	Ludey,	Stilwell,
Farrell,	Malin,	Stokes,
Fox,	Marriott,	Taggart,
Hahn,	Marshall,	Tallman,
Halenkamp,	Matthews,	Tannehill,
Halfhill,	Mauck,	Tetlow,
Harbarger,	McClelland,	Thomas,

Ulmer,
Wagner,
Walker,

Watson,
Weybrecht,
Winn,

Wise,
Woods,
Mr. President.

Those who voted in the negative are: Messrs. Brat-tain, Campbell, Norris, Price.

So the proposal passed as follows:

Proposal No. 54—Mr. Elson, to submit an amendment to article I, section 5, of the constitution.—Reform of civil jury system.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SEC. 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The proposal is finally adopted. The president wishes to announce that unless the Convention definitely orders otherwise no one, who might have been in his seat to answer to his name when it was first called, will be recognized to cast his vote on a proposal that carries.

The next proposal in order is Proposal No. 72—Mr. Stokes.

The proposal was read the third time.

Mr. MAUCK: I offer an amendment. I stated yesterday the purport of the amendment I offer. The purpose is to make it clear that the last sentence of the proposal is not necessarily related to the preceding part of the proposal, by adding the following after the last words: "Whether owned by a corporation, joint stock company or individual", and to make of the last sentence a separate paragraph of the section.

The amendment was read as follows:

Div. 1. Make a separate paragraph of the last sentence.

Div. 2. After the last word of the proposal strike out the period and insert a comma and add the following: "whether owned by a corporation, joint stock company or individual."

Mr. COLTON: I raise a question as to whether it should be paraphrased. The custom of the committee has been not to break any section into paragraphs and we have followed that consistently, and I do not see the necessity of making a paragraph here.

Mr. MAUCK: The only purpose in making a separate paragraph was to disassociate it as far as possible from the rest.

Mr. LAMPSON: It has been our custom not to paraphrase, and I do not see any reason for departing from that custom.

The PRESIDENT: The amendment will be divided and the first question will be put on separating the paragraphs.

The first division of the amendment was lost.

The second division of the amendment was agreed to.

The question being "Shall the proposal pass?"

Regulation of Corporations and Sale of Personal Property — Eight-Hour Day on Public Work.

The yeas and nays were taken, and resulted—yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Okey,
Antrim,	Henderson,	Peck,
Baum,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pierce,
Beatty, Wood,	Hoskins,	Price,
Beyer,	Hursh,	Read,
Bowdle,	Johnson, Madison,	Redington,
Brattain,	Johnson, Williams,	Riley,
Brown, Highland,	Jones,	Rockel,
Campbell,	Kehoe,	Roehm,
Cassidy,	Keller,	Rorick,
Cody,	Kerr,	Shaffer,
Collett,	Kilpatrick,	Smith, Geauga,
Colton,	King,	Smith, Hamilton,
Cordes,	Knight,	Solether,
Crites,	Kramer,	Stamm,
Crosser,	Kunkel,	Stevens,
Davio,	Lambert,	Stewart,
Donahey,	Lampson,	Stilwell,
Doty,	Leete,	Stokes,
Dunlap,	Longstreth,	Taggart,
Dwyer,	Ludey,	Tallman,
Eby,	Malin,	Tannehill,
Elson,	Marriott,	Tetlow,
Evans,	Marshall,	Thomas,
Farrell,	Matthews,	Ulmer,
Fox,	Mauck,	Wagner,
Hahn,	McClelland,	Walker,
Halenkamp,	Miller, Crawford,	Watson,
Halfhill,	Miller, Fairfield,	Weybrecht,
Harbarger,	Miller, Ottawa,	Winn,
Harris, Ashtabula,	Moore,	Wise,
Harris, Hamilton,	Norris,	Woods,
Harter, Huron,	Nye,	Mr. President.

So the proposal passed as follows:

Proposal No. 72—Mr. Stokes, to submit an amendment to article XIII, section 2, of the constitution.—Regulation of corporations and sale of personal property.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XIII.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

The PRESIDENT: The question is on the adoption of Proposal No. 209.

Mr. HARRIS, of Ashtabula: Just right there. I do not understand that the rules make any provision for action or revision of these proposals after amendments have been made under the third reading. If so, I am not aware of it. It seems just as necessary that the pro-

posals, when amended, should be considered by the committee on Phraseology now as at any time. I move that this proposal and all proposals acted upon in this way be referred to the committee on Arrangement and Phraseology, to be reported at their convenience before adjournment.

Mr. DOTY: I would say that the Rules committee provided for another roll call on all of these matters, so that if the motion of the gentleman from Ashtabula [Mr. HARRIS] is adopted and we should have any criticism to make our report could be embodied in the final report, which requires a roll call.

Mr. HARRIS, of Ashtabula: I raise the question for the consideration of the Convention.

Mr. DOTY: Certainly. The Convention should have opportunity to consider the provision before final adoption.

Mr. LAMPSON: There will be a final roll call upon all amendments under one grand resolution so to speak.

Mr. HARRIS, of Ashtabula: I shall insist on the first part of my motion, that the proposals that are amended be referred to the committee on Arrangement and Phraseology.

The motion was carried.

Mr. HARTER, of Huron: I want to have my vote recorded on Proposal No. 54.

Mr. DOTY: I object.

Mr. PRESIDENT: We are going to spend a great deal of time calling rolls if the members exercise this privilege.

Mr. DOTY: I object. If we are going into this sort of a thing we shall never have any journals.

Mr. HOSKINS: What right has the gentleman from Cuyahoga [Mr. Doty] to object to that?

Mr. DOTY: My right as a member.

Mr. HOSKINS: No one can lay down an arbitrary rule that the names cannot be called—

Mr. DOTY: The right I have is my right as a member. The vote on this proposal is on the journal and I question the right of any member to have a subsequent roll call. We cannot run that desk and have people voting all day long.

Mr. HOSKINS: I don't know of any rule that prevents it.

Mr. DOTY: The rule is that the journal shows who voted for a proposal.

Mr. LAMPSON: The rule requires that each member shall vote when his name is called and it has simply been by unanimous consent and sufferance that we have been permitting members to come in and have their votes recorded.

The PRESIDENT: And the rule will be enforced hereafter.

Mr. WINN: I desire to make an inquiry. I would like to know whether the rule announced by the president respecting the members' right to have their votes recorded after their names are passed applies only to those whose names are not called until after the result is announced?

The PRESIDENT: The president so understands.

Mr. WINN: I cannot see any objection to that. What I wanted to know was, if a person is sitting in his seat here and fails to answer, he could not have his name called and vote before the result was announced.

Eight-Hour Day on Public Work — Workmen's Compensation.

The PRESIDENT: The question is on Proposal No. 209.

The proposal was read the third time.

Mr. TETLOW: I offer an amendment.

The amendment was read as follows:

"In line 7 strike out the word "laborers" and in lieu thereof insert the word "workmen".

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 93, nays 11, as follows:

Those who voted in the affirmative are:

Anderson,	Hoskins,	Pierce,
Antrim,	Hursh,	Price,
Beatty, Wood,	Johnson, Madison,	Read,
Beyer,	Johnson, Williams,	Redington,
Bowdle,	Jones,	Riley,
Brown, Highland,	Kehoe,	Rockel,
Campbell,	Keller,	Roehm,
Cassidy,	Kerr,	Rorick,
Cody,	Kilpatrick,	Shaffer,
Cordes,	King,	Smith, Geauga,
Crosser,	Knight,	Smith, Hamilton,
Davio,	Kramer,	Soletcher,
Donahey,	Kunkel,	Stamm,
Doty,	Lambert,	Stevens,
Dunlap,	Lampson,	Stewart,
Dwyer,	Leete,	Stilwell,
Eby,	Leslie,	Stokes,
Elson,	Longstreth,	Taggart,
Evans,	Ludey,	Tallman,
Farrell,	Malin,	Tannehill,
FitzSimons,	Marriott,	Tetlow,
Fluke,	Marshall,	Thomas,
Fox,	Matthews,	Ulmer,
Hahn,	Miller, Crawford,	Wagner,
Halenkamp,	Miller, Fairfield,	Walker,
Halfhill,	Moore,	Watson,
Harbarger,	Norris,	Weybrecht,
Harris, Hamilton,	Nye,	Winn,
Harter, Huron,	Okey,	Wise,
Harter, Stark,	Peck,	Woods,
Hoffman,	Peters,	Mr. President.

Those who voted in the negative are:

Baum,	Collett,	Holtz,
Beatty, Morrow,	Cunningham,	McClelland,
Brattain,	Farnsworth,	Miller, Ottawa,
Brown, Pike,	Harris, Ashtabula,	

So the proposal passed as follows:

Proposal No. 209—Mr. Tetlow, to submit an amendment by adding section 37 to article II, of the constitution.—Eight hour day on public work.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract, or otherwise.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next proposal is Proposal No. 24, by Mr. Cordes.

The proposal was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 107, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Nye,
Antrim,	Harris, Hamilton,	Okey,
Baum,	Harter, Huron,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Henderson,	Pierce,
Beyer,	Hoffman,	Price,
Bowdle,	Holtz,	Read,
Brattain,	Hoskins,	Redington,
Brown, Highland,	Hursh,	Riley,
Brown, Pike,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Roehm,
Cassidy,	Jones,	Rorick,
Cody,	Kehoe,	Shaffer,
Collett,	Kerr,	Smith, Geauga,
Colton,	Kilpatrick,	Smith, Hamilton,
Cordes,	King,	Soletcher,
Crites,	Knight,	Stamm,
Crosser,	Kramer,	Stevens,
Cunningham,	Kunkel,	Stewart,
Davio,	Lambert,	Stilwell,
Donahey,	Lampson,	Stokes,
Doty,	Leete,	Taggart,
Dunlap,	Leslie,	Tallman,
Dwyer,	Longstreth,	Tannehill,
Eby,	Ludey,	Tetlow,
Elson,	Malin,	Thomas,
Evans,	Marriott,	Ulmer,
Farnsworth,	Marshall,	Wagner,
Farrell,	Matthews,	Walker,
FitzSimons,	Mauck,	Watson,
Fluke,	McClelland,	Weybrecht,
Fox,	Miller, Crawford,	Winn,
Hahn,	Miller, Fairfield,	Wise,
Halenkamp,	Miller, Ottawa,	Woods,
Halfhill,	Moore,	Mr. President.
Harbarger,	Norris,	

So the proposal passed as follows:

Proposal No. 24—Mr. Cordes, to submit an amendment by adding section 35 to article II, of the constitution.—Workmen's compensation.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employees and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree

Investigations by Each House of General Assembly — Abolition of Justices of the Peace in Certain Cities.

of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

The PRESIDENT: The next proposal is Proposal No. 236—Mr. Worthington.

The proposal was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 108, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Norris,
Antrim,	Harris, Hamilton,	Nye,
Baum,	Harter, Huron,	Okey,
Beatty, Morrow,	Harter, Stark,	Peck,
Beatty, Wood,	Henderson,	Peters,
Beyer,	Hoffman,	Pierce,
Bowdle,	Holtz,	Price,
Brattain,	Hoskins,	Read,
Brown, Highland,	Hursh,	Redington,
Brown, Pike,	Johnson, Madison,	Riley,
Campbell,	Johnson, Williams,	Rockel,
Cassidy,	Jones,	Roehm,
Cody,	Kehoe,	Rorick,
Collett,	Keller,	Shaffer,
Colton,	Kerr,	Smith, Geauga,
Cordes,	Kilpatrick,	Smith, Hamilton,
Crites,	King,	Solether,
Crosser,	Knight,	Stamm,
Cunningham,	Kramer,	Stevens,
Davio,	Kunkel,	Stewart,
Donahey,	Lambert,	Stilwell,
Doty,	Lampson,	Stokes,
Dunlap,	Leete,	Taggart,
Dwyer,	Leslie,	Tallman,
Eby,	Longstreth,	Tannehill,
Elson,	Ludey,	Letlow,
Evans,	Malin,	Thomas,
Farnsworth,	Marriott,	Ulmer,
Farrell,	Marshall,	Wagner,
FitzSimons,	Matthews,	Walker,
Fluke,	Mauck,	Watson,
Fox,	McClelland,	Weybrecht,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, Fairfield,	Wise,
Halfhill,	Miller, Ottawa,	Woods,
Harbarger,	Moore,	Mr. President.

So the proposal passed as follows:

Proposal No. 236—Mr. Worthington, to submit an amendment to article II, section 8, of the constitution.—Investigations by each house of general assembly.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors, to read as follows:

ARTICLE II.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation.

or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

The PRESIDENT: The next proposal is Proposal No. 100 by Mr. Fackler.

The proposal was read the third time.

Mr. PECK: I offer an amendment.

The amendment was read as follows:

Strike out the period in line 6 and in lieu thereof insert a comma and add the following: "until otherwise provided by law."

Mr. PECK: It is obvious there are times and places in the state where they do not desire to have justices of the peace and the number of these places is increasing. The constant tendency is to do away with them as in Cleveland. It was the intention of the Judiciary committee to report an amendment putting the whole matter into the hands of the general assembly and that is what I offer.

The amendment was agreed to.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 100 as follows: By adding "Schedule No. 1."

Resolved, further, That in the event Proposal No. 184—Mr. Peck, passed by the Convention, be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing proposal, if adopted, shall be of no effect.

Mr. TAGGART: If the Convention will indulge me, this is the action of the Schedule committee in order to provide for any inconsistency that may arise between Proposal No. 184 if adopted and Proposal No. 100 if adopted. Judge Peck's proposal abolishes the office of justice of the peace as a constitutional office, in which event the whole matter would be in the hands of the legislature, and then there would be no purpose or object in the Fackler Proposal, No. 100.

Mr. PECK: I am not sure that Proposal No. 184 does abolish it. It simply drops out the word's "justice of the peace" here, but those words are in several other places and I think those words are necessary here.

Mr. TAGGART: The only other place in which the words "justice of the peace" occur is section 9, which this repeals and leaves the matter in the hands of the legislature to create courts inferior to the courts specified in your proposal. We had the matter up in the committee on Schedule.

Mr. PECK: I am in sympathy with the object. I think the whole matter should be left to the general assembly. If you are sure of what you are driving at, all right.

Mr. TAGGART: The committee has gone over it carefully and we are unanimous that that will be the effect.

Mr. HALFHILL: Cannot your committee make a more definite description than by referring to Proposal 184?

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Mr. TAGGART: We had nothing more definite than that to refer to. We could not make it any more specific and certain than by referring to Proposal No. 184.

Mr. HALFHILL: When can that addenda be changed?

Mr. TAGGART: Those words can be changed or made more definite by the committee on Phraseology.

Mr. KNIGHT: The amendment just offered does two things. First it nullifies Proposal No. 100 if Proposal Nos. 184 and 100 are both ratified by the people. Proposal No. 184 then becomes section 9 of article IV. But if Proposal No. 100 is not ratified by the people will it have any effect on section 9? There is a section 9 in the constitution now and there will be a question, which does this repeal?

Mr. TAGGART: If the electors adopt this they adopt it with the distinct statement of the schedule that this is of no force and effect in case Proposal No. 184 is adopted.

Mr. KNIGHT: It leaves the original section 9 of article IV as it stands now?

Mr. TAGGART: Yes, and expressly provides that section 9 of article IV is repealed if the Peck proposal is adopted.

Mr. ELSON: The object of the Fackler proposal, I suppose, is to prevent the suburban justices of the peace from doing a city business. I think that is the only object of it. Does the second proposal cover that?

Mr. TAGGART: The object and purpose of the Fackler proposal is to prevent country justices of the peace opening offices in the city of Cleveland and similar cities and doing a justice of the peace business, but looking at the language of the proposal as read by the secretary and adopted by the committee on Phraseology it prohibits the justices of the peace in such places and it recognizes the office of justice of the peace as a constitutional office. Now you cannot have recognition of the office of justice of the peace in this proposal and have it stricken out in the judiciary proposal as proposed by Judge Peck.

Mr. ELSON: The purpose is if the Peck proposal passes third reading that this is cancelled?

Mr. TAGGART: No; this is to go to the people and the people know what is included in this schedule.

Mr. PECK: What becomes of Proposal No. 100? What effect does your proposal have upon that proposal?

Mr. TAGGART: If Proposal No. 184 does not pass and this does, then Proposal No. 100 becomes part of the constitution and prohibits justices of the peace from exercising jurisdiction in the cities. If Proposal No. 184 and this also pass, then Proposal No. 100 is of no effect, section 9 of article IV is repealed, and Proposal No. 184 is effective.

Mr. JOHNSON, of Williams: It seems to me that this question of schedule is out of order now. We haven't adopted any of these proposals yet. In my opinion the time to fix up the schedule is after we have adopted the proposals that are contradictory. Why not pass this proposal?

Mr. KING: I rise to a point of order. The gentleman is not asking a question.

Mr. JOHNSON, of Williams: I am asking a question. I propose to ask it, too. Why not leave this until we know whether Judge Peck's proposal, eliminating the

justices of the peace, passes? Why discuss a matter of that sort when nothing has passed the Convention?

Mr. TAGGART: The Schedule committee must assume some facts, and we have assumed that as the Peck Proposal No. 184 has passed this Convention on two readings and as Proposal No. 100 has passed this Convention on two readings, that those proposals will pass. We are providing for a contingency that will arise in these proceedings, and we cannot wait until the last moment and then provide a schedule. We must do it as it comes along.

Mr. KING: If we submit all of these in a separate schedule might not the schedule be defeated?

Mr. TAGGART: That is true, and we think this is the best way.

Mr. KNIGHT: Should not this proposition be prefaced by "Resolved further"?

Mr. TAGGART: I have no objection to that.

Mr. KRAMER: If Judge Peck's proposal is adopted by the people, the only way to get relief would be to apply to the legislature.

Mr. TAGGART: Yes.

Mr. KNIGHT: What would be the effect upon the justices of the peace now in office if Proposal No. 184 is adopted?

Mr. TAGGART: That is another proposition that will have to be disposed of at the proper time and place.

Mr. LAMPSON: I ask the question merely for the purpose of getting before the Convention what I apprehend is the necessary policy of the committee on Schedule, whether or not the different sections or items of the schedule must not necessarily be made dependent upon the adoption or rejection of the various amendments to which they apply?

Mr. TAGGART: That is undoubtedly the case. We cannot have a complete schedule and have it submitted to the people and defeated and the original proposals passed. We would have confusion worse confounded.

Mr. LAMPSON: The paragraphs or amendments if adopted might not go into effect.

Mr. MAUCK: I would ask the member from Wayne if we could not accomplish all that is desired to be accomplished by merely passing this proposal: "Laws may be passed providing for the office of justice of the peace"?

Mr. TAGGART: I had nothing to do with the original proposal. I did not champion it and I do not know anything about it. I am taking care of this proposed amendment so that there will be no inconsistency.

Mr. KING: I would inquire of the acting chairman of the committee on Schedule if the proposition as to the life of existing justices of the peace is not proper to be taken care of by an additional schedule added to Proposal No. 184?

Mr. TAGGART: Undoubtedly.

Mr. HARTER, of Stark: I am opposed to the whole proposal. I believe the justice courts are the courts of the people. There is a great deal of business in the hands of the justices and this is the only place where a man not a member of the bar can plead his own case.

Mr. DOTY: You have no objection to a proposal or amendment to the constitution that would allow you to have justices of the peace in Stark county and allow us not to have them, in Cleveland?

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Mr. HARTER, of Stark: That is all right.

Mr. DOTY: That is all that this provides for.

Mr. HARTER, of Stark: I am opposed to having our minor courts taken out of the hands of the people. I think this is a lawyers' proposition.

Mr. DOTY: If we prefer any other form of courts, you don't care what we have?

Mr. HARTER, of Stark: I do not want the power taken from the people for the sake of the lawyers. Many of the best decisions that have been made have been made by justices of the peace.

Mr. DOTY: The question I had in mind is, you do not have any objection to our substituting municipal courts for justices of the peace in Cleveland?

Mr. HARTER, of Stark: No, sir.

Mr. DOTY: That is all this proposal undertakes to do, and therefore the objection you have to the proposal is not good.

Mr. HARTER, of Stark: I cannot say as to that, but I do not want the minor courts taken away from the people.

Mr. DOTY: The gentleman misapprehends the object of this proposal.

Mr. KING: I would like to inquire if the member from Stark [Mr. HARTER] does not know that the right of any citizen of the state to appear in any court and argue and conduct his own case is not prohibited in the constitution and cannot be prohibited by law.

Mr. HARTER, of Stark: I did not know that.

Mr. KING: That is true.

Mr. HARTER, of Stark: We laymen hesitate very much to appear in court.

Mr. PECK: Do you know that within the year past a woman appeared in the supreme court of Ohio and argued her own case and won it?

Mr. HARTER, of Stark: I admit that women are just as capable to practice law or any other kind of business as men. We admitted that in the woman's suffrage proposal.

Mr. JOHNSON, of Williams: The matter of the proposal under consideration was thoroughly discussed by the committee on Judiciary and Bill of Rights. I have the same feeling as the gentleman who just left the floor in regard to this matter. The justice courts are the courts of the people. I want this proposal to pass because I believe my friends in Cleveland are working in the interest of the people in that locality, but I want the justices left as a constitutional office, hence I am opposed to that part of Judge Peck's proposal, and for that reason I objected to the gentlemen's fixing the schedule at this time. I am not a lawyer but a farmer, and farmers are noted for their common sense. It would be well to get something for the Schedule committee to work upon before we make the schedule, and it seems to me to discuss the schedule before we have anything before us is out of order. I am glad to be permitted now to talk, for I won't be called to order because I am asking a question in a square-toed way. I favor making the office of justice a constitutional one and I signed the report for this proposal and propose to vote for it. I believe we should pay no attention to the schedule until we get something to act upon. I do not know that I have made myself clear. I think my good friend from Cuyahoga understands, but if he

does not, as a gentleman said the other day, I cannot furnish him with judgment.

Mr. PECK: I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on the adoption of the amendment of the delegate from Wayne.

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 105, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Norris,
Antrim,	Harter, Huron,	Okey,
Baum,	Harter, Stark,	Peck,
Beatty, Morrow,	Henderson,	Peters,
Beatty, Wood,	Hoffman,	Pierce,
Beyer,	Holtz,	Price,
Bowdle,	Hoskins,	Redington,
Brattain,	Hursh,	Riley,
Brown, Highland,	Johnson, Madison,	Rockel,
Brown, Pike,	Johnson, Williams,	Roehm,
Campbell,	Jones,	Rorick,
Cassidy,	Kehoe,	Shaffer,
Collett,	Keller,	Shaw,
Colton,	Kerr,	Smith, Geauga,
Cordes,	Kilpatrick,	Smith, Hamilton,
Crites,	King,	Solether,
Crosser,	Knight,	Stamm,
Cunningham,	Kramer,	Stevens,
Donahey,	Kunkel,	Stewart,
Doty,	Lambert,	Stilwell,
Dunlap,	Lampson,	Stokes,
Dwyer,	Leete,	Taggart,
Eby,	Leslie,	Tallman,
Elson,	Longstreth,	Tannehill,
Fackler,	Ludey,	Tetlow,
Farnsworth,	Malin,	Thomas,
Farrell,	Marriott,	Ulmer,
FitzSimons,	Marshall,	Wagner,
Fluke,	Matthews,	Walker,
Fox,	Mauck,	Watson,
Hahn,	McClelland,	Weybrecht,
Halenkamp,	Miller, Crawford,	Winn,
Halfhill,	Miller, Fairfield,	Wise,
Harbarger,	Miller, Ottawa,	Woods,
Harris, Ashtabula,	Moore,	Mr. President.

Mr. Davio and Mr. Evans voted in the negative.

So the proposal passed as follows:

Proposal No. 100 — Mr. Fackler, to submit an amendment to article IV, section 9, of the constitution. — Abolition of justices of the peace in certain cities.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE IV.

SEC. 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law. Their term of office shall be four years and their powers and duties shall be regulated by law; provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise, jurisdiction in such township.

Abolition of Justices of the Peace in Certain Cities—Removal of Officials.

SCHEDULE NO. I.

Resolved further, That in the event Proposal No. 184—Mr. Peck, passed by the Convention be adopted by the electors of this state and become a part of constitution, then section 9 of article IV, of the constitution is repealed, and the foregoing proposal if adopted, shall be of no effect.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 241 is the next in order.

The proposal was read the third time.

Mr. WATSON: I offer an amendment.

The amendment was read as follows:

Strike out all after the resolving clause and insert the following:

SECTION I. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alterations or amendments made to the constitution by this Convention, the following article, independently of the submission of any revision, alteration or other amendments submitted to them shall be separately submitted to the electors in the words following, to-wit:

SECTION 1a. Every elective public officer of the state of Ohio or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

SECTION 1b. Upon the filing of a petition as herein provided, asking for the recall of any such elective official, the question of recalling said officials shall be submitted to the electors entitled to vote for a successor of such official, at the next succeeding annual November election, occurring not less than ninety days after the filing of said petition. The number of signatures necessary upon said recall petition shall be as follows:

(a) For the recall of an official for whose successor all of the electors of the state are entitled to vote, twenty (20) per cent. of said electors.

(b) For the recall of an official for whose successor the electors of any district, county, municipality or part of a municipality are entitled to vote, twenty-five (25) per cent. of the electors of such district, county, municipality or part of a municipality.

SECTION 1c. The basis upon which the required number of petitioners in any case shall be determined, shall be the total number of votes cast for the office of governor at the last preceding election therefor, by the electors of the state, district, county, municipality or part of a municipality entitled to vote for a successor of the official sought to be recalled. All petitions asking for the recall of a public official shall be filed at the same time and in the following places to-wit:

(a) For the recall of an official for whose

successor the electors of the entire state are entitled to vote, in the office of the secretary of state.

(b) For the recall of an official for whose successor the electors of a district comprising more than one county and less than the entire state are entitled to vote, with the board of deputy state supervisors of elections of the most populous county in said district.

(c) For the recall of a county or municipal official, with the board of deputy state supervisors of elections of the county whose electors are entitled to vote for a successor to such official or in which the municipality of which the incumbent is an official, is located.

SECTION 1d. The general election laws shall apply to recall elections in so far as applicable. Any recall petition may be presented in separate parts, but each part shall have attached thereto the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of a petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature to such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed the same to be electors and that they signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name, and no other affidavit thereto shall be required.

Every recall petition shall contain a general statement of not more than two hundred words, giving the reasons for such recall. Each signer of a recall petition must be an elector of the state qualified to vote for a successor to the official sought to be recalled and shall place on such petition, after his name, the date of signing and his place of residence. In the case of a signer residing outside of a municipality he shall state the township and county in which he resides, and in the case of a resident of a municipality, in addition to the name of such municipality he shall state the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink or indelible pencil, each signer for himself.

The signatures upon such petitions so verified shall be presumed to be in all respects sufficient unless not later than forty days before the election it shall be otherwise proven, and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No recall election shall be held invalid or void on account of the insufficiency of the petitions by which such election was called. After one recall petition and election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless the petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all the expenses of the preceding election.

Removal of Officials.

Separate ballots shall be provided for the expression by the electors of their vote for or against the recall of officials sought to be recalled. There shall be printed on the recall ballot, as to every officer whose recall is to be voted on at said election, the following questions: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the left of each, in which the voter shall indicate by making a cross-mark (X), his vote for or against such recall.

In case any official against whom a recall petition has been filed shall die or resign, all further proceedings in the election shall be stayed. If a majority of all the votes cast by the electors entitled to vote for a successor to such official at the election at which the recall of the official is voted upon are in favor of the recall of such official, his office shall be deemed vacant and shall be filled according to law.

SECTION 1E. At the election at which this amendment is submitted to the electors, a separate ballot in the following form shall be furnished to each elector desiring to vote:

RECALL OF PUBLIC OFFICIALS.

	For recall of public officials.
	Against recall of public officials.

Separate ballot boxes shall be provided for the reception of such ballots. The elector shall indicate his choice by placing a cross mark (X) within the blank space opposite the words "For the recall of public officials if he desires to vote in favor of the amendment above mentioned and within the blank space opposite the words "Against recall of public officials" if he desires to vote against the amendment above mentioned. If the votes for the recall of public officials shall exceed the votes against the recall of public officials, then the above mentioned shall be section _____ of the schedule of the constitution regardless of whether any revision, alteration or other amendment submitted to the electors shall be adopted or rejected.

Mr. PECK: I move that that amendment be laid on the table.

Mr. DOTY: A point of order. The member from Guernsey has the floor.

Mr. PECK: He did not have the floor. How did he have the floor? I rose and addressed the chair and was recognized and the gentleman from Guernsey wasn't on his feet.

The PRESIDENT: The member from Guernsey has the floor.

Mr. PECK: I appeal from the decision of the chair.

He did not have the floor. The member from Guernsey wasn't even on his feet.

The PRESIDENT: The member from Hamilton [Mr. PECK] is right in that statement. The member from Guernsey [Mr. WATSON] was not on his feet.

Mr. DOTY: The member from Guernsey was holding the floor. He had offered an amendment.

Mr. PECK: The member from Cuyahoga butted in as usual and took up the time of the member from Guernsey.

Mr. DOTY: As soon as the amendment was presented the member from Guernsey had the floor.

Mr. LAMPSON: I make the point of order that the motion to lay on the table takes precedence of the motion to amend.

Mr. DOTY: It has not been amended.

Mr. LAMPSON: But there has been a motion to amend and Judge Peck moved to lay that on the table.

Mr. DOTY: How could he?

Mr. LAMPSON: The motion to table was in order. He was entitled to the floor to make a motion of precedence.

Mr. DOTY: If he can get the floor.

Mr. LAMPSON: But he is entitled to it.

Mr. PECK: I was recognized and I made the motion regularly.

Mr. LAMPSON: On page 29 is a list of motions that take precedence over each other. To amend is No. 8 and to lay on the table is No. 4.

The PRESIDENT: There is no doubt as to the precedence, but the question was whether the member from Guernsey had the floor.

Mr. LAMPSON: The member from Guernsey was sitting in his seat.

Mr. BROWN, of Highland: The member from Guernsey had not asked for recognition.

Mr. WATSON: The member from Guernsey was going to as soon as the amendment was read.

The PRESIDENT: Under the rules of the Convention the member from Guernsey [Mr. WATSON] had the floor and there is an appeal from the decision of the chair. Shall the decision of the chair be sustained?

The decision of the chair was sustained.

Mr. WATSON: I shall occupy only a moment of your time. This question was discussed once before. We are asking that this be substituted for the pony recall of the member from Montgomery [Mr. DWYER]. As was stated in respect to this matter sometime ago, it is evident that the people of this state have a right to rule and beyond any doubt we will hear that urged on the question of taxation. When the gentleman from Allen [Mr. HALFHILL] argues the taxation question, the people have a right to rule. Why should not they have a right to rule in regard to their public officials? They have a right to recall them. If a man has a right to choose a man for his service he has a right to reject him when he thinks he is not properly performing his duty.

The PRESIDENT: The member from Hamilton [Mr. PECK] moves to lay this amendment on the table.

Mr. DOTY: I move that the Convention proceed with the orders of the day.

The PRESIDENT: The question is, "Shall the orders of the day be proceeded with?"

Removal of Officials.

Mr. PECK: What is "the orders of the day?"

The PRESIDENT: This proposal and the amendment.

Mr. PECK: More tricks! Let us have a fair deal and quit these tricks. I do not believe in tricks. If you are going to pass this proposal pass it, but pass it fairly.

The PRESIDENT: The question of precedence is first to adjourn, second to recess, third to proceed to the orders of the day and fourth to lie upon the table.

Mr. PECK: The motion to lay upon the table has been made and you cannot displace it.

The PRESIDENT: The question to table has been made and now a motion of precedence, to proceed to the orders of the day. Even when you are on the floor that question takes precedence and that motion could be made.

Mr. LAMPSON: Then you sustain the point I made a few moments ago.

The PRESIDENT: The question now before the Convention is on the motion made by the gentleman from Cuyahoga to proceed to the orders of the day. The orders of the day is this proposal and amendment. It amounts to two votes on it. That is all.

Mr. PECK: My question would get right to it. I demand the yeas and nays on the question to lay on the table.

Mr. LAMPSON: I would like to make a statement. This question of proceeding to the orders of the day has no application to the situation here now. We are already proceeding with the orders of the day, which is this proposal and the pending amendment. That is the orders of the day and we are proceeding with it. The gentleman from Hamilton moves to lay an amendment on the table, the very thing that we are proceeding with, to which his motion is applicable. The motion of the gentleman from Cuyahoga [Mr. Doty] has no application in considering the orders of the day, to which the motion to lay upon the table is applicable.

Mr. MARRIOTT: A point of order. I suggest that the president had not recognized the gentleman from Cuyahoga, and he therefore had no right to make the motion until he was recognized.

The PRESIDENT: The president will overrule that point.

Mr. DOTY: I do not understand whether the member from Ashtabula [Mr. LAMPSON] has made a point of order or made a suggestion. Of course the orders of the day is the pending proposal and pending amendments. Now a member makes a motion which interferes with that and that is to lay it aside, and the object of that proceeding is to have the Convention decide in a matter of precedence of one question over another, whether we shall lay aside the orders of the day and proceed to it; and it brings a question in the positive form before it brings it in the negative form, and the member from Ashtabula [Mr. LAMPSON] is aware that the object of this order of business to take precedence has been thus accorded.

Mr. LAMPSON: But you are proceeding with the orders of the day and it is not necessary to do that.

Mr. KNIGHT: I would like to ask a question and have it answered in plain terms. Suppose the motion

of the gentleman from Cuyahoga passes; what will be the next thing in order?

Mr. DOTY: To go right on.

Mr. PECK: Then my motion comes right in there.

Mr. DOTY: No, sir.

The PRESIDENT: If the members wish to sustain the member from Hamilton [Mr. PECK] they should vote against the motion to proceed to the orders of the day.

The motion to proceed to the orders of the day was lost.

The PRESIDENT: The question is, Shall the amendment lie on the table?

Mr. DOTY: On that I demand the yeas and nays.

DELEGATES. No, no.

Mr. DOTY: I demand the yeas and nays.

Mr. DWYER: One or two men in this Convention are taking up the whole of the time. They want to hurry things, but they want to take up all of the time talking themselves, and it is time that they should be stopped.

The question being "Shall the motion of Mr. Peck to lay on the table be agreed to?"

The yeas and nays were regularly demanded, taken, and resulted—yeas 80, nays 30, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Norris,
Antrim,	Harris, Hamilton	Peck,
Baum,	Harter, Stark,	Peters,
Beatty, Morrow,	Holtz,	Price,
Beyer,	Hoskins,	Redington,
Bowdle,	Johnson, Madison,	Riley,
Brattain,	Johnson, Williams,	Rockel,
Brown, Highland,	Jones,	Roehm,
Brown, Pike,	Kehoe,	Rorick,
Campbell,	Keller,	Shaffer,
Cody,	Kerr,	Shaw,
Collett,	King,	Smith, Geauga,
Colton,	Knight,	Smith, Hamilton,
Cordes,	Kramer,	Soletcher,
Crites,	Lampson,	Stamm,
Cunningham,	Leete,	Stevens,
Donahey,	Longstreth,	Stewart,
Dunlap,	Ludey,	Stokes,
Dwyer,	Malin,	Taggart,
Eby,	Marriott,	Tallman,
Elson,	Marshall,	Tannehill,
Evans,	Matthews,	Ulmer,
Farnsworth,	Mauck,	Weybrecht,
Fox,	McClelland,	Winn,
Hahn,	Miller, Crawford,	Wise,
Halfhill,	Miller, Fairfield,	Woods,
Harbarger,	Miller, Ottawa,	

Those who voted in the negative are:

Beatty, Wood,	Halenkamp,	Okey,
Cassidy,	Harter, Huron,	Pierce,
Crosser,	Henderson,	Read,
Davio,	Hoffman,	Stilwell,
Doty,	Hursh,	Tetlow,
Dunn,	Kilpatrick,	Thomas,
Fackler,	Kunkel,	Wagner,
Farrell,	Lambert,	Walker,
FitzSimons,	Leslie,	Watson,
Fluke,	Moore,	Mr. President.

So the motion was carried.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 107, nays none, as follows.

Removal of Officials—Extending Bond Limit for Inter-County Wagon Roads.

Those who voted in the affirmative are:

Anderson,	Harbarger,	Norris,
Antrim,	Harris, Ashtabula,	Okey,
Baum,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Harter, Huron,	Peters,
Beatty, Wood,	Henderson,	Pierce,
Beyer,	Hoffman,	Price,
Bowdle,	Holtz,	Read,
Brattain,	Hoskins,	Redington,
Brown, Highland,	Hursh,	Riley,
Brown, Pike,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Roehm,
Cassidy,	Jones,	Rorick,
Cody,	Kehoe,	Shaffer,
Collett,	Keller,	Shaw,
Colton,	Kerr,	Smith, Geauga,
Cordes,	Kilpatrick,	Smith, Hamilton,
Crites,	King,	Solether,
Crosser,	Knight,	Stamm,
Davio,	Kramer,	Stevens,
Donahy,	Kunkel,	Stewart,
Doty,	Lambert,	Stilwell,
Dunlap,	Lampson,	Stokes,
Dunn,	Leete,	Taggart,
Dwyer,	Leslie,	Tallman,
Eby,	Longstreth,	Tetlow,
Elson,	Luddy,	Thomas,
Evans,	Malin,	Ulmer,
Fackler,	Marriott,	Wagner,
Farnsworth,	Marshall,	Walker,
Farrell,	Matthews,	Watson,
FitzSimons,	Mauck,	Weybrecht,
Fluke,	McClelland,	Winn,
Fox,	Miller, Crawford,	Wise,
Hahn,	Miller, Fairfield,	Woods,
Halenkamp,	Miller, Ottawa,	Mr. President.
Halfhill,	Moore,	

So the proposal passed as follows:

Proposal No. 241—Mr. Dwyer, to submit an amendment by adding section 38 to article II, of the constitution.—Removal of officials.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors, to read as follows:

ARTICLE II.

SEC. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

The PRESIDENT: The next is Proposal No. 118—Mr. Lampson.

The proposal was read the third time.

Mr. JONES: I offer an amendment.

The amendment was read as follows:

Strike out of the title the words "good roads" and insert in lieu thereof the words "inter-county wagon roads".

Mr. JONES: I desire to be heard very briefly in the explanation of the purpose of this amendment. As will be seen from the reading of the proposal as it passed second reading, the specific thing for which the bond

issue is authorized is not the building of roads in general, which, as was explained on second reading, will cover all kinds of public highways, wagon roads, railroads, electric roads and all other means of reaching from one point to another. The proposal, as it was finally passed, was limited to a particular kind and class of roads, to-wit, "inter-county wagon roads." Now the title ought to express exactly what the proposal provides for. As it stands now, it is a proposal to raise the limit of bonded indebtedness of the state for "good roads" as a general term. That may be crossroads, byroads leading from the barn to the market, electric roads, railroads or any sort of public highway. Now the title ought to be changed so that it will clearly express what the proposal provides for, raising the bond limit to authorize the building of "inter-county wagon roads." Then when anybody reads the title he will get a correct idea of what the bond limit is to be raised for.

Mr. DOTY: Do you not think \$50,000,000 should be in there so that they could have the full benefit of the whole thing?

Mr. JONES: I have no objection to that. It might unduly lengthen the title, but it conduces to a ready and quick understanding of what the proposal is. Certainly this should be changed, because unless the person has read the proposal he will have to ask half a dozen questions to find out what kinds of roads it relates to. Are the roads all over the county to be improved? No, sir; it is the inter-county roads.

Mr. LAMPSON: I have no objection whatever to the amendment so far as I am concerned.

Mr. DOTY: Does the gentleman object to my suggestion about putting \$50,000,000 in there?

Mr. LAMPSON: Yes; it makes it so long.

Mr. HARRIS, of Hamilton: Does not the gentleman think the words "good inter-county roads" should be left in there?

Mr. JONES: That is anticipating the result of the work of the state highway department. I think we should adjust the title to what is provided for in the body of the proposal. It is not to build "good inter-county wagon roads," but to build "inter-county wagon roads," and the title should contain exactly what is expressed by the body of the proposal.

Mr. HARRIS, of Hamilton: Does not the member know that the philosopher says "anticipation is better than actual possession"?

Mr. JONES: Yes, but we had better keep away from too much anticipation.

The amendment was agreed to.

Mr. ANTRIM: I offer an amendment.

The amendment was read as follows:

Strike out comma and insert "and" before "repairing" in line 15.

Strike out "and maintaining" in line 15.

In line 19 strike out period after "maturity" and insert comma and the words "the general assembly shall provide for the maintenance of said roads."

Mr. ANTRIM: Just a word by way of explanation. You know that this proposal provides for two things:

1. For the issuing of \$50,000,000 in bonds for the purpose, as the proposal reads, of constructing, rebuild-

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ing, improving, caring for and maintaining a system of inter-county wagon roads, and also,

2. For the paying off of those bonds.

My amendment has to do particularly with the subject of maintenance, and what I do is to eliminate the word maintaining in the first part of the proposal and in the latter part of the proposal introduce a clause, "and the general assembly shall provide for the maintenance of said roads." If we leave the proposal as it is there will be no money left for maintenance after we have spent the \$50,000,000 and the roads will be left unmaintained, but if we pass my amendment we shall have \$50,000,000 for the purpose of building the roads and then the general assembly will provide for the maintenance of those roads. My idea of maintenance is that automobile fees and other fees may be used for the purpose of maintenance, and of course, if there is not enough from those sources, then a tax can be levied, but for a number of years to come there will be an abundance of money from the automobile fees and other sources to maintain the roads as they are being built, so I think this will be an excellent idea.

Mr. LAMPSON: I have no objection to the amendment.

Mr. DOTY: I would like to have the words changed from "the general assembly" to "laws shall be passed to."

Mr. BROWN, of Highland: Does not that defeat the purpose of the proposal?

Mr. ANTRIM: I think not.

Mr. BROWN, of Highland: If you provide for money outside, that is contradictory.

Mr. ANTRIM: I think not.

The amendment was agreed to.

Mr. MAUCK. I offer an amendment. One might suppose from the title that this placed a limitation on the issuance of state bonds for good roads. My amendment is that before the word "State" in the title there shall be inserted the words "To extend to \$50,000,000 the". The purpose of this is to advise those who are called upon to vote upon this proposal that they are extending the limitation and placing a limitation in the constitution that does not now exist.

The amendment offered by the member from Gallia was read as follows:

In the title insert before the word "State" the words "To extend to fifty million dollars the".

Strike out the capital "S" in "State" and insert lower case "s".

Mr. LAMPSON: I think this amendment is wholly unnecessary. If there is any question submitted to the people that the people will understand all about, it is the question of raising the bond limit for an intrastate system of roads. It may involve a large amount and the people are perfectly familiar with the method of voting. We have used the referendum upon bond issues everywhere from time immemorial. There will be no trouble about the people understanding what is involved in this proposition and I move to lay the amendment on the table.

Mr. MAUCK: On that I demand the yeas and nays. This certainly does not subtract from the knowledge of the people.

The yeas and nays were taken, and resulted—yeas 41, nays 64, as follows.

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Peters,
Antrim,	Harris, Hamilton,	Price,
Beatty, Morrow,	Johnson, Williams,	Redington,
Bowdle,	Kramer,	Riley,
Brown, Highland,	Lampson,	Rockel,
Brown, Pike,	Leete,	Shaw,
Campbell,	Longstreth,	Smith, Geagua,
Collett,	Ludey,	Stamm,
Colton,	Marriott,	Stevens,
Cunningham,	Marshall,	Tannehill,
Dunn,	Matthews,	Walker,
Elson,	McClelland,	Weybrecht,
Evans,	Miller, Ottawa,	Winn.
Fess,	Peck,	

Those who voted in the negative are:

Baum,	Harbarger,	Miller, Fairfield,
Beatty, Wood,	Harter, Huron,	Moore,
Beyer,	Harter, Stark,	Norris,
Cassidy,	Henderson,	Okey,
Cody,	Hoffman,	Pierce,
Cordes,	Holtz,	Roehm,
Crites,	Hoskins,	Shaffer,
Crosser,	Hursh,	Smith, Hamilton,
Davio,	Johnson, Madison,	Solether,
Donahey,	Jones,	Stewart,
Doty,	Kehoe,	Stilwell,
Dunlap,	Keller,	Stokes,
Eby,	Kerr,	Taggart,
Fackler,	King,	Tallman,
Farnsworth,	Knight,	Tetlow,
Farrell,	Kunkel,	Thomas,
FitzSimons,	Lambert,	Ulmer,
Fluke,	Leslie,	Wagner,
Fox,	Malin,	Watson,
Hahn,	Mauck,	Wise,
Halenkamp,	Miller, Crawford,	Woods.
Halfhill,		

So the motion to table was lost.

The PRESIDENT: The question is on the adoption of the amendment.

The amendment was agreed to.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

Strike out all after the colon in line 12, and lines 13, 14, 15, 16, 17, 18 and 19 including the period and insert the following:

"Provided, however, that in the year 1913, and in each year thereafter, including the year 1922, a tax levy of three-fourths of one mill on the grand tax duplicate of the state shall be levied and collected for the purpose of constructing, improving, maintaining, repairing and rebuilding a system of inter-county wagon roads throughout the state. In the year 1922 the advisability of continuing such levy shall be submitted to a vote of the people."

Mr. THOMAS: This amendment simply provides that good roads shall be built by direct tax rather than by a bond issue of \$50,000,000. It will permit the raising of \$3,500,000 per year; and as it will require nearly half that amount to be levied and collected annually by taxation to pay off the bonds, it seems to me by direct taxation we can just as well add on that much more and build \$50,000,000 worth of good roads with \$50,000,000.

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If the estimates given by the financiers of the Convention are correct, it will require something like \$38,000,000 to pay the interest charges on this \$50,000,000, running from thirty-five to forty years. I want to save to the citizens this \$38,000,000 in interest and let them have \$50,000,000 of good roads for \$50,000,000.

Mr. LAMPSON: This question was fully gone into when the proposal was up for consideration on second reading. This is simply a practical way to kill the proposal. I think every delegate in, this Convention thoroughly understands the situation. The question is up to the delegates. I do not know that I have any more interest in the matter of a good-roads system in the state of Ohio than have the other delegates, but I do not desire that the proposal shall be killed without my protest. The responsibility is on the Convention and I move to lay the amendment on the table.

Mr. MAUCK: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 57, nays 48, as follows:

Those who voted in the affirmative are:

Antrim,	Henderson,	Peters,
Beatty, Morrow,	Holtz,	Price,
Bowdle,	Johnson, Madison,	Read,
Brattain,	Kerr,	Redington,
Brown, Highland,	Kilpatrick,	Riley,
Brown, Lucas,	King,	Rockel,
Campbell,	Knight,	Rorick,
Collett,	Kramer,	Shaw,
Colton,	Lambert,	Smith, Geauga,
Cunningham,	Lampson,	Stevens,
Dunlap,	Leete,	Stewart,
Dunn,	Longstreth,	Tallman,
Elson,	Ludey,	Tannehill,
Evans,	Marriott,	Ulmer,
Fess,	Marshall,	Walker,
Halfhill,	Matthews,	Weybrecht,
Harris, Ashtabula,	McClelland,	Winn,
Harris, Hamilton,	Miller, Ottawa,	Wise,
Harter, Stark,	Okey,	Mr. President.

Those who voted in the negative are:

Baum,	FitzSimons,	Miller, Crawford,
Beatty, Wood,	Fluke,	Miller, Fairfield,
Beyer,	Halenkamp,	Moore,
Brown, Pike,	Harbarger,	Norris,
Cody,	Harter, Huron,	Peck,
Cordes,	Hoffman,	Pierce,
Crites,	Hoskins,	Roehm,
Crosser,	Hursh,	Shaffer,
Davio,	Johnson, Williams,	Smith, Hamilton,
Donahey,	Jones,	Solether,
Doty,	Kehoe,	Stilwell,
Dwyer,	Keller,	Taggart,
Eby,	Kunkel,	Thomas,
Fackler,	Leslie,	Wagner,
Farnsworth,	Malin,	Watson,
Farrell,	Mauck,	Woods.

So the amendment was tabled.

The PRESIDENT: The question is on the adoption of the proposal.

Mr. HOSKINS: I would ask for information of the member from Ashtabula [Mr. LAMPSON] whether or not under this proposal the entire expense of these roads is not borne by the state. Is it the intention of the proposal to prevent any consolidation of state funds with local funds in the building of a single road?

Mr. LAMPSON: I do not think it would necessarily prevent it. It would be up to the legislature to

pass the laws regulating the matter, but these roads will be state roads.

Mr. HOSKINS: It does provide that the cost of building and maintaining shall be by the state. Will not that be construed to prevent any consolidation of the state and county or city funds?

Mr. LAMPSON: I do not think so.

Mr. HURSH: In lines 12 and 13 the proposal reads, "contract debts and authorize the issue of bonds for an amount in the aggregate not to exceed \$50,000,000." Do I understand that the whole debt shall not exceed \$50,000,000?

Mr. LAMPSON: It never can exceed in the aggregate \$50,000,000.

Mr. HARRIS, of Hamilton: And whenever any part of the \$50,000,000 is paid off no additional amount will be used.

Mr. LAMPSON: That is true; and the legislature may not authorize \$50,000,000. It may not authorize anything.

Mr. WOODS: If this goes into the constitution, do you understand that afterwards the state debt can be kept up to \$50,000,000 all the time?

Mr. LAMPSON: I do not. Whenever a part of it is paid off it will be reduced to that extent and no more can be issued in lieu of that.

Mr. WOODS: That is not what it says.

Mr. LAMPSON: That is my interpretation of it.

Mr. SHAFFER: In line 12 did you purposely leave in "general assembly"?

Mr. LAMPSON: Yes.

Mr. HARRIS, of Hamilton: Is not the statement of the member from Medina absolutely incorrect?

Mr. LAMPSON: I so understand it.

Mr. HARRIS, of Hamilton: There is nothing in the proposal by which the total amount of bonds issued can ever exceed \$50,000,000, and whenever any of them are paid no additional bonds can be issued.

Mr. LAMPSON: That is my understanding.

Mr. HARRIS, of Hamilton: Clear as sunlight.

Mr. HURSH: I would suggest to the gentleman from Ashtabula [Mr. LAMPSON] that he put that in very definite terms, because that is going to raise trouble in the campaign. It is as to whether the bond limit will be at \$50,000,000 always or not.

Mr. LAMPSON: I call the attention of the gentleman to line 13 on the yellow paper, "provided however that the general assembly may contract debts and authorize the issuance of bonds which in the aggregate shall not exceed \$50,000,000." Not in the aggregate at any one time, but in the aggregate at all times.

Mr. HURSH: Is not that language susceptible of misconstruction?

Mr. LAMPSON: I think not. The bonds all put together shall not exceed at all times \$50,000,000 and not more than \$10,000,000 in any one year.

Mr. WOODS: Are you willing to put those words in?

Mr. LAMPSON: Certainly. That is what it means.

Mr. WOODS: But it doesn't say that.

Mr. KNIGHT: There seems to be a little doubt about this matter, and in view of that I move to recess until 2 o'clock p. m. The clerks say they must have two hours at noon to put our books in shape. If there

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is to be a vote on the main proposal anyway soon I will withdraw the motion.

Mr. LAMPSON: If the word "total" were inserted before the word "aggregate" would that satisfy you?

Mr. WOODS: We want to fix this so that only \$50,000,000 can ever be issued, and if you mean that say it.

Mr. LAMPSON: My opinion of the matter is that the language is sufficiently explicit to limit the amount to an aggregate of \$50,000,000. The word "total" inserted before the word "aggregate" will not add anything to it.

Mr. KNIGHT: Would it not be equivalent to saying the total whole?

Mr. LAMPSON: Yes.

Mr. KNIGHT: And would anybody think about using that language?

Mr. LAMPSON: I think not. I think this is as explicit as it can be made.

Mr. HARRIS, of Hamilton: The language here used was practically passed upon by the highest courts of this state. It was practically the language I adopted in an amendment which cut out any possibility of exceeding \$50,000,000. The trustees of the sinking fund had that language defined, and there is no possibility that any excess over \$50,000,000 will be issued. Whenever any of the bonds that are issued are paid off, they cannot be reissued.

Mr. LAMPSON: That is my understanding of the matter.

Mr. JONES: As a member of this Convention know, I have always been opposed to this bond issue, but if it should be passed by this Convention and adopted by the people I, like every other member, am interested in having it in the best possible shape although I would oppose the proposal even if the amendment I am offering were adopted; but I want to call the attention of the Convention for a moment to the suggestion by the gentleman from Auglaize [Mr. HOSKINS], which it occurs to me has very much merit in it, and if this proposal is adopted it should be incorporated into it. There is doubtless a very prevalent feeling over the state that these inter-county roads ought to be contributed to, if built, by those directly benefited. The owners of land along which the roads run will be benefited by them, and the townships into which they go will likewise be benefited much more than townships into which they do not go. There will be special benefits to different classes of people by this expenditure. That being so, the way ought to be left open for the legislature to provide for the building of these roads by the distribution of the burdens, when it is desired to do so, among those that are benefited. I know in a number of counties with which I am familiar the people would be glad to have the lands along the roads assessed for part of the cost in order to encourage the building of the roads. As this proposal now stands there can be nothing done with the money from this bond issue except that the state shall expend the whole of it in the construction of roads. The direction is explicit that these roads shall be built, repaired, maintained, etc., by the state. That cuts out all opportunity for doing what is suggested by the gentleman from Auglaize, of getting aid from townships or from abutting property owners or by contributions from or assessments upon owners of automobiles and various other ways in which funds may be

contributed to this \$50,000,000 in order to do what is admitted by all cannot be accomplished by \$50,000,000, to wit, provide a complete system of inter-county roads in the state. I think this provision restricting the expenditure to the state should be eliminated.

Mr. HALFHILL: Is there anything in this proposal that prevents doing the very thing that you are arguing for?

Mr. JONES: Yes, the language that the cost of constructing, rebuilding, improving, repairing and maintaining "shall be paid by the state." Now we ought to have these inter-county roads built, if they are going to be built, by any means that the legislature may provide. If the localities through which they run are willing to contribute, or if in the wisdom of the legislature it is found that they should contribute, there should be a way open to do it. If the legislature wanted to apply the automobile fees to the building of these roads there should be a way of doing so. It should not be limited to this particular fund and nothing else.

Mr. HALFHILL: The contention of the gentleman from Fayette [Mr. JONES], it seems to me, is not borne out by the reading of the proposal. There cannot be any construction that the entire cost of these roads shall be borne by the state to the extent of excluding anything like local contribution. No such construction as that can be properly placed on that language. The purpose of the proposal, as we all know, was to give the state, through the state highway department, the right to locate these roads and have general supervision over them. Now the moment that you begin to put into this proposal matters purely legislative, so that the county commissioners or the local authorities can in any way help out in this, just that moment you open the door and do away with the exclusive control of a good highway system of state roads.

Mr. JONES: What possible objection could there be, if the legislature wanted to so provide, to having, for instance, the automobile fund devoted in part to the building of these roads?

Mr. HALFHILL: That is a mere matter of detail as to creating the revenue and has nothing to do with this. The question of collecting automobile fees and putting that in here would be improper. That is a question of taxation.

Mr. LAMPSON: Would not the money collected by the state known as the automobile fund belong to the state, and could not the state use it as it saw fit?

Mr. HALFHILL: Certainly. It is now covered into the treasury and distributed in a certain way and could be exclusively devoted to the benefit of this system.

Mr. JONES: Note in this proposal that provision is made for the building of these roads by this bond issue. The language is, "such wagon roads shall be paid for by the state". Now, the wagon roads are to be built by this fund. How can you provide by legislative enactment for the building of them in any other way than is provided here and limited to those funds raised by the state?

Mr. HALFHILL: Why, it doesn't provide for them to be built any other way. It was intended that they should be built as a system of county roads under the control of the state, and the fund created here is small compared with the resources of the state undertaking

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the great internal works. We ought to be ashamed of ourselves, when we see the property of the state of Ohio now as compared with the property it had at the time the canals were built, to object to creating a fund of \$50,000,000 to improve the public highways of the state.

Mr. ELSON: Does this proposal make it possible for the state in any way to assess the property benefited by the inter-county roads?

Mr. JONES: It is well known to everybody that the question of taxation and the question of assessment come in upon an entirely different basis under the present constitution. The question of taxation is one thing levied under general law. The question of assessments is another thing, and they are levied under special laws. Does not that preclude the possibility of the use of any local assessment? The language in line 21 was "shall be paid by the state."

Mr. HALFHILL: It does not preclude it for the logical reason I have already tried to state.

Mr. JONES: I have been at sea for a month. If I were sure of that I would not have anything else to say, but it is not plain. The property by which the roads run will be very much more benefited than the property off some distance, and why should not the men along whose property the road runs contribute something to it when it enhances the value of their property?

Mr. HALFHILL: They can be assessed under this present arrangement.

Mr. KNIGHT: I would like to renew the motion to recess. It is evident that this discussion will take further time.

Mr. HALFHILL: I yield the floor, but I want it when we resume.

Mr. KNIGHT: I move that the Convention recess until 2:30 o'clock p. m.

The motion was carried and the Convention recessed until 2:30 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. LAMPSON: I desire to offer an amendment.

Mr. HALFHILL: I have the floor. How much time have I, Mr. President?

The PRESIDENT: Five minutes.

Mr. HALFHILL: Then I must decline to be interrupted by questions until I get through.

Gentlemen, this proposal has received a very thorough consideration by the Convention and its terms are plain and explicit. It simply says that the present limitation of the constitution against incurring debts for internal improvements, is removed, and the state is authorized to issue bonds to the amount of \$50,000,000 for the purpose of inter-county roads. That limitation of \$50,000,000 is explicit and complete, and whenever any bonds are retired that ends it. In other words, the total or aggregate issue shall be \$50,000,000, so that there can be no misunderstanding on that point. Now the proceeds of these bonds are for the purpose of constructing, building, improving and repairing a sys-

tem of inter-county roads. Do not overlook the fact that I mentioned and discussed in the early part of the session, that there are eighty-eight thousand miles of highways in the state of Ohio; that, at the outside, any system that could be established or maintained in Ohio, would not control over ten or twelve per cent of the mileage of the public highways. So that this system of roads, which it is presumed will be under the control of the state highway department, will not represent more than ten or twelve per cent of the roads or highways of the state of Ohio.

It follows then that there is ninety per cent of the highways of the state of Ohio that must be improved by local assessment—by local political subdivisions, and they are the roads that lead out onto these main arteries of trade. These are the trunk lines that are provided for here. These trunk lines or main lines of highway are the only roads which it is contemplated can be established by any system put in effect under the power granted by this proposal. That much of it is plain and I think cannot be gainsaid.

Now I want to address a little attention to the argument of the member from Fayette. Gentlemen, there is nothing that is quite so confusing as a half truth. Before we realize it, a half truth entangles us in the meshes of its uncertainty and we are involved in inextricable difficulties; and there is nothing that is so dangerous to us right now as to consider and embrace any half truths, no matter how adroitly suggested in argument. Keep in mind this is a system of state highways under state control. Nobody expects that by virtue of the power provided for here we will have any local control of these particular highways. Then the argument is suggested by the member from Fayette [Mr. JONES] that this provision in the fundamental law is wrong because it provides that the cost of these state highways shall be borne by the state. Where else should the cost be borne except by the state? These highways are the main arteries of traffic. They are the inter-county highways. There is yet ninety per cent of the highways of the state, the cost of constructing which must be largely assessed upon the local property in order that the local roadways that lead out to these inter-county highways may be improved. So as a plain proposition why should not the state bear the cost and the expense of this ten or twelve per cent of the total mileage of the highways of the state? However, it does not necessarily even have to do that in order to meet the objection that is urged by the member from Fayette, because you must distinguish between the power to tax and the power to assess; and if we do not distinguish between the power of taxation and the power of assessment as exercised under our constitution then we cannot logically consider and weigh the argument that was urged here by the gentleman from Fayette. If there is anything that is well established in Ohio it is that the power of taxation and the power of assessment are two separate powers in that they do not draw their authority from the same source in the constitution. Permit me to read the first three sections of the syllabus in the case of Reeves vs. The Treasurer of Wood County, 8 O. S. 333:

1. The power to authorize assessments, as distinguished from taxes proper, is comprehended

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in the general grant of legislative power in the general assembly.

2. Such assessments are not embraced within the meaning of the word "taxing," in the second section of the twelfth article of the constitution.

3. The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of streets and sidewalks, exists to the same extent under the present constitution as under that of 1802.

So it is important to keep that distinction in mind. Now it is very apparent to all who have observed, that under general laws providing for taxation, certain property is not taxed, as when streets are improved around churches, the church property although not taxed is assessed by way of benefits conferred for the special improvement. In other words, the power of assessment is so different from the power of taxation that we should not confuse the two at any time, especially with reference to this particular proposal, because forsooth it is argued that by putting a state highway through a part of a county you will enhance the value of certain lands that lie adjacent to that highway which is paid for by the state; and that it ought to be within the power of the state to assess a portion of the cost and expense upon adjoining lands because they are especially benefited and improved by virtue of that improvement. For if that be the correct policy, then there is ample authority under the constitution as it now exists and there will be ample authority after the passage of this proposal just as it is written. There can be no gainsaying that point. I doubt the advisability of it, but that is altogether a different thing. That is something for the legislature to take into account, and I say if it is necessary to invoke the power of assessment, it being a different power from the power of taxation, it can be exercised and put into effect right along with this proposed amendment, so that the objection raised there is met by the existing power in the constitution. The taxing power is a greater power than the power of assessment. The taxing power reaches out and takes in all the lands, whether near to the highway that we construct or whether remote from the highway. That is one of the purposes of the issuance of these \$50,000,000 of bonds. Those remote lands can be made of nearer and easier access to good roads and markets. Do you not consider that the people of the city have already improved streets and paid for them by special assessment and by adopting this they are going to do more proportionately to help out the farmers than by any other scheme of public improvement since the state was organized? Therefore, where the people of a municipality have already paid for their own local assessments and improvements of streets and have enhanced the value of their cities, they are ready to stand their proportionate assessment on the grand duplicate to make this fund for the inter-county system better, so that the products of the farm can be brought to market.

Mr. LAMPSON: I offer an amendment.

The amendment was read as follows:

In line 13 after "aggregate" insert the words "of all issues."

Mr. LAMPSON: I have offered this amendment to make this emphasize what I believe the proposal already means, and I have done it to meet the suggestion of several delegates like the gentleman from Hardin [Mr. HURSH], the gentleman from Guernsey [Mr. WATSON], and the gentleman from Medina [Mr. WOODS]. Insert after the word "aggregate" in line 13 the words "of all issues," so that it will read that the general assembly may contract debts and authorize the issuance of bonds which in the aggregate of all issues shall not exceed \$50,000,000.

Mr. HURSH: I would like to have you insert in line 19, "such wagon roads shall be determined under general laws and the cost of constructing and rebuilding, improving and repairing the same shall be paid by the state." That authorizes the legislature to make other levies than the \$50,000,000.

Mr. LAMPSON: They can do that anyway, and this does not authorize it.

Mr. WINN: Suppose the national government should enter upon a plan of improving the roads, and one of the bills now pending in congress provides for an apportionment of the money among the states according to the amount that the states will provide—in other words, that the United States government will give an equal amount with the state—suppose such a law were enacted, would there be any way by which this fund could be used in connection with the national fund to construct roads?

Mr. LAMPSON: I think so.

Mr. WINN: Find it. It is provided that these roads shall be built under general laws and the state is to do the constructing, building and improving. Suppose congress provides a plan and that is put under some department of the national government, and they come into Ohio and want to appropriate \$25,000,000 or \$50,000,000 if we appropriate the same amount. None of this money could be available.

Mr. LAMPSON: If the national government undertakes to do anything of that kind it must act with the authority of the state. It could not act with the authority of the counties or municipalities.

Mr. WINN: I do not think you understand what I am talking about. I did not make myself clear. This provides that the state shall have charge of constructing, repairing, maintaining. That does not contemplate that the state in conjunction with any county or any other official or national government may expend this money in the construction of roads. Is it not confined absolutely to the authorities of the state?

Mr. LAMPSON: It must be by the state and the state must have control. I know nothing about the feeling of congress, but if a proposition is made to allow the general government to come into the state and undertake to control the roads you will be up against public sentiment that you cannot get over. You will be invading state rights.

Mr. BROWN, of Highland: Suppose the United States government wants to help and the state accepts, who in Ohio would object to it?

Mr. LAMPSON: There would not be anybody to object.

Mr. HALFHILL: It is a well-known fact that the

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United States appropriates its money for public improvement only in two ways: One is by giving a gratuity to the state whereby the state has control, and the other is by taking the entire jurisdiction to itself. In this instance it would be a gratuity.

Mr. WINN: How do you know?

Mr. LAMPSON: I know that the state would not relinquish its rights.

Mr. WINN: Might not the government undertake to take upon itself the construction of the Erie canal?

Mr. HALFHILL: The government never takes control of any such a thing unless it has jurisdiction and title.

Mr. LAMPSON: I undertake to say there is not a state in the Union that would surrender its rights to the general government to control its public highways.

Mr. TAGGART: Does the provision of Proposal No. 118 in anyway provide that the cost of constructing, rebuilding, improving, repairing, maintaining, etc., shall be exclusively paid by the state?

Mr. WINN: No, sir; it does not.

Mr. DWYER: I was going to suggest this: I believe it would be a great calamity to have the general government come into Ohio to build roads, and I will give you my reasons in just a moment. All over Ohio we have good turnpike roads. All through the South they have not any. All through the West and especially in Kansas they have not any. If we get the government to building roads we will have to pay for those roads, and we will pay more than our proportion because we have a level country and good roads. It would be an unfortunate thing to have the general government build roads in Ohio, for if it built roads in Ohio it would build roads in other states. I have had experience in this matter. We have a good level country here and good roads. If the general government builds roads here it must build in Arizona and New Mexico and all through the South, where they haven't any roads, and we shall have to pay for them. We had better build our own roads and let the general government alone.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: I am opposed, on general principles, to the state's going into a bond issue to build roads, but if the wisdom of the people of the state stands for the issue of the bonds I, for one citizen of the state of Ohio, want to see the proposition go through entirely in the hands of the state without any entanglement whatsoever from any section or subdivision of the state. I do not want any donations from the counties to that fund. I want nobody responsible for that issue and for that application of that entire proposition but the state of Ohio. I know from experience what it means to take in the counties and townships in a proposition of that sort. It means logrolling at every point, and when your road system is completed it is a laugh for the age. Let the state of Ohio build the grand arteries of communication where in its judgment they will fit and let the counties conform to these arteries just as the body physical responds to the main arteries of the same. When we do that we have a comprehensive system that begins somewhere and ends where it was intended to end, and the result of it will be that we will have a line of roads for an extravagant price, because you are willing to saddle on your children a sum total

in the aggregate for the interest to men who do not do a bit of work. Personally I would like to see \$150,000,000 expended for good roads in Ohio, and I believe it would be an economic outlay in its results, but on the other hand I want a dollar's worth of roads for every dollar's worth of money taken out of the pockets of the people of Ohio for the road proposition. When we do that, instead of having five thousand miles of roads for an outlay of \$120,000,000, or about \$24,000 a mile, you will have for the same amount about twelve thousand miles of road. That difference of seven thousand miles of main arteries in the state of Ohio is worth considering. Is it not the proper thing for us to figure on that? It is our children that have to pay that we may run over the roads in our days. That is not a broad spirit. Let us aim to leave those following us as good conditions as we have had. It will be less of a hardship to give them good roads that we have paid for than it was for our progenitors to dig out of the wilderness roads of Ohio that we might go through them. But if we decide to issue this \$50,000,000 of bonds that will cost \$120,000,000 before we are through, in the name of common sense let us keep the business in our own hands. Do not let us enter into any negotiation or alliance with any county on anybody that has an axe to grind. Give it to the highway commission, and let that end it, and let them give us such roads as meet the requirements of the age. When we do that the counties will have the privilege of taxing themselves to meet the building of the laterals to connect with them, and when we do that we will have a road system that is extensive, and we shall have nothing to regret except the error of bonding ourselves instead of paying as we go, and we will have a road system that will be a credit to Ohio.

Mr. HARRIS, of Hamilton: May I ask a question?

Mr. FITZSIMONS: Yes.

Mr. HARRIS, of Hamilton: As long as you have lived in Cleveland have you ever voted for a bond issue?

Mr. FITZSIMONS: Yes; I voted for one the other day.

Mr. HARRIS, of Hamilton: You have been guilty of the heinous crime of putting on future generations a bond issue?

Mr. FITZSIMONS: I voted the other day to bond the city of Cleveland for a playgrounds for the children, knowing full well that I was handing the matter over to the children to pay the cost of the same in the future.

Mr. HARRIS, of Hamilton: Have you ever voted for any other bond issue?

Mr. FITZSIMONS: Yes, and I expect to do so again as long as we are silly enough to keep to the bonding proposition.

The amendment was agreed to.

Mr. MOORE: I am opposed to this scheme of issuing bonds to build a temporary improvement for which posterity will have to pay at a time when these roads will probably be worn out. We have been talking about good roads. Now a good road is a road that will last half a century, and there is no provision here for good roads. This is a scheme to issue bonds. There are millions of dollars in this country that are seeking investment every year, and this bond issue will make a market for the investment of \$50,000,000 which will draw interest without labor. To that extent it is an invest-

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ment which may be termed parasitic. There are many counties in this state that are now heavily bonded for good roads. They have built roads and spent millions of dollars. If this bond scheme is adopted by the people, these counties will be rebonded and the money will be spent in the counties that have not had enterprise enough to bond themselves and to build their own roads, and to that extent it will be unfair. Now we are to borrow \$50,000,000, and if we get \$50,000,000 worth of roads, which I doubt, it will cost us in total levy about \$100,000,000 to pay off that \$50,000,000. We could get \$50,000,000 worth of roads for \$50,000,000 if we didn't issue the bonds.

I have been charged with voting against good roads. I have been voting in favor of good roads and against bankruptcy, and I do not believe in an unlimited issue of bonds. Our states and our nation and the nations of the world and the business enterprises of the world, the railroads, the factories and the industries generally, are bonded for sums incalculable, and personally, I do not believe that this capitalization will ever be paid. The development of the great, rich agricultural land is almost at an end, unless the system under which our business is conducted is radically changed. The fertility is escaping. People who work the land are going into the mills and factories and you will have to see a change in the whole system before there is anything like general prosperity, and this scheme of issuing bonds for roads that we cannot pay cash for is only putting off the day of reckoning. There will come a time when men will refuse to pay. I am opposed to any thing like repudiation, but if we walk deliberately into it, there will come a day of judgment.

There is still another phase. If this issuing of bonds, unlimited in extent for building public service enterprises upon which the people will have to pay the interest, dividends and profits, continues, we may as well issue bonds and build them ourselves. If we permit an issue of bonds to build a railroad, why not issue the bonds and build the railroad? If we issue bonds to build railroads, we will eventually own the roads. There is not much difference in paying two cents at a toll gate when you pass through, and in having some one come to the county treasurer's office and collect three and a half per cent for building the roads. In effect it is the same thing as private ownership of a public highway.

I am going to vote against the bond scheme, but I want to declare before the Convention that if there is anybody in favor of good roads, and if any county in the state needs good roads it is Muskingum county, and I am the man, but I am opposed to this issue of bonds.

Mr. CASSIDY: I offer an amendment.

The amendment was read as follows:

In line 12 strike out the words, "the general assembly may" and in lieu thereof insert the following: "laws may be passed to".

The amendment was agreed to.

Mr. FESS: Gentlemen of the Convention: It seems to me that we have discussed this proposition pro and con for all there is in it, so I call for the previous question.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 83, nays 25, as follows:

Those who voted in the affirmative are:

Antrim,	Harter, Huron,	Price,
Beatty, Morrow,	Harter, Stark,	Read,
Beyer,	Hoffman,	Redintgon,
Bowdle,	Holtz,	Riley,
Brown, Highland,	Johnson, Madison,	Rockel,
Brown, Pike,	Kerr,	Roehm,
Campbell,	Kilpatrick,	Rorick,
Cody,	King,	Shaffer,
Collett,	Knight,	Shaw,
Colton,	Kramer,	Smith, Geauga,
Crosser,	Lambert,	Stamm,
Cunningham,	Lampson,	Stevens,
Davio,	Leete,	Stewart,
Joty,	Leslie,	Stilwell,
Dunlap,	Longstreth,	Stokes,
Dunn,	Ludey,	Taggart,
Dwyer,	Malin,	Tallman,
Fackler,	Marriott,	Tannehill,
Farnsworth,	Marshall,	Tetlow,
Farrell,	Matthews,	Thomas,
Fess,	McClelland,	Ulmer,
FitzSimons,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Weybrecht,
Halfhill,	Nye,	Winn,
Harbarger,	Okey,	Wise,
Harris, Ashtabula,	Peck,	Mr. President.
Harris, Hamilton,	Peters,	

Those who voted in the negative are:

Baum,	Hoskins,	Norris,
Beatty, Wood,	Hursh,	Partington,
Brattain,	Johnson, Williams,	Pierce,
Cordes,	Jones,	Smith, Hamilton,
Crites,	Kehoe,	Solether,
Donahey,	Kunkel,	Stalter,
Evans,	Mauck,	Wagner,
Fluke,	Moore,	Woods.
Halenkamp,		

So the proposal passed as follows:

Proposal No. 118—Mr. Lampson, to submit an amendment to article VIII, section 1, of the constitution.—To extend to fifty million dollars the state bond limit for inter-county wagon roads.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to electors to read as follows:

ARTICLE VIII.

SEC. 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever: provided, however, that laws may be passed to contract debts and authorize issues of bonds to an amount which in the aggregate of all issues shall not exceed fifty million dollars for

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the purpose of constructing, rebuilding, improving and repairing a system of inter-county wagon roads throughout the state. Not to exceed ten million dollars of such bonds shall be issued in any one year, and there shall be levied and collected annually by taxation an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their redemption at maturity, and laws shall be passed to provide for the maintenance of said roads. Such wagon roads shall be determined under general laws and the cost of constructing, rebuilding, improving, repairing and maintaining the same shall be paid by the state. The provisions of this section shall not be limited or controlled by section 6, of article XII.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. KING: I ask unanimous consent to offer a report so that it may go upon the calendar for tomorrow.

Consent was given and the report was read as follows:

The standing committee on Schedule, to which was referred Proposal No. 340—Mr. Taggart, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the word "either" in line 4 and insert the word "any" in lieu thereof. After the figures "1913" strike out the period and insert a comma and these words: "except as otherwise specifically provided in any of the said amendments."

After the word "repealed" in line 7 strike out the period and insert semi-colon and these words: "provided that all cases pending in the courts at the time this amendment takes effect shall be heard and tried in the same manner and by the same procedure as is now authorized by law."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Doty the proposal as amended was ordered printed and placed on the calendar for second reading tomorrow.

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 54, by Mr. Elson. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 72, by Mr. Stokes. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 209, by Mr. Cordes. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 24, by Mr. Cordes. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 236, by Mr. Worthington. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 100, by Mr. Fackler. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 241, by Mr. Dwyer. His name being called, Mr. Fess voted "aye."

The PRESIDENT: The next is Proposal No. 122 by Mr. Farrell.

The proposal was read the third time.

Mr. HARRIS, of Hamilton: I offer an amendment.

The amendment was read as follows:

Strike out in line 6 "a minimum wage".

Mr. HARRIS, of Hamilton: The proposal with the exception of minimum wage seems so sound that I am very anxious to vote for it, and even if my amendment is tabled I state that I shall vote for same because it contains so much that appeals to me that I do not want to oppose it, but the words "minimum wage" mean nothing. They are put in to fool the laboring men. The members of the labor unions know that the words "minimum wage" will accomplish no practical results, absolutely none, and the words are there for the purpose of saying to the laboring men of the state that we have done something for you. As a matter of fact nothing in that direction has been done or can be done for them of a practical nature and I want to voice my protest against such a procedure.

Mr. DWYER: The parliament of England within a month passed a minimum wage for the house of commons, the house of lords, and the house of nobles.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage. I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I will say something more. I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. HARRIS: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Mr. DWYER: I have from Mr. Read, of Redington, a list of names of the members of the parliament who have the same minimum wage.

Welfare of Employees.

Mr. PECK: You assert with great confidence, but you do not offer the proof; Judge Dwyer knows what he is talking about and you do not. It has settled the coal strike notwithstanding the talk of some people, and there is no question about our power to do this.

Mr. HARRIS, of Hamilton: This statement, like many others that you are in the habit of making, is careless and loose.

Mr. PECK: The statement you make is very impudent, like a good many others you are in the habit of making. You had better find out something before you talk. That is what you had better do.

Mr. HARRIS, of Hamilton: I know what I am talking about and I know the facts so far as they can be ascertained in this country. The minimum wage in England has been a much disputed question. I shall at the first opportunity present the newspapers verifying my statement.

Mr. PECK: Parliament acted upon the subject and the strike abated and there have been some people—perhaps some people like you—discontented and not satisfied with anything, and they have been trying to get it at a point, but it has not aroused much interest and the strike is over.

Mr. HARRIS, of Hamilton: The question is as I have stated and I clearly understand it.

Nonsense. understands any-

mission in Eng-
miners do not
ed. The will

Have you any

a telling you that
and Press dispatches.

not expecting that this
I do not expect me to
benefit of those who do

extraordinary statement for
in which I have the highest
the accuracy of a statement which

those who select all the daily papers
for their with. I should either of the
as privy for the ownership of a public highway consider for a

I am going to vote against the bond so as to this pro-
want to declare before the Convention the minimum
anybody in favor of good roads, and if I live decently for
the state needs good roads it is Muskingum accept \$1.50?
I am the man, but I am opposed to this and the coal miners

Mr. CASSIDY: I offer an amendment notwithstanding
The amendment was read and followed by Hamilton [Mr. PECK].

Mr. PECK: I am in the strike comes. You know
in advance what they have in their minds and we do not.

Mr. HARRIS, of Hamilton: So in advocating the
striking out of these words, "minimum wage," I am
advocating something to the interest of the laboring men,
because I do not want them to bear the burden of their
opponents claiming that after the working men had first
agreed to accept the minimum wage, they then had repu-
diated the agreement. They may and probably will
establish a minimum wage below the cost of living.

Mr. PECK: We are just leaving it to the general assembly.

Mr. STILWELL: Is your complaint against the principle or the size of the minimum? The miners are not making complaint against the minimum wage as a principle, but against the size of the minimum wage established.

Mr. HARRIS, of Hamilton: I have not argued with these gentlemen on the question of principle. I ask you whether my statements are correct and whether the miners of England do or do not complain about the minimum wage actually established by the commission?

Mr. STILWELL: There is some complaint, but far from being by a majority of the miners. They have already accepted it. There are various amounts paid, according to the district, and some of them have the minimum too low for their particular branch of trade.

Mr. HARRIS, of Hamilton: Is not the variance so great as to threaten another strike?

Mr. STILWELL: Not against the principle.

Mr. HARRIS, of Hamilton: No, but against the amount. I am complaining against Judge Peck and Judge Dwyer denying and contradicting the correctness of my statements, but I want to say in conclusion that I forgive both of them.

Mr. PECK: Neither of them has asked your forgiveness.

Mr. HARRIS, of Hamilton: Judge Peck insists on getting angry. I refuse to get angry, because my statement has been verified by Mr. Stilwell, the labor leader.

Mr. JOHNSON, of Williams: I would like to make a few remarks in regard to this subject because I am compelled to be against it, but not for the reason that Mr. Harris, of Hamilton, is opposed to it. I believe the laboring men are in favor of the proposition and that, gentlemen, is not the reason I am opposed to it. I think it will prove detrimental. I have been in a country something like a republic when the laboring men ran the affairs of that government. They had a minimum wage and it was fixed at eight shillings, or about \$2 a day. I heard the premier of South Australia make a speech in Melbourne wherein he wanted the minimum wage run up to nine shillings instead of eight. I tell you that everything in Australia is worse today than ever before in its existence. I know the minimum wage was fixed in New Zealand, and an old gentleman seventy years of age was working for a man that he had been working for for six years, but as he was getting old, the gentleman he was working for agreed with him on the price of seven shillings per day, but the union would not let him go to work because the minimum wage was eight shillings, and in six months from that time that old man of seventy years landed in the poor house. If I thought this would accomplish any good I would vote for it. I voted for every proposition that the laboring men wanted and I dare say I did it from conscientious motives. I am not a candidate and I do not expect that I ever shall be, and I just vote my sentiments, but I want to say to the assembly that I am in Hamilton [Mr. HARRIS] that he has contracted, and the laboring men have a right to be paid, how much I do not know, but I don't think it will do any good, but I cannot do it. I will not do any good.

Mr. STILWELL: You would not deny the recogni-

Welfare of Employes.

tion of this principle simply because an elderly gentleman out in Australia was denied the right to violate the law?

Mr. JOHNSON, of Williams: As before stated, I heard the premier of South Australia speak in Melbourne. He advocated a minimum wage of nine shillings per day. I know that the working people of Australia think they are slaves of the money men. I was in Australia when four of the six states of Australia were in control of the labor party. I also know that they have had a reaction since then. I know that a proposition for nationalizing many of the industries of that commonwealth has been voted down. I do not like tyranny of any kind. In some parts of Australia if the laboring man does not vote as the leaders dictate he is treated worse than a scab. That is not a free government.

Mr. STILWELL: Do you not realize that we are in Ohio?

Mr. JOHNSON, of Williams: Yes, and it amuses me to hear some of the gentlemen on this floor talk. When we were talking about Pennsylvania the other day they told us, "but this is Ohio." I know that we in Ohio adopted the Australian ballot system. I know you added the Torrens land system, and now it comes with very poor grace from my friend from Cuyahoga to tell me that we are in Ohio. Yes, we are in Ohio. I heard Vice-President Sherman talk about being "abroad" when he was a candidate for vice president. Yet I know, with all of my experience away from home, that we are in the grandest state in the Union, but I know we can learn something from somebody else. I know I am representing the best county in Ohio and I know that I live in the best part of Williams county and we have one of the best towns you ever saw.

Now, the laboring men of Australia, like the laboring men of everywhere else, do not like to be pinched. They are for permitting a man to live.

Mr. DWYER: Will you pardon me?

Mr. JOHNSON, of Williams: Yes; I will pardon anybody.

Mr. DWYER: You are opposed to sweat shops?

Mr. JOHNSON, of Williams: Yes. I think if some of the men who hire the poor boys and girls did not have so much greed in their souls things would be a good deal better.

Mr. DWYER: You are opposed to pauper wages?

Mr. JOHNSON, of Williams: I certainly am.

Mr. DWYER: How are you going to prevent it? Now I want to give you an illustration. The railroads of this state and all over the country are paying good wages to their engineers. Why? Because the engineers are organized and demand it. They are paying good wages to their conductors. Why? Because they are organized and demand it. They are paying good wages to their firemen and for the same reason. They are paying good wages to all who are organized because they can demand it—

Mr. JOHNSON, of Williams: Let me answer.

Mr. DWYER: Wait until I get through. But take the men who work on the tracks, work in all kinds of weather on the tracks, the men who have no organization, the laboring men, and they are given \$1.25 a day. Why? Because they have no organization. Now I am

in favor of having minimum wages and having a commission to compel these men to pay more wages to that class of men.

Mr. JOHNSON, of Williams: I have been a friend of the laboring men when sometimes they have not been their own friend. I wish to tell my friend from Cuyahoga that I have always been opposed to the tariff tax that is robbing the laboring men on the theory that it will give the capitalists a large profit to be divided up with the laboring men, but there is never any division and the laboring men don't get their share.

Mr. PECK: Did you ever know any set of men, laborers or otherwise, that were satisfied?

Mr. JOHNSON, of Williams: No, sir; and that is the trouble. I want it on a square basis. If you want to vote for this to help the laboring men, I say amen. But I don't believe that you are going to help him any.

Mr. DOTY: In the interest of harmony and especially as between the various members of the Cincinnati delegation, I move that this amendment be tabled.

The motion was carried.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 96, nays 5, as follows:

Those who voted in the affirmative are:

Anderson,	Hoskins,	Peters,
Antrim,	Hursh,	Pierce,
Beatty, Morrow,	Johns,	Price,
Beatty, Wood,		
Beyer,		
Bowdle,		
Brown, Highland,		
Campbell,		
Collett,		
Cordes,		
Crosser,		
Davio,		
Donahay,		
Doty,		
Dunlap,		
Dunn,		
Dwyer,		
Fackler,		
Farnsworth,		
Farrell,		
Fess,		
FitzSimons,		
Fluke,		
Fox,		
Hahn,		
Halenkamp,		
Halfhill,		
Harbarger,		
Harris, Hamilton,		
Harter, of Huron,		
Henderson,		
Hoffman,		
	McClelland,	
	Miller, Crawford,	
	Miller, Fairfield,	
	Moore,	
	Norris,	
	Nye,	
	Okey,	
	Partington,	
	Peck,	
		Tetlow,
		Thomas,
		Ulmer,
		Wagner,
		Walker,
		Watson,
		Weybrecht,
		Winn,
		Wise,
		Mr. President.

Those who voted in the negative are: Brown, of Pike; Cunningham, Harris of Ashtabula; Holtz, Johnson, of Williams.

So the proposal passed as follows:

Proposal No. 122—Mr. Farrell, to submit an amendment by adding section 34 to article II, of the constitution.—Welfare of employes.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Mechanics' and Builders' Liens—Reports of Standing Committees.

ARTICLE II.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

Proposal No. 166—Mr. Stilwell, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 102, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Okey,
Antrim,	Henderson,	Partington,
Baum,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pierce,
Beatty, Wood,	Hoskins,	Price,
Beyer,	Hursh,	Read,
Bowdle,	Johnson, Madison,	Redington,
Brown, Highland,	Johnson, Williams,	Riley,
Campbell,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Collett,	Keller,	Rorick,
Colton,	Kerr,	Shaffer,
Cordes,	Kilpatrick,	Shaw,
Crosser,	King,	Smith, Geauga,
Cunningham,	Knight,	Smith, Hamilton,
Davio,	Kramer,	Solether,
Donahey,	Kunkel,	Stalter,
Doty,	Lambert,	Stamm,
Dunlap,	Lampson,	Stevens,
Dunn,	Leete,	Stewart,
Dwyer,	Leslie,	Stilwell,
Fackler,	Longstreth,	Stokes,
Farnsworth,	Ludey,	Taggart,
Farrell,	Malin,	Tannehill,
Fess,	Marriott,	Tetlow,
FitzSimons,	Marshall,	Thomas,
Fluke,	Matthews,	Ulmer,
Fox,	Mauck,	Wagner,
Hahn,	McClelland,	Walker,
Halenkamp,	Miller, Crawford,	Watson,
Halfhill,	Miller, Fairfield,	Weybrecht,
Harbarger,	Miller, Ottawa,	Winn,
Harris, Ashtabula,	Moore,	Wise,
Harter, Huron,	Nye,	Mr. President.

Those who voted in the negative are: Brattain, Brown, of Pike, Crites, Tallman.

So the proposal passed as follows:

Proposal No. 166—Mr. Stilwell, to submit an amendment by adding section 33 to article II, of the constitution.—Mechanics' and builders' liens.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

Mr. Colton submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 96—Mr. Fess, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title strike out all after dash and insert: "Creating office of superintendent of public instruction to replace state commissioner of common schools."

In line 5 after "instruction" insert: ", to replace the state commissioner of common schools".

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Knight submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 5—Mr. Cunningham, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert: "To amend article V, section 1, of the constitution.—Omitting word 'white'".

Strike out all of lines 2 and 3 after "proposal" and insert: "to amend the constitution shall be submitted to the electors to read as follows:"

Between lines 3 and 4 insert subhead ARTICLE V.

In line 4 change "Section" to "Sec."

In line 6 strike out "precinct".

In line 6 strike out the last comma.

In line 7 change "qualification" to "qualifications".

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Knight submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 15—Mr. Riley, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the second line of title strike out all after the dash and insert: "Depositions by state and comment on failure of accused to testify in criminal cases."

In line 5 change "Section" to "Sec."; and strike out "and".

In line 7 strike out "in all" and insert "cases involving".

In line 7 strike out "a punishment" and insert "the penalty provided is".

In line 8 strike out "is provided," and insert a comma after "penitentiary".

In line 9 insert comma after "infamous".

In line 10 after the first "jury" insert a semicolon.

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In line 10 after "persons" insert "necessary".
 In lines 10 and 11 strike out "concurrence of what".
 In line 11 strike out "shall be necessary to find" and insert "necessary to concur in finding".
 Eliminate paragraph in lines 12 and 13.
 In line 17 strike out asterisks.
 In lines 23 and 24 eliminate paragraph.
 In lines 26 and 27 eliminate paragraph.
 In lines 26 strike out "the same."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Nye submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 212—Mr. Johnson, of Williams, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended.

Strike out all after first period in title and insert: "Limiting veto power of governor."

Between lines 3 and 4 insert subhead ARTICLE II.

In line 4 change "Section" to "Sec."
 In line 4 insert "on" after "read".
 In line 6 change "rules" to "rule".
 In lines 10 and 11 eliminate paragraph.
 In line 11 strike out "a".
 In line 11 insert a comma after "shall".
 In line 11 strike out "can".
 In line 12 change "come" to "comes".
 In line 12 strike out comma after "governor".
 In line 12 change "approve" to "approves".
 In line 12 strike out the word "it".
 In line 13 between "it" and the period insert: "and thereupon it shall become a law and be filed with the secretary of state."
 In line 13 change "send" to "return".
 In line 16 after "governor" insert a comma.
 In line 16 strike out "then agree" and insert "vote".
 In line 17 insert a comma after "house".
 In line 18 strike out "then agree" and insert "vote".
 In line 19 insert a comma after "governor".
 In line 19a change "can" to "shall".
 In line 19b change "first" to "original".
 In line 21 between "law" and the comma insert: "in like manner as if he had signed it".
 In line 23 insert a comma after "adjournment".
 In line 23 between "objections" and the comma insert: "in writing".
 In line 26 strike out "stricken therefrom" and insert "void".
 In line 27 change the second "the" to "a".
 In lines 11 and 21 change capitals "G" and "A" to lower case "g" and "a".

Mr. JOHNSON, of Williams: I was going to ask to have the further consideration postponed until tomorrow because I have no printed copy before me, but a friend loaned me his book. Still there are so many

amendments I do not know whether I am in favor of it or not, and I would like to have the consideration postponed.

Mr. LAMPSON: There are no amendments that change the substance at all. They are simply changes in the wording.

Mr. JOHNSON, of Williams: Then the only question is, if the initiative and referendum should carry would the governor's veto affect that? I don't think it would. My friend has never deceived me and I will withdraw my motion to defer consideration. I just want a fair consideration, and if it is not fair I do not want it passed.

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Nye submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 240—Mr. Anderson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert: "To submit an amendment by adding section 19a to article I of the constitution.—Damages for wrongful death."

Strike out lines 4, 5 and 6 and insert:

ARTICLE I.

"Sec. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect or default of another, shall not be limited by law."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Halfhill submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 62—Mr. Pierce, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert: "To submit an amendment to article I, section 9, of the constitution.—Abolition of capital punishment."

In line 10 change "Section" to "Sec."

In lines 13 and 13a eliminate paragraph.

In line 13b strike out the comma.

Strike out lines 4 to 8 and lines 14 to 26 inclusive.

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Halfhill submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 51—Mr. Miller, of Crawford, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

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In the title strike out all after dash and insert: "Regulating insurance."

In line 5 strike out "Section 6. The general assembly shall never authorize" and insert: "Sec. 6. No laws shall be passed authorizing".

In line 9 change semi-colon to colon.

In lines 9 and 10 and in lines 12 and 13 eliminate the paragraphs.

In line 10 change "Providing" to "provided," and strike out "however;"

In line 10 insert "the insuring of" after "prevent".

In line 11 strike out "being insured."

In line 13 strike out "The general assembly may provide by law" and insert: "Laws may be passed providing".

The report was agreed to. The proposal was ordered to be engrossed and placed on the calendar of today for third reading.

Mr. Halfhill submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 322—Mr. Bowdle, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title insert after "amendment" the words: "by adding Section 39 to".

In title strike out all after dash and insert: "Regulating expert testimony in criminal trials."

Between lines 3 and 4 insert subhead "ARTICLE II."

In line 4 before "Laws" insert "Sec. 39."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Doty submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 184—Mr. Peck, having the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 1 of title change "Section" to "Sections".

In title strike out all after first dash and insert: "Change in judicial system."

Between lines 3 and 4 insert subhead "ARTICLE IV."

In line 4 change "Section" to "Sec."

In line 8 change "Section" to "Sec."

In line 12 insert "to" after "or".

In line 14 strike out the comma after "prohibition" and insert "and" and insert a comma after "procedendo".

In line 15 insert a comma after "state".

In line 16 strike out "and".

In line 16 strike out "also" and insert "and".

In line 17 insert a comma after "appeals".

In line 21 change "terms" to "term".

In line 22 after "years," insert "as may be prescribed by law,".

Eliminate paragraph in lines 23 and 24.

In line 26 insert a comma after "judgment".

In line 29 after the first "of" insert "at least".

Eliminate paragraphs in lines 30 and 31.

In line 32 strike out "the" and insert "any".

In line 33 insert comma after "court" and after "review".

In line 35 change "Section" to "Sec."

In line 36 change "and divided" to "bounded".

In line 37 insert a comma after "judges" and change "statute" to "law".

In line 40 strike out "continue to" and insert "the" after "be".

In line 42 change "expirations" to "expiration".

In lines 43 and 44 strike out "respectively" and insert "respective" after the second "the" in line 43.

In line 44 insert a period after "arise".

In lines 44 and 45 strike out: "and the same number shall be elected in each district".

In line 45 change "enacted" to "passed".

In line 48 insert "in the district" after "county".

In line 49 strike out the comma after "district".

In line 51 change "courts" to "court".

In line 52 strike out "his".

In line 53 insert "appellate" before "district".

Eliminate paragraph in lines 53 and 54.

In line 54 strike out "respective" and insert "respective" before "circuit".

In line 55 change "court" to "courts".

In line 56 after the first "the" insert "respective".

In line 57 change "court" to "courts".

In line 57 strike out "the existence of".

In line 57 insert a comma after "into".

In line 58 insert a comma after "by".

In line 58 change "its" to "their".

Eliminate paragraph in lines 58 and 59.

In line 59 change "C" and "A" to lower case "c" and "a".

In line 60 insert a comma after "procedendo".

In line 61 insert a comma after "pleas".

In line 62 strike out the first "and".

In line 63 change "said" to "the" and change "appeal" to "appeals".

In line 64 strike out "such as involve" and insert: "cases involving".

In line 64 after "constitution" insert: "of the United States or".

In line 65 strike out: "or the United States, or".

In line 65 strike out "or" after "felony,".

In line 66 strike out first "or" and insert "and".

In line 67 change "the" to "any".

In line 70 insert comma after "evidence".

In line 71 insert a semi-colon after "questions".

In line 73 after "any" insert "other".

Eliminate paragraph in lines 74 and 75.

Mr. DWYER: In view of the many changes it would be well to refer that back to the committee on Judiciary.

Mr. DOTY: I will simply move that the further con-

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sideration of the report of the committee be deferred until tomorrow morning and that it be placed upon the calendar at that time. The member from Montgomery desires to look over it before it is agreed to.

Mr. DWYER: There are so many changes.

Mr. DOTY: That is true and I make that motion. The motion was carried.

Mr. Doty submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 163 — Mr. Miller, of Crawford, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after the dash in the title and insert: "Eligibility of women for appointment to certain offices."

Between lines 3 and 4 insert ARTICLE XV. In line 4 before "no" insert "Sec. 4."

In line 5 change semi-colon to colon.

Strike out all of line 6 after "that" and all of line 7 up to and including "of".

In line 7 strike out the comma after "citizens" and insert "may be appointed,".

In line 10 strike out "where" and insert "involving" and insert a period after "both."

In line 10 strike out comma.

Strike out line 11.

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Doty submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 169 — Mr. Worthington, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title insert after "amendment" the following: "by adding section 10 to".

In title strike out "Relative to the" and capitalize "c" in "civil".

In line 5 insert "Sec." in lieu of "Section".

In line 7 insert comma after "ascertained" and a comma after "practicable".

In lines 7 and 8 strike out: "And it shall be the duty of the general assembly to enact laws" and insert: "Laws shall be passed".

In line 9 strike out "hereof" and insert: "of this provision."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Antrim submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 64 — Mr. Miller, of Fairfield, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment by adding section 36 to article II, of the constitution. — Conservation of natural resources."

Between lines 3 and 4 insert subhead "ARTICLE II."

Strike out lines 4 to 15 inclusive and insert:

"Sec 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including the development and regulation of water power and the formation of conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing all minerals."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Fess submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 134 — Mr. Halenkamp, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert: "To submit an amendment by adding section 21 to article IV of the constitution. — Contempt proceedings and injunctions."

Between lines 3 and 4 insert subhead: "ARTICLE IV."

Before "Laws" in line 4 insert: "Sec. 21."

In line 5 strike out "supreme court and other".

In lines 5 and 6 strike out "and for the regulation of" and insert "regulating".

In line 6 insert a comma after "contempt".

In line 7 strike out "persons adjudged guilty of" and insert "for".

In lines 7 and 8 eliminate paragraph.

In lines 8 and 11 strike out "industrial".

In line 10 change comma to semi-colon.

In lines 11 and 12 strike out "involving the employment of labor".

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Fess submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 34 — Mr. Thomas, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment by adding section

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41 to article II of the constitution. — Abolishing prison contract labor."

Between lines 3 and 4 insert subhead "ARTICLE II."

In line 4 before "Laws" insert "Sec. 41."

In line 7 strike out "to work".

In line 8 insert "to work" after "thereto".

In line 14 strike out "to provide" and insert "providing"; and insert a comma after "for".

In line 15 insert a comma after "to".

In lines 16 and 17 change word "division" to "sub-division".

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Fess submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 93 — Mr. Earnhart, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after the dash in the title and insert: "Double liability of bank stockholders and inspection of private banks."

In line 4 before "Dues" insert "Sec. 3."

In line 10 strike out the comma after "value."

In line 11 strike out the comma and insert a period.

Strike out all of lines 12 to 18 inclusive and insert without paragraph: "No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank" or "banker" as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall first submit to inspection, examination and regulation as is now or may hereafter be provided by the laws of this state."

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Fess submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 7 — Mr. Nye, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title change "3" to "III." Capitalize "s" in "Section".

In title strike out all after dash and insert: "Limiting power of general assembly."

Strike out lines 5 and 6.

In line 7 change "Section" to "Sec."

In line 8 change "said" to "the".

In line 9 change "said" to "such".

In line 9 insert a comma after "called".

In line 10 change first said to "such".

In line 10 change second "said" to "the".

In lines 11 and 12 change "G" and "A" to lower case "g" and "a".

In line 12 change "G" to lower case "g".

The report was agreed to.

The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. Fess submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 91 — Mr. Kilpatrick, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title insert "V" in first blank and "I" in second blank.

In title strike out "Relative to equal suffrage" and insert "Woman's suffrage."

Strike out line 10 and insert subhead: "ARTICLE V."

In line 11 insert before "Every" "Sec. 1."

Strike out lines 4 to 9 inclusive.

Strike out lines 16 to 29 inclusive.

In line 13 strike out the first word "or" and insert a comma.

The report was agreed to. The proposal was ordered to be engrossed and placed at the foot of the calendar of today for third reading.

Mr. DOTY: It hardly seems proper to waste three-quarters of an hour. There are at least four proposals on the calendar that will excite no discussion. I would suggest that we take up those four.

The first one is Proposal No. 5, and I move that that have its third reading now.

The motion was carried.

Proposal No. 5—Mr. Cunningham, was read the third time.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 5 as follows: By adding

SCHEDULE NO. 2.

Resolved further, That in the event Proposal No. 91—Mr. Kilpatrick, passed by the Convention, be adopted by the electors of this state and become a part of the constitution, then the foregoing proposal, if adopted, shall be of no effect.

Mr. TAGGART: Just a word of explanation: Proposal No. 91 by Mr. Kilpatrick, which is a woman's suffrage proposal, strikes out "white male" and thus permits women to vote. In case that proposal should fail, Mr. Cunningham's proposal, if it receives a majority of votes, would be part of the constitution, but in the event that Proposal No. 91 receives a majority, then there is no necessity for this Proposal No. 5. The committee on Schedule unanimously recommends this schedule.

The amendment was agreed to.

Mr. KRAMER: In line 7 it reads "who shall have been residents of this state for one year next preceding the election and of the county, township, or ward". What I was thinking about was, does the law provide that a man must live in a ward so long?

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Mr. DOTY: That is in the constitution now; that exact wording.

Mr. KNIGHT: The only change is by striking out the word "white".

Mr. KRAMER: Have we any law requiring a man to reside in a ward?

Mr. DOTY: Yes; twenty days in a ward and thirty days in a county.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 97, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Partington,
Antrim,	Harris, Hamilton,	Peck,
Baum,	Harter, Huron,	Peters,
Beatty, Morrow,	Harter, Stark,	Pierce,
Beatty, Wood,	Henderson,	Price,
Beyer,	Hoffman,	Read,
Bowdle,	Holtz,	Redington,
Brattain,	Hursh,	Riley,
Brown, Highland,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Roehm,
Collett,	Jones,	Rorick,
Colton,	Kehoe,	Shaffer,
Cordes,	Keller,	Smith, Geauga,
Crites,	Kerr,	Smith, Hamilton,
Crosser,	Kilpatrick,	Solother,
Cunningham,	King,	Stalter,
Davio,	Knight,	Stamm,
Doty,	Kramer,	Stevens,
Dunlap,	Kunkel,	Stewart,
Dunn,	Lambert,	Stilwell,
Dwyer,	Lampson,	Stokes,
Elson,	Leete,	Taggart,
Evans,	Longstreth,	Tannehill,
Farnsworth,	Ludey,	Tetlow,
Farrell,	Malin,	Thomas,
Fess,	Marshall,	Ulmer,
FitzSimons,	Matthews,	Walker,
Fluke,	Mauck,	Watson,
Fox,	McClelland,	Weybrecht,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Nye,	Mr. President.
Harbarger,		

So the proposal passed as follows:

Proposal No. 5—Mr. Cunningham, to amend article V, section 1, of the constitution.—Omitting word "white."

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE V.

SEC. 1. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he resides, such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

SCHEDULE NO. 2.

Resolved further, That in the event Proposal No. 91—Mr. Kilpatrick, passed by the Convention, be adopted by the electors of this state and become a part of the constitution, then the foregoing proposal, if adopted, shall be of no effect.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: The next proposal is an amendment to article XV, offered by Mr. Miller, of Crawford.

Proposal No. 163—Mr. Miller, of Crawford, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 100, nays none, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Partington,
Beatty, Morrow,	Harris, Hamilton,	Peck,
Beatty, Wood,	Harter, Huron,	Peters,
Beyer,	Harter, Stark,	Pierce,
Bowdle,	Hoffman,	Price,
Brattain,	Holtz,	Read,
Brown, Highland,	Hursh,	Redington,
Campbell,	Johnson, Madison,	Riley,
Cassidy,	Johnson, Williams,	Rockel,
Codv,	Jones,	Roehm,
Collett,	Kehoe,	Rorick,
Colton,	Keller,	Shaffer,
Cordes,	Kerr,	Smith, Geauga,
Crites,	Kilpatrick,	Smith, Hamilton,
Crosser,	King,	Solother,
Cunningham,	Knight,	Stalter,
Davio,	Kramer,	Stamm,
Donahay,	Kunkel,	Stevens,
Doty,	Lambert,	Stewart,
Dunlap,	Lampson,	Stilwell,
Dunn,	Leete,	Stokes,
Dwyer,	Longstreth,	Taggart,
Elson,	Ludey,	Tallman,
Evans,	Malin,	Tannehill,
Farnsworth,	Marriott,	Tetlow,
Farrell,	Marshall,	Thomas,
Fess,	Matthews,	Ulmer,
FitzSimons,	Mauck,	Walker,
Fluke,	McClelland,	Watson,
Fox,	Miller, Crawford,	Weybrecht,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Nye,	Mr. President.
Harbarger,		

So the proposal passed as follows:

Proposal No. 163—Mr. Miller, of Crawford, to submit an amendment to article XV, section 4, of the constitution.—Eligibility of women for appointment to certain offices.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XV.

SEC. 4. No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector: provided that women who are citizens may be appointed, as notaries public, or as members of boards, or to positions in those departments and institutions established by the state or any political sub-division thereof involving the interests or care of women or children or both.

Proposal No. 169—Mr. Worthington, was read the third time.

The question being "Shall the proposal pass?"

Civil Service—Limiting Power of General Assembly in Extra Sessions.

The yeas and nays were taken, and resulted—yeas 84, nays 16, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Nye,
Antrim,	Harter, Huron,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Hoffman,	Pierce,
Beyer,	Holtz,	Read,
Bowdle,	Hursh,	Redington,
Campbell,	Johnson, Madison,	Riley,
Cassidy,	Johnson, Williams,	Rockel,
Colton,	Jones,	Roehm,
Cordes,	Kehoe,	Rorick,
Crites,	Kerr,	Shaffer,
Crosser,	Kilpatrick,	Smith, Geauga,
Cunningham,	King,	Smith, Hamilton,
Doty,	Knight,	Soletcher,
Dunn,	Kramer,	Stamm,
Dwyer,	Kunkel,	Stevens,
Elson,	Lambert,	Stewart,
Evans,	Lampson,	Stilwell,
Farnsworth,	Leete,	Stokes,
Farrell,	Leslie,	Taggart,
Fess,	Longstreth,	Tallman,
FitzSimons,	Marriott,	Tannehill,
Fox,	Marshall,	Tetlow,
Hahn,	Mauck,	Thomas,
Halenkamp,	McClelland,	Ulmer,
Halfhill,	Miller, Crawford,	Walker,
Harbarger,	Miller, Ottawa,	Winn,
Harris, Ashtabula,	Moore,	Mr. President.

Those who voted in the negative are:

Brattain,	Keller,	Price,
Cody,	Ludey,	Stalter,
Collett,	Malin,	Watson,
Davio,	Okey,	Weybrecht,
Donahey,	Partington,	Wise.
Dunlap,		

So the proposal passed as follows:

Proposal No. 169—Mr. Worthington, to submit an amendment by adding section 10 to article XV, of the constitution.—Civil service.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XV.

SEC. 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

Proposal No. 7—Mr. Nye, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 83, nays 17, as follows:

Those who voted in the affirmative are:

Anderson,	Cody,	Dwyer,
Antrim,	Collett,	Elson,
Beatty, Morrow,	Colton,	Farnsworth,
Beatty, Wood,	Cordes,	Fess,
Beyer,	Crites,	Fluke,
Brattain,	Cunningham,	Fox,
Brown, Highland,	Donahey,	Hahn,
Campbell,	Dunlap,	Halenkamp,
Cassidy,	Dunn,	Halfhill,

Harbarger,	Lampson,	Soletcher,
Harris, Ashtabula,	Leete,	Stalter,
Harris, Hamilton,	Longstreth,	Stamm,
Harter, Huron,	Ludey,	Stevens,
Harter, Stark,	Marriott,	Stewart,
Henderson,	Matthews,	Stilwell,
Hoffman,	McClelland,	Stokes,
Holtz,	Miller, Crawford,	Taggart,
Hursh,	Nye,	Tallman,
Johnson, Madison,	Okey,	Tannehill,
Johnson, Williams,	Partington,	Tetlow,
Kehoe,	Peters,	Ulmer,
Keller,	Price,	Walker,
Kerr,	Read,	Watson,
King,	Redington,	Weybrecht,
Knight,	Riley,	Winn,
Kramer,	Rockel,	Wise,
Kunkel,	Rorick,	Mr. President.
Lambert,	Smith, Geauga,	

Those who voted in the negative are:

Crosser,	Kilpatrick,	Pierce,
Davio,	Malin,	Shaffer,
Doty,	Mauck,	Smith, Hamilton,
Evans,	Miller, Ottawa,	Thomas,
Farrell,	Moore,	Wagner.
FitzSimons,	Peck,	

So the proposal passed as follows:

Proposal No. 7—Mr. Nye, to submit an amendment to article III, section 8, of the constitution.—Limiting power of general assembly.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE III.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

Proposal No. 240—Mr. Anderson was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 70, nays 26, as follows:

Those who voted in the affirmative are:

Anderson,	Elson,	Henderson,
Antrim,	Evans,	Hoffman,
Beatty, Morrow,	Fackler,	Hursh,
Beatty, Wood,	Farnsworth,	Johnson, Williams,
Beyer,	Farrel,	Kehoe,
Cassidy,	Fess,	Keller,
Colton,	FitzSimons,	Kerr,
Cordes,	Fox,	Kilpatrick,
Crosser,	Hahn,	Kunkel,
Davio,	Halenkamp,	Lambert,
Donahey,	Halfhill,	Leete,
Doty,	Harbarger,	Leslie,
Dunn,	Harris, Ashtabula,	Marshall,
Dwyer,	Harris, Hamilton,	McClelland,
Eby,	Harter, Huron,	Miller, Crawford,

Damage for Wrongful Death.

Moore,	Solether,	Ulmer,
Nye,	Stevens,	Walker,
Okey,	Stewart,	Watson,
Peck,	Stilwell,	Weybrecht,
Peters,	Stokes,	Winn,
Pierce,	Tallman,	Wise,
Read,	Tannehill,	Mr. President.
Shaffer,	Tetlow,	
Smith, Geauga,	Thomas,	

Those who voted in the negative are:

Brattain,	Lampson,	Redington,
Brown, Pike,	Longstreth,	Riley,
Campbell,	Ludey,	Rockel,
Collett,	Malin,	Roehm,
Crites,	Marriott,	Rorick,
Cunningham,	Matthews,	Smith, Hamilton,
Dunlap,	Miller, Ottawa,	Stamm,
King,	Partington,	Taggart.
Kramer,	Price,	

So the proposal passed as follows:

Proposal No. 240 — Mr. Anderson: To submit an amendment by adding section 19a to article I, of the constitution. — Damages for wrongful death.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

Sec. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

Mr. DOTY: There is such an era of good feeling that I am almost tempted to bring up the taxation matter. We have a calendar for tomorrow of twelve proposals and the committee on Arrangement and Phraseology will have the remaining reports ready to make in the morning. All the reports will be on your desks on both sides of the house tomorrow morning.

Mr. HARRIS, of Hamilton: I rise to a question of personal privilege and to make a correction. In order that a mistake of history may not be passed down I call attention to the fact that I hold in my hands this evening's paper, the Columbus Citizen, which contains a united press dispatch from London, England, stating that a strike of one hundred thousand, is threatened in England.

Mr. DOTY: I move that we indorse the strike. But before that is put I move that we adjourn until tomorrow morning at 9 o'clock.

The motion to adjourn was carried.

SEVENTY-FIFTH DAY

MORNING SESSION.

FRIDAY, May 24, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by Rev. Dr. McClelland, delegate from Knox.

The journal of yesterday was read and approved.

Mr. LAMPSON: I demand a call of the Convention.

The PRESIDENT: A call of the Convention has been demanded, the sergeant-at-arms will close the door and the secretary will call the roll.

The roll was called; when the following members failed to answer to their names:

Anderson,	DeFrees,	Fess,
Brown, Lucas,	Dunlap,	Keller,
Brown, Pike,	Earnhart,	Miller, Ottawa,
Cody,	Eby,	Pettit,
Collett,	Elson,	Worthington,
Crites,		

The president announced that one hundred and three members had answered to their names.

The PRESIDENT: The sergeant-at-arms will dispatch his messengers for the absentees.

Mr. LAMPSON: I move that the sergeant-at-arms be instructed to send for the absentees.

The PRESIDENT: The sergeant-at-arms is instructed to dispatch his messengers for the absentees.

Mr. LAMPSON: And the secretary will furnish him with the list.

Mr. DOTY: I would like to inquire if the sergeant-at-arms has found the vice president? And, Mr. President, I am informed that some members of the Convention have gone out of the room. The members of the Convention have no right to go out.

The PRESIDENT: I instructed the sergeant-at-arms to close the doors.

Mr. DOTY: But members have been going out and we do not know where we are. I move that all further proceedings under the call be dispensed with.

The motion was carried.

Mr. DOTY: I desire to make a report at this time.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 331—Mr. Walker, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert: To submit an amendment to article VIII, section 12, and to repeal section 13.—Abolishing board of public works.

In line 4 strike out comma and "sections 12 and 13" and insert a period.

Strike out lines 5 and 6.

In line 7 before "So" insert "Sec. 12."

In line 7 change "requires" to "require."

Strike out lines 8 and 9 and insert: "a superintendent of public works shall be appointed by the governor for the term of one year, and his

duties and powers shall be defined by law."

After line 9 add:

"Resolved further, That section 13 of article VIII is hereby repealed."

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Knight submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 242—Mr. Roehm, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In the title strike out all after the dash and insert: "Use of voting machines."

Between lines 3 and 4 insert subhead ARTICLE V.

In line 4 before "all", insert "Sec. 2."

In line 4 insert "by" after each word "or" and insert comma after "device" and after "both".

In line 5 strike out "The general assembly may" and insert "Laws may be enacted to".

In line 6 insert "to" before "determine".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Knight submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 272—Mr. FitzSimons, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert:

"To submit an amendment to the constitution by adding article XVIII.—Municipal home rule."

In line 6 change "section" to "Sec."

In line 7 change "5,000" to "five thousand".

In line 10 change "section" to "Sec."

In line 11 change "enact" to "pass".

In line 14 strike out comma.

In line 16 change "Section" to "Sec."

In line 17 change "enact" to "adopt".

In line 20 change "Section" to "Sec."

In line 22 after "is" insert "or is to be".

In line 25 insert a comma after first "of" and after "to".

In line 28 change "Section" to "Sec."

In line 29 insert a comma after "utility" and after "therefor".

In line 38 change "Section" to "Sec."

In line 44 change "Section" to "Sec."

In line 49 insert a comma after "electors".

In line 50 insert a comma after "question".

In line 56 insert a comma after "designation" and change "provisions" to "provision".

In line 47 change "Section" to "Sec."

In line 57 strike out "thereof."

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In line 62 change "provisions" to "provision".
In line 69 change "Section" to "Sec."

Strike out line 71 after "and", all of line 72 and all of line 73 to and including the period, and insert: "upon petition signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority."

In line 78 strike out "so submitted" and insert "such" before "amendment."

In line 80 insert after "thereto," the words: "shall be certified to the secretary of state,".

In line 81 strike out ", shall be certified to the secretary of state," and insert a period.

In line 82 change "Section" to "Sec."

In line 84 insert a comma after "improvement".

In line 87 insert a comma after "acquired".

In line 91 change "Section 10-a" to "Sec. 11".

In line 92 change "therefore" to "therefor".

In line 97 change "Section 11." to "Sec. 12."

In line 100 strike out the comma.

In line 107 change "Section 12" to "Sec. 13."

In line 108 insert a comma after "purposes".

In line 113 change "Section 13" to "Sec. 14".

In line 115 change "signing" to "required to sign".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Knight submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 334 — Mr. Jones, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment by adding section 40 to article II of the constitution.— Registering and guaranteeing land titles."

Between lines 3 and 4 insert subhead "ARTICLE II."

In line 4 change "Section 33." to "Sec. 40."

In line 5 between "counties" and the comma insert "thereof" and before "counties" insert "by the".

In line 6 strike out "the"; strike out "determination of * * *" and insert "determining".

In line 7 insert "to" after "claims"; insert a comma after "in"; strike out "and to the".

In line 8 strike out comma after "insured".

In line 10 strike out "to effect and carry out said purposes,".

In line 10 strike out comma after "powers".

In line 11 strike out "to the common pleas court,".

In line 12 strike out "respect to".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Colton submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No.

261 — Mr. Halenkamp, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title change "II" to 2 and strike out all after dash and insert: "Regulating state printing."

Strike out lines 4 to 8 inclusive and insert:

ARTICLE XV.

Sec. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Antrim submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 309 — Mr. Taggart, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title strike all after dash and insert: "Methods of submitting amendments to constitution."

Between lines 3 and 4 insert subhead ARTICLE XVI.

In line 4 change "Section" to "Sec."

In line 5 insert a comma after "and".

Strike out, in line 7, all after "nays," and all of lines 8, 9, 10, 11, 12 and the word "and" in line 13, and insert: "and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for eight consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published."

In line 13 strike out "if" and insert: "If".

In line 17 change "Section" to "Sec."

In line 30 change "Section" to "Sec."

In line 32 after "constitution" insert a comma.

In line 33 after second "electors" insert a comma.

In line 34 after first "convention" insert a comma.

In line 36 after "delegates" insert a comma.

In line 36 after "convention" insert a comma.

In line 38 after "effect" insert a comma.

In line 39 after "state" insert a comma.

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Antrim submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No.

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329—Mr. Knight, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title after "amendment" insert: "by adding Section 3 to".

In title strike out "Section 3,".

In title strike out all after dash and insert: "Organization of boards of education."

Between lines 3 and 4 insert subhead "ARTICLE VI".

In line 4 insert "Sec." in lieu of "Section".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Nye submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 252—Mr. Weybrecht, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title strike out all after dash and insert: "Suits against the state."

Strike out all after line 3 and insert:

ARTICLE I.

Sec. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Nye submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 304—Mr. Halfhill, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert:

"To submit amendments to article IV, sections 3, 7, 12 and 15, of the constitution.—Judge of court of common pleas for each county."

Between lines 3 and 4 insert subhead ARTICLE IV.

Strike out line 4.

In line 5 before "One" insert "Sec. 3".

In line 6 change "of" to "or".

In lines 9 and 10 eliminate paragraph.

In line 10 strike out "such a" and insert "the".

In line 13 correct spelling of "disqualification".

At the end of line 13 insert a comma.

Strike out lines 14 and 15 and insert: "and he may assign any judge to any county to hold court therein."

Strike out line 16.

Insert in line 17 before "There" "Sec. 7".

In line 18 change "voters" to "electors".

In line 21 strike out: "But the general assembly may provide by law" and insert: "Laws may be passed".

In line 22 after the second "the" insert: "probate court with the".

In lines 22 and 23 strike out "and probate court".

In line 23 insert a comma after "county"; after "and" insert "to".

In line 24 change "where" to "if".

In line 24 insert "voting" after "electors".

In line 24 strike out "so" and insert between "vote" and the period the word "therefor".

In line 24 strike out "And provision" and insert "Provision".

In line 25 change "similar" to "the".

In line 26 strike out "where the same may" and insert: "in which they".

In line 27 strike out second "such" and insert "the".

In line 27 strike out "shall so vote." and insert: "voting at such election shall vote therefor."

Strike out line 28.

In line 29 insert "Sec. 12" before "The".

In line 29 insert comma after "office".

In line 31 strike out "(6)".

Strike out line 32.

In line 33 insert "Sec. 15" before "The".

In line 33 strike out "The general assembly may" and insert: "Laws may be passed to".

In line 34 change "may" to "to."

In line 35 change "or" to "and".

In line 35 change "may" to "to".

In line 38 strike out "the general assembly" and insert "law".

In line 39 strike out "by law." and insert a period after "provided."

In line 40 strike out "continue to".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Colton submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 249—Mr. Tannehill, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the title and insert:

"To submit an amendment by adding section 7 to article V.—Primary elections."

Strike out lines 4 to 16 and insert:

ARTICLE V.

Sec. 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the

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electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Doty submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 2—Mr. Crosser, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment to article II, section I, of the constitution.—Initiative and referendum."

Strike out lines 2 to 7 inclusive and insert: "A proposal shall be submitted to the electors to amend article II, section I, of the constitution as follows:"

Strike out lines 197 to 211 inclusive.

In line 9 change "Section" to "Sec."

Except in line 65 change all capital letters of words that do not commence sentences or are not enclosed in quotation marks, to lower case.

In line 11 after "propose" insert "to the general assembly".

In line 12 strike out all after "polls" and insert: "on a referendum vote as hereinafter provided;"

In line 13 strike out "general assembly, and" and insert: "They" and strike out ", at their own option,".

In line 14 strike out "appropriating money".

In line 15 after "law" insert: "appropriating money".

In line 15 strike out the period and insert ", except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls."

In line 16 insert a comma before "on".

In line 18 change "Section" to "Sec." and strike out "Initiative."

Eliminate paragraph in lines 21 and 22.

In line 22 strike out all after "when" up to and including "State" and in line 23 after "electors," insert: "shall have been filed with the secretary of state,".

In line 24 insert a comma after "constitution" and in lines 24 and 25 strike out "proposed amendment to the constitution."

In line 26 insert a comma after "electors".

In line 27 insert a comma after "amendment" and strike out "to the constitution".

In line 29 strike out "All such" and insert "The".

In line 33 change "Section" to "Sec."

In line 35 insert comma after "state".

In line 44 change "approved" to "passed" and insert a comma after "assembly".

In line 46 insert a comma after "assembly".

In line 48 insert a comma after "thereon".

In line 51 change "decline" to "omit" and strike out "any".

In line 52 before "constitutional" insert: "omit or refuses to submit such proposed".

In line 52 strike out "adopt" and insert: "may pass or submit".

Eliminate paragraph in lines 56 and 57.

In line 57 insert a comma after "petitions".

In line 58 insert a comma after "thereof".

In line 58 strike out "the following".

In line 59 strike out the comma and insert a semi-colon after the quotation mark.

In lines 59 and 61 strike out "to be" and insert "to be" after "First" in each case.

Eliminate paragraph in lines 61 and 62 and in lines 63 and 64.

In line 65 strike out "it is".

In line 67 change "is" to "was".

Eliminate paragraph in lines 67 and 68.

In line 71 insert a comma after "law".

In line 74 strike out "power".

In line 75 change "Section" to "Sec." and strike out "Referendum".

In line 79 insert "in any law" after "item" and strike out same words after "money".

Eliminate paragraph in lines 79 and 80.

In line 81 change "the same" to "it".

Eliminate paragraph in lines 82 and 83.

In line 87 insert "in such law," after "item" and strike out same words after "money".

In line 89 change "item" to "section" and in line 90 change "section" to "item".

In line 91 strike out "at a time".

In line 92 change "item" to "section" and change "section" to "item" and strike out the comma after "section".

In line 94 change "item" to "section" and change "section" to "item".

In line 96 change "Section" to "Sec." and strike out "Emergency measures." and change "Acts" to "Laws".

In line 98 insert a comma before "and" and change "measures" to "laws".

In line 99 strike out ", if" and insert: "shall go into immediate effect". Change "such" to "Such" and change "measures" to "laws".

In line 100 change "shall" to "must".

In line 101 strike out all after the first comma and in line 102 strike out "stituting" and insert "and the reasons for".

In line 102 change "act" to "law".

In line 104 change "acts" to "laws" and "never" to "not".

In line 105 change "Section" to "Sec."

In lines 105 and 106 change capitals "I" and "R" to lower case "i" and "r".

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In line 106 change "never" to "not" and "enact" to "pass".

In line 108 insert "the levy of" after "authorizing".

In line 111 change "Section" to "Sec." and strike out "Local initiative and referendum".

In line 112 strike out "of the people" and change "electors" to "people".

In line 114 change comma to semi-colon and change the last "to" to "shall".

In line 116 change "Section" to "Sec." and strike out "General provisions".

In line 122 strike out "In the case of a" and insert "A".

In line 123 strike out "he" and insert a period after "resides"; strike out remainder of line and insert "A".

In line 124 insert after first "municipality" "shall state" and after second "municipality" insert a comma and strike out "he shall".

In line 125 strike out "state".

In line 127 strike out "Each" and insert "To each".

In line 128 change "have" to "be" and strike out "thereto".

In line 130 after first "such" insert "part of such".

In line 132 change "to" to "on".

In line 136 change comma to semi-colon.

Eliminate paragraph in lines 136 and 137.

In line 139 insert "the" before "election" and strike out "proven and" and insert "proved".

In line 140 change comma to period; strike out "and no" and insert "No".

In line 142 insert a comma after "thereon" and strike out "ever".

In line 144 change "shall have been" to "was".

Eliminate paragraph in lines 146 and 147.

In line 149 insert a comma after "state".

Eliminate paragraph in lines 150 and 151.

In line 155 insert comma after "petition".

In line 156 change "arguments" to "argument".

In line 157 strike out the first "s".

In lines 163 and 164 eliminate paragraph.

In line 164 change "have" to "cause to be" and insert a comma after each word "law".

In line 165 insert a comma after "constitution".

In line 166 insert a comma after "each" and strike out the remainder of line.

In line 167 insert a comma after "explanations".

In line 168 insert a comma after "each"; strike out "of the same," and insert a comma after "mail" and after "distribute".

In line 169 insert a comma after each word "law" and after "constitution".

In line 171 insert "may be" before "reasonably".

Eliminate paragraph in lines 171 and 172.

In line 173 strike out "official" and insert a comma after "ballots" and each word "law".

In line 174 insert a comma after "constitution".

In line 175 insert "so" after "ballots" and strike out "so" after "be".

In line 176 insert a comma after "law" and after "money" and insert "in a law" after "item" and strike out "in a law".

In line 177 insert a comma after "law" and eliminate paragraph in lines 177 and 178.

In line 178 insert a comma after "laws" and after "constitution", and after "electors" in line 179.

In line 180 change the second comma to a colon.

In line 181 strike out the comma after the second "measure" and insert a semi-colon after the last quotation mark, and strike out "and secondly" and insert "second".

In lines 185 and 186 insert a comma after "law" and after "constitution".

Eliminate paragraphs in lines 186 and 187, in lines 189 and 190, and in lines 192 and 193.

In line 194 change "Legislation" to "Laws" and change "enacted" to "passed".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Lampson submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 333 — Mr. Peck, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out title and insert:

"To submit an amendment by adding section 2 to article XV, of the constitution. — Outdoor advertising."

Between lines 3 and 4 insert subhead "ARTICLE XV".

In line 4, insert "Sec. 2" before "Laws".

In line 4 change "adopted" to "passed".

In line 5 insert "for erecting bill-boards thereon and" after "grounds"; and strike out "bill boards".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. Lampson moved that the rules be suspended and Proposal No. 333 be considered at once.

The motion was carried.

MR. LAMPSON: This is a simple proposal of three or four lines, known as the bill-board proposal, and I move that it be taken up and placed upon its passage now.

The motion was carried.

The proposal was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 85, nays 16, as follows:

Those who voted in the affirmative are:

Anderson,	Cordes,	Evans,
Antrim,	Crites,	Fackler,
Baum,	Crosser,	Farnsworth,
Beatty, Morrow,	Davio,	FitzSimons,
Beatty, Wood,	Donahey,	Fluke,
Beyer,	Doty,	Fox,
Powdle,	Dunn,	Hahn,
Brown, Highland,	Dwyer,	Halenkamp,
Colton,	Elson,	Halfhill,

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Harris, Hamilton,	Leete,	Roehm,
Harter, Huron,	Leslie,	Rorick,
Harter, Stark,	Longstreth,	Shaffer,
Henderson,	Malin,	Smith, Geauga,
Hoffman,	Matthews,	Smith, Hamilton,
Holtz,	Mauck,	Solether,
Hoskins,	McClelland,	Stamm,
Hursh,	Miller, Crawford,	Stevens,
Johnson, Williams,	Miller, Fairfield,	Stewart,
Jones,	Miller, Ottawa,	Stilwell,
Kehoe,	Moore,	Stokes,
Keller,	Nye,	Tannehill,
Kerr,	Okey,	Tetlow,
Kilpatrick,	Peck,	Thomas,
King,	Peters,	Ulmer,
Knight,	Pierce,	Watson,
Kramer,	Read,	Weybrecht,
Kunkel,	Redington,	Wise,
Lambert,	Rockel,	Mr. President.
Lampson,		

Those who voted in the negative are:

Brattain,	Johnson, Madison,	Riley,
Brown, Pike,	Ludey,	Taggart,
Campbell,	Marrriott,	Tallman,
Collett,	Norris,	Wagner,
Cunningham,	Price,	Walker.
Harbarger,		

So the proposal passed as follows:

Proposal No. 333 — Mr. Peck. To submit an amendment by adding section 2 to article XV, of the constitution. — Out-door advertising.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XV.

SEC. 2. Laws may be passed regulating and limiting the use of property on or near public ways and grounds for erecting bill-boards thereon and for the public display of posters, pictures and others forms of advertising.

Mr. Harter, of Huron, arose to a question of privilege, and asked that his vote be recorded on Proposal No. 54, by Mr. Elson. His name being called, Mr. Harter, of Huron, voted "aye".

Mr. Leslie arose to a question of privilege, and asked that his vote be recorded on Proposal No. 54, by Mr. Elson. His name being called, Mr. Leslie voted "aye."

Mr. Leslie arose to a question of privilege, and asked that his vote be recorded on Proposal No. 72, by Mr. Stokes. His name being called, Mr. Leslie voted "aye."

Mr. FitzSimons arose to a question of privilege and asked that his vote be recorded on Proposal No. 54, by Mr. Elson, and Proposal No. 72, by Mr. Stokes. His name being called, Mr. FitzSimons voted "aye."

Mr. Lampson submitted the following report:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 151 — Mr. Anderson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title strike out "XXX" and insert "XV."

In title strike out "18" and insert "9".

In title strike out "of Schedule".

In title strike out all after dash and insert: "License to traffic in intoxicating liquors."

In lines 2 and 3 strike out "the constitution by substituting for section 18 of the schedule the following:" and insert "Article XV, Section 9, of the constitution and that:"

In lines 3, and 4 eliminate paragraph.

In line 4 strike out "Section 1. At" and insert "at".

In line 6 change "article" to "section".

In line 9 strike out "FOR LICENSE".

Insert subhead "ARTICLE XV."

In line 10 before the word "License" insert "Sec. 9."

In line 10 strike out the word "hereafter".

In lines 12 and 13 strike out "the general assembly may provide, and the general assembly shall authorize" and insert: "may be provided by law and".

In line 13 after "corporations" insert: "shall be authorized by general laws".

In line 14 after "saloons" change the comma to a period and strike out "under general laws applicable thereto; provided" and in line 15 strike out "that".

In line 15 before "where" insert: "Laws shall not be passed authorizing more than one license in each township or municipality of less than five hundred population, or more than one license for each five hundred population in other townships and municipalities."

In line 15 change "where" to "Where" and insert "the" after "where".

In line 19 change "law" to "laws".

In line 20 after "now" insert "in force".

In lines 21 and 22 eliminate paragraph.

In line 22 strike out "No license shall" and insert: "License to traffic in intoxicating liquors shall not".

In line 22 strike out "such".

In line 23 after "application" insert "therefor".

In line 24 strike out "No license shall" and insert: "License shall not".

In line 24 strike out "or manner".

In lines 25 and 26 strike out "beverages" and insert "liquors".

In line 26 strike out the comma after "sale" and insert "as a beverage".

In line 27 strike out "or manner".

In line 28 strike out "asked to be licensed, and that" and insert "for which the license is sought; and".

In lines 28 and 29 strike out "in any manner whatsoever".

In line 30 change the first comma to a semi-colon, and strike out "and".

In line 30 strike out "be made to" and insert: "shall".

In line 30 strike out "said".

In lines 31 and 32 eliminate paragraph.

In line 33 strike out "the license of said licensee" and insert: "his license".

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In lines 34 and 35 strike out "such convicted licensee" and insert: "him."

In lines 35 and 36 eliminate paragraph.

Strike out lines 36 to 39 inclusive and insert: "License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto."

Strike out lines 40, 41 and 42.

In line 43 strike out "Section 2. At" and insert: "Resolved, further, that at".

In line 47 strike out "Section 3."

In line 53 strike out "Section".

The report was agreed to. The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. DOTY: This a large attendance and as this question has been talked about and discussed more than any thing else, I think we should get rid of this proposal now, and I move that it be read the third time now.

The motion was carried.

Proposal No. 151 as amended by the committee was read the third time.

Mr. WEYBRECHT: I offer an amendment.

The amendment was read as follows:

In line 18 after the word "districts" insert the word "now."

Mr. DOTY: I move to amend Mr. Weybrecht's amendment.

The amendment was read as follows:

At the end of the amendment add: Strike out the word "similar" in line 22.

Mr. KING: I offer an amendment.

The amendment was read as follows:

In lines 14 and 15 strike out the words "license" and insert in lieu thereof the words "saloon".

Mr. KING: It was evident enough when the amendment was originally proposed by the gentleman from Ashtabula [Mr. LAMPSON] and the proposal as amended was passed that the understanding of all the delegates was that that particular limitation of the number of licenses rated as to the population should be applied by the legislature and this Constitutional Convention to those engaged in the retail business only.

Now the word "retail" placed before the word "license" would no doubt accomplish that and would be no doubt as good or better than the word I propose, but the proposition as passed provided two sources or two kinds of limitations of the number:

1. The proposition first originally read contained almost in the first clause these words which are now in it, beginning in line 11, "And municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons".

That is as it was passed. The Lampson amendment came in after certain other limitations had been introduced and passed as amendments. The committee on Arrangement and Phraseology has taken the Lampson amendment and the five hundred proposition, that being

the minimum, and put it up with the statement in the proposal that municipal corporations may limit, and their right to limit as well as the right of the legislature anywhere to limit is governed by the latter clause, that no more shall be authorized than one to five hundred population or one in a township or in a municipality having less than five hundred and then one for each five hundred beyond that.

Now the reason I offer this amendment in this form is because with the clause authorizing the municipal corporations to limit the number of saloons—that is good work—it is understood, as all Americans do understand it, to mean a retail dealer in liquor. Then it should be carried to the next limitation with that same understanding; that is, that the number of saloons shall be limited to one to each five hundred of population. Now with this limitation upon the retail dealer, which I say was understood to apply, would be very unfair to say that that should include all dealers in these articles.

Mr. ELSON: Will you please define a saloon?

Mr. KING: A place where liquor is sold to be drunk on the premises.

Mr. ELSON: It does not include a jug-house?

Mr. KING: There are none of these in my community and I do not know anything about them. Do you know what they are? There are a good many retail dealers where I live, but there are also in our section of the country a large number of manufacturers of distilled liquors, and if those were to be counted as well as the wholesalers the limitation is valueless. It is practical prohibition of the retail traffic in the large communities where the sentiment permits it.

Mr. ELSON: I do not think there was any intention of limiting the manufacturers by this at all. So far as the jug-houses are concerned might not this limitation call into existence a number of houses where they would sell, not to be drunk on the premises, but a small quantity, a quart or a pint, to be carried off.

Mr. KING: I cannot define in a word the difference between a retailer and a wholesaler, but the law of Ohio has rightly defined it and the decisions of the court are abundant, and the whole tenor of that is that a wholesaler is one who sells to a retailer and a retailer is one who sells to a consumer.

Mr. ANDERSON: Has the law interpreted "wholesaler" and "retailer" and made a distinction as to whether or not the liquor is consumed on the premises? Has not the distinction been made that a retailer is one who sells where the liquor is to be consumed on the premises, and the wholesaler where it is not to be?

The PRESIDENT: The questions come out of the time of the speaker and if the speaker yields to the questions he must understand that they are consuming his time.

Mr. ANDERSON: Well, I do not wish to take his time.

Mr. KING: Then I will repeat: I think we understood that this limitation of five hundred should apply to those who get license to traffic as retailers to sell to consumers and to be drunk on the premises. I do not say that that is universal. Under the state law a retailer is one who sells in quantities of less than a gallon; for instance, to the man running through the country with his automobile or otherwise who goes in and buys

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a pint of whiskey and goes off. It is not intended to say that every drop sold is to be drunk on the premises either, but it is to be sold in retail quantities. I do not know what a jug-house is.

Mr. ELSON: Suppose a dealer sells nothing to be drunk on the premises, but he would sell as low as a pint or a quart, would that be called a wholesale house?

Mr. KING: It would not be a wholesale house.

Mr. ELSON: Would that be a saloon?

Mr. KING: Yes.

Mr. ELSON: If that were understood I suppose we can all agree.

Mr. ANDERSON: Will the gentleman yield?

Mr. KING: If my time is not up, but I hope it is.

The PRESIDENT: The member's time is up.

Mr. WINN: Gentlemen of the Convention: If this Convention will write into this proposal the definition of a saloon and if that definition conforms to the one given here by the gentleman from Erie [Mr. KING], I have no objection to it, but if we are to pass it leaving it to the court to fix the definition it is most mischievous indeed. If we may say that the word saloon as herein used means a place where intoxicating liquors are kept for sale and sold as a beverage otherwise than in quantities of one gallon or more, then we have the definition of a saloon as given by the member from Erie. If that is added I shall offer no objection.

Mr. KING: I agree to that.

Mr. WINN: "And the word saloon as herein used means a place where intoxicating liquors are kept for sale and sold for beverages otherwise than in quantities of one gallon or more"; if that is added, all right.

"A hall or state department, a large reception room or fine arts exhibition, a bar room or grog shop"—that is the definition, and it is very indefinite, so I say again to the gentleman from Erie, so far as I am personally concerned, if his definition of the word saloon may be added in his amendment I shall make no objection to it.

Mr. KING: There is no objection to that.

Mr. DOTY: I think if the Convention will allow us to recess for five minutes we can put this matter into shape. I move that we take a recess for five minutes.

The recess was ordered.

10:30 o'clock a. m.

The Convention met pursuant to recess.

Consideration of Proposal No. 151 was resumed.

Mr. KING: I desire to withdraw the amendment I just offered and offer another.

Consent was given.

The amendment was read as follows:

In line 14, strike out the word "license" and insert in lieu thereof the word "saloon".

In line 15, strike out the word "license" and insert the word "saloon".

In line 38, after the period add the following: "The word saloon as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon."

The amendment was agreed to.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

In line 42 between the words "for" and "license" insert "restricted".

In line 43 between "against" and "license" insert "restricted".

Mr. ANDERSON: I do not suppose there will be any objection to that as it simply makes the form of the ballot correspond with the body of the proposal.

In the King proposal it was unrestricted license. Therefore it was "For or against license," but by the time we got through it was restricted license.

It means tens of thousands more votes in that case than in its present shape. Now on the question of "now" and "similar," it is marching up the hill and marching down again if you take out the word "similar". Judge King, shortly after this proposal passed, came to me and stated that there had been a mistake at the desk and by reason of that the word "now" was scratched out and that it should appear and would appear if it hadn't been erased by mistake at the desk. I told him if it was a mistake of one of the secretaries I would offer no objection to putting the word "now" in. I find it was a mistake, if a mistake it be, of the gentleman offering the amendment, and that has been demonstrated here by an examination of the original paper where it shows his pen went through the word "now". I grant you that there is not very much substantive value in leaving the word "similar" in or putting the word "now" in or out, but it seems apparently, from the numerous letters I have received, that others think there is something in it. They think with the word "similar" in or the word "now" not in that this license proposal will receive thousands of votes more than it would otherwise. Now let us analyze the difference between putting the word "similar" in and taking it out, the word "similar" applied to the prohibitory and regulatory temperance laws. There cannot be any other kind except prohibitory and regulatory. Consequently the word "similar" in no manner affects the descriptive part of the law, but with the word "similar" in and the word "now" in, it would prevent the legislature from permitting any larger unit than the county to vote on the wet or dry question. Now, mark it, it would prevent the legislature from passing laws that would permit a wet or dry vote upon any larger unit or political subdivision than a county. In other words the legislature—I don't think the legislature ever would—is prevented from giving us as a legislative enactment statewide prohibition. It never has in sixty years. In connection with this I want to read a letter from a man with whom a number of the delegates are acquainted, the superintendent of the schools at Youngstown, Mr. N. H. Chaney:

Hon. D. F. ANDERSON,
Constitutional Convention,

Columbus, O.

My Dear Mr. Anderson: The congregation at Trinity church last Sunday morning passed a resolution to request the Constitutional Convention to strike out the word "similar" in the Anderson proposal for the regulation of the liquor traffic, and appointed me to memorialize the Convention in its behalf and to that end. Therefore I am sending you this statement praying your careful and

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favorable attention to this point, hoping that the removal of the word will clarify and strengthen the measure among those who seem to feel that the word causes quibbling that tends to weaken rather than strengthen the public mind in regard to the whole splendid proposal. In fulfillment of my appointed duty and in full assurance of our hearty support of the proposal in form as it may finally issue to the people, I am, on behalf of the congregation, most sincerely yours,

N. H. CHANEY.

Dr. Chaney is not a minister, but he is a broad, liberal, educated, cultured gentleman. It merely shows that with the word "similar" out we will get thousands of more votes for this excellent proposal. That comes from the Trinity M. E. church, with a membership of over two thousand. You note that Dr. Chaney says they intend to support it. Now if those who represent the wets, and who have for years and years been clamoring for regulation and limitation, will do half as much as the church members have indicated for this measure there will be no question about the passage of this proposal.

Mr. KING: I want to say a few words on the question when you reach the point where that question is up to be voted on, but I rise for the purpose of objecting to the change in the title of this proposal as it goes on the ballot. It has been passed and the committee has reported it back, and therefore I move to lay the amendment of the gentleman from Mahoning on the table.

Mr. ANDERSON: May I ask you a question?

Mr. KING: Yes.

Mr. ANDERSON: What harm can the word "restricted" do in the form of the ballot so long as the proposal itself is for restricted license provided those who represent the wets really are in favor of restricted license?

Mr. KING: I hope that we can get through this without getting excited.

Mr. ANDERSON: I demand the yeas and nays.

The PRESIDENT: The question is shall the amendment of the delegate from Mahoning, inserting the word "restricted," lie upon the table.

The yeas and nays were taken, and resulted — yeas 56, nays 56, as follows:

Those who voted in the affirmative are:

Bowdle,	Harter, Stark,	Peck,
Brattain,	Henderson,	Pierce,
Brown, Pike,	Hoffman,	Price,
Cordes,	Hoskins,	Redington,
Crosser,	Hursh,	Riley,
Cunningham,	Johnson, Madison,	Rochm,
Davio,	Keller,	Shaffer,
Donahay,	King,	Smith, Hamilton,
Doty,	Kunkel,	Stalter,
Dwyer,	Leslie,	Stamm,
Earnhart,	Ludey,	Stilwell,
Farrell,	Malin,	Stokes,
FitzSimons,	Marriott,	Tallman,
Fox,	Marshall,	Thomas,
Hahn,	Matthews,	Ulmer,
Halenkamp,	Mauck,	Weybrecht,
Halfhill,	Moore,	Wise,
Harris, Hamilton,	Norris,	Mr. President.
Harter, Huron,	Partington,	

Those who voted in the negative are:

Anderson,	Harbarger,	Okey,
Antrim,	Harris, Ashtabula,	Peters,
Baum,	Holtz,	Read,
Beatty, Morrow,	Johnson, Williams,	Rockel,
Beatty, Wood,	Jones,	Rorick,
Beyer,	Kehoe,	Shaw,
Brown, Highland,	Kerr,	Smith, Geauga,
Campbell,	Kilpatrick,	Solether,
Cassidy,	Knight,	Stevens,
Collett,	Kramer,	Stewart,
Colton,	Lambert,	Taggart,
Crites,	Lampson,	Tannehill,
Dunn,	Leete,	Tetlow,
Elson,	Longstreth,	Wagner,
Evans,	McClelland,	Walker,
Fackler,	Miller, Crawford,	Watson,
Farnsworth,	Miller, Fairfield,	Winn,
Fess,	Miller, Ottawa,	Woods.
Fluke,	Nye,	

The roll call was verified.

The motion was lost.

The PRESIDENT: The question is on the adoption of the amendment.

The yeas and nays were regularly demanded, taken, and resulted—yeas 51, nays 60, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Okey,
Antrim,	Holtz,	Peters,
Baum,	Johnson, Williams,	Read,
Beatty, Morrow,	Jones,	Rockel,
Beatty, Wood,	Kehoe,	Rorick,
Beyer,	Kilpatrick,	Shaw,
Brown, Highland,	Knight,	Smith, Geauga,
Campbell,	Kramer,	Solether,
Cassidy,	Lambert,	Stevens,
Colton,	Lampson,	Stewart,
Crites,	Leete,	Tannehill,
Dunn,	Longstreth,	Tetlow,
Elson,	McClelland,	Wagner,
Farnsworth,	Miller, Crawford,	Walker,
Fess,	Miller, Fairfield,	Watson,
Fluke,	Miller, Ottawa,	Winn,
Harbarger,	Nye,	Woods.

Those who voted in the negative are:

Bowdle,	Harter, Huron,	Partington,
Brattain,	Harter, Stark,	Peck,
Brown, Pike,	Henderson,	Pierce,
Collett,	Hoffman,	Price,
Cordes,	Hoskins,	Redington,
Crosser,	Hursh,	Riley,
Cunningham,	Johnson, Madison,	Rochm,
Davio,	Keller,	Shaffer,
Donahay,	Kerr,	Smith, Hamilton,
Doty,	King,	Stalter,
Dwyer,	Kunkel,	Stamm,
Earnhart,	Leslie,	Stilwell,
Fackler,	Ludey,	Stokes,
Farrell,	Malin,	Taggart,
FitzSimons,	Marriott,	Tallman,
Fox,	Marshall,	Thomas,
Hahn,	Matthews,	Ulmer,
Halenkamp,	Mauck,	Weybrecht,
Halfhill,	Moore,	Wise,
Harris, Hamilton,	Norris,	Mr. President.

The roll call was verified.

The amendment was disagreed to.

Mr. BROWN, of Highland: I ask leave of absence—

Mr. DOTY: Regular order.

The PRESIDENT: If there is objection the leave cannot be granted.

Mr. DOTY: I object.

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Mr. LAMPSON: I offer an amendment.
The amendment was read as follows:

In line 42 after "License" insert the words "to traffic in intoxicating liquors."

In line 43 after "License" insert "to traffic in intoxicating liquors."

Mr. BROWN, of Highland: I move that the rules be suspended and that I be granted leave of absence for—

The PRESIDENT: The delegate from Ashtabula [Mr. LAMPSON] has the floor.

Mr. LAMPSON: I have offered this amendment to make it correspond with the action already taken by the Convention in adopting the report this morning, which will be found on your pink slip where it reads "in the title strike out all after dash and insert "License to traffic in intoxicating liquors". That is adopted and is decided, and the report will be made by the committee on Submission recommending the title for every proposal, together with the article and section that it is supposed to amend, and the supposition is that if it is adopted that the article and the section, together with the title, will go upon the ballot. I think there should be no exception made in this case.

The amendment was agreed to.

The PRESIDENT: The question is on the adoption of the amendment offered by the member from Cuyahoga [Mr. DOTY] to an amendment offered by the delegate from Stark [Mr. WEYBRECHT].

Mr. COLTON: I call for a division of the amendment offered by Mr. Doty.

Mr. DOTY: That is a subject by itself and you cannot divide it.

The PRESIDENT: The secretary will read the amendment.

The amendment was read.

The amendment was agreed to.

The PRESIDENT: The question is on the adoption of the amendment as amended.

Mr. WINN: Relative to the vote just taken on the adoption of the amendment offered by the member from Cuyahoga [Mr. DOTY] let us understand what it means. I will read it lest some of you may not have your books before you, that part of the paragraph to which the amendment of the member from Stark [Mr. WEYBRECHT] applies:

Where traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local subdivision while any prohibitory law is operative therein.

Now it can be seen by what has already been said that by adding the word "now," as is proposed by the original amendment, the general assembly will be prevented from making any different regulatory or prohibitory laws as they may apply to any different districts from those which now exist. The word "similar," it is agreed all around, should be stricken out, but I do not believe that the word "now" should be inserted and the word "similar" stricken out at the same time. An amendment has been prepared to strike out the word "similar" only, so I trust that

friends of this measure, and I mean those who would have it adopted at the polls and those who would have it made effectual, as it was designed to be when it was passed on second reading, will now vote against this amendment and vote it down, and when it is voted down an amendment will be immediately offered striking out the word "similar" and doing nothing more than that. Then we shall have this whole proposal in what I believe to be first-class shape. I hope this amendment will be voted down.

Mr. KING: When this proposal was adopted on second reading I know it was the general understanding of most of the delegates who voted for the proposal, and they, I think, were all of those who were present, that this word "now" at the place where it is now asked to be inserted was then in the proposal. This was adopted the last day of the discussion of the question and motions were made rather rapidly. But the amendment finally adopted with the proposal as it now is, was one offered by the gentleman from Huron [Mr. HARTER]. He had prepared it rather hurriedly and dictated a part of the amendment to the clerk at the desk. He asked the clerk to strike out certain words which I think were "or hereafter", or he thinks he did, and the clerk struck them out and also struck out the word "now", and it was not until after it was printed that anybody saw that the "now" was out. I agree with the gentleman from Mahoning that it perhaps does not make much difference whether either word is in or out, but at the same time I disagree with him when we come to this proposition that as to the wording of both propositions the word "now" ought to be there. The friends of temperance, if they are honest, in my judgment ought to be satisfied with the local option laws of the present day, which include every possible district up to and including the county line. If they want any broader districts they can have state prohibition by submitting by a petition through the initiative an amendment to the constitution to be voted upon, and also by applying to the legislature, and that will always permit that question to be submitted, but as to local subdivisions the county is the largest division we have in the state and this amply protects that. Why should the word "now" honestly be written in this proposal unless the question whether we shall have statewide prohibition or not, is squarely and honestly presented to the people of the whole state? I am not opposed to submitting the question to the vote of the people, but I am opposed to putting any subterfuge in here by which somebody is to be cajoled into voting for this license proposal without understanding its whole tenor and effect. Therefore the word "now" should go in, and if that goes in I do not care whether the word "similar" goes out or not.

Mr. ANDERSON: I do not believe I have spoken upon this particular part of this matter and I would like to have a little fairness extended to me even if it is painful. This whole thing is a trick hatched up premeditatedly and presented here upon the floor of the Convention. The gentleman from Cuyahoga [Mr. DOTY], the eminent "dry" advocate, is so anxious to do that which the dries seem to want done that he moves to strike out the word "similar" and he becomes the champion of that side and draws up an amendment to take out the word "similar", but with the distinct understand-

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ing with the president that Mr. Weybrecht was to be recognized first and then Mr. Doty, so that the situation can be a sort of nunc pro tunc.

Mr. PRICE: Why doesn't the gentleman come to his point? I cannot understand what he is driving at.

Mr. ANDERSON: I am not responsible for your understanding.

Mr. PRICE: It doesn't seem to me that the gentleman is in order.

The PRESIDENT: The member is in order.

Mr. ANDERSON: And I do not want that taken out of my time. I want this Convention to have an opportunity of voting separately upon taking "similar" out of this proposal. I do not want any trickery or chicanery hatched up and foisted upon this Convention by any set of men. We have got along with the liquor question splendidly and it is too near adjournment to resort to trickery. Therefore I demand a separation and I call for the yeas and nays, so that we may have an opportunity of voting upon taking the word "similar" out of the proposal and then determining in a fair and honest way whether we shall put the word "now" in it.

Mr. FESS: The only regular way that I can see is to vote on it, and I hope every temperance man will vote against this amendment as amended. Then an amendment can be introduced to strike out the word "similar". I think Mr. Doty very well understood that this was a very crude move. I saw it at once and I called the attention of the members to it. I do not find any fault with Mr. Doty. I would have done it if I had wanted to defeat this thing. It seems to me the temperance people should stand together and vote down this amendment as amended and then let the word "similar" be stricken out. I do not want to get into any controversy where ultimately we won't know what we have done when we are through doing it.

The PRESIDENT: The amendment can be divided in any way the Convention desires. If the Convention desires to vote as to whether "now" shall be inserted they can do that, or they can vote on taking the "similar" out first.

Mr. PECK: Why don't we take a vote in the order in which they come.

The PRESIDENT: There is an amendment pending before the Convention. The amendment provides for the insertion of the word "now" and the striking out of the word "similar." A request has been made that this amendment be divided and the president has ruled that it is susceptible of division. If the Convention is willing to have the question put it will be first upon the motion to insert the word "now" and the yeas and nays are demanded.

Mr. MARRIOTT: I move that the proposed amendment and the amendment to it be laid on the table.

Mr. DOTY: On that I demand the yeas and nays. The yeas and nays were taken, and resulted—yeas 58, nays 54, as follows:

Those who voted in the affirmative are:

Anderson,	Cassidy,	Farnsworth,
Antrim,	Colton,	Fess,
Baum,	Crites,	Fluke,
Beatty, Morrow,	Cunningham,	Harbarger,
Beatty, Wood,	Dunn,	Harris, Ashtabula,
Beyer,	Elson,	Holtz,
Campbell,	Evans,	Hoskins,

Johnson, Madison,	McClelland,	Smith, Geauga,
Johnson, Williams,	Miller, Fairfield,	Solether,
Jones,	Miller, Ottawa,	Stevens,
Kehoe,	Norris,	Stewart,
Kilpatrick,	Nye,	Taggart,
Knight,	Okey,	Tannehill,
Kramer,	Partington,	Tetlow,
Lambert,	Peters,	Wagner,
Lampson,	Read,	Walker,
Leete,	Rockel,	Watson,
Longstreth,	Rorick,	Winn,
Marriott,	Shaw,	Woods.
Mauck,		

Those who voted in the negative are:

Bowdle,	Halfhill,	Peck,
Brattain,	Harris, Hamilton,	Pierce,
Brown, Highland,	Harter, Huron,	Price,
Brown, Pike,	Harter, Stark,	Redington,
Collett,	Henderson,	Riley,
Cordes,	Hoffman,	Roehm,
Crosser,	Hursh,	Shaffer,
Davio,	Keller,	Smith, Hamilton,
Donahay,	Kerr,	Stalter,
Doty,	King,	Stamm,
Dwyer,	Kunkel,	Stilwell,
Earnhart,	Leslie,	Stokes,
Fackler,	Ludey,	Tallman,
Farrell,	Malin,	Thomas,
FitzSimons,	Marshall,	Ulmer,
Fox,	Matthews,	Weybrecht,
Hahn,	Miller, Crawford,	Wise,
Halenkamp,	Moore,	Mr. President.

So the motion was carried.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

In line 22 strike out the word "similar".

Mr. WINN: I believe that the members all understand what this is and I shall not consume time in debating it. The amendment strikes out, and does not do any more than strike out, the word "similar".

Mr. PECK: Was not that involved in the amendment just voted on?

Mr. WINN: No; not exactly in that form, and I now move the previous question on that amendment.

Mr. TALLMAN: I would like to talk on the question.

Mr. WINN: The gentleman is out of order. I have demanded the previous question and it was seconded by not less than thirty or forty.

The PRESIDENT: The previous question was regularly demanded.

Mr. TALLMAN: I ask unanimous leave of the Convention, without being cut off in this way, to present the other side.

DELEGATES: Objection.

The PRESIDENT: Objection is made. The question is, Shall the debate close?

Mr. DWYER: Does that embrace the entire proposition?

Mr. WINN: On the amendment only.

The previous question was ordered.

The PRESIDENT: The question now is, "Shall the amendment prevail?"

The yeas and nays were regularly demanded, taken, and resulted—yeas 65, nays 46, as follows:

Those who voted in the affirmative are:

Anderson,	Beatty, Morrow,	Brown, Highland,
Antrim,	Beatty, Wood,	Campbell,
Baum,	Beyer,	Cassidy,

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Collett,	Johnson, Williams,	Partington,
Colton,	Jones,	Peters,
Crites,	Kehoe,	Read,
Cunningham,	Kilpatrick,	Rockel,
Doty,	Knight,	Rorick,
Dunn,	Kramer,	Shaw,
Elson,	Lambert,	Smith, Geauga,
Evans,	Lampson,	Solether,
Fackler,	Leete,	Stevens,
Farnsworth,	Longstreth,	Stewart,
Fess,	Ludey,	Taggart,
Fluke,	Matthews,	Tannehill,
Halfhill,	Mauck,	Tetlow,
Harbarger,	McClelland,	Wagner,
Harris, Ashtabula,	Miller, Crawford,	Walker,
Holtz,	Miller, Fairfield,	Watson,
Hoskins,	Miller, Ottawa,	Winn,
Hursh,	Nye,	Wise,
Johnson, Madison,	Okey,	

Those who voted in the negative are:

Bowdle,	Harter, Stark,	Price,
Brattain,	Henderson,	Redington,
Brown, Pike,	Hoffman,	Riley,
Cordes,	Keller,	Roehm,
Crosser,	Kerr,	Shaffer,
Davio,	King,	Smith, Hamilton,
Donahey,	Kunkel,	Stalter,
Dwyer,	Leslie,	Stamm,
Earnhart,	Malin,	Stilwell,
Farrell,	Marriott,	Stokes,
FitzSimons,	Marshall,	Tallman,
Fox,	Moore,	Thomas,
Hahn,	Norris,	Ulmer,
Halenkamp,	Peck,	Weybrecht,
Harris, Hamilton,	Pierce,	Mr. President.
Harter, Huron,		

The amendment was agreed to.

Mr. WATSON: I offer an amendment.

The amendment was read as follows:

Strike out all after the resolving clause and substitute the following:

"The manufacture, sale and free distribution of intoxicating liquors as a beverage shall never be permitted in this state."

Mr. WATSON: Mr. President and Gentlemen of the Convention: This is the greatest question of the age. It is the great question in this Constitutional Convention, the question whether or not the great state of Ohio shall put her seal of approval upon that which leads men and women down into degradation, misery, want and woe. I hope, gentlemen of the Convention, that you will realize that there is a power above that is greater than all earthly power and that is He whose spoken words were that righteousness exalteth a nation, but sin is a reproach to any people. He will stand as judge over this Constitutional Convention and the seat which He occupies to pass judgment upon the members of this Convention is high above the dais where the president of this Convention presides. I look to Him as the one who possesses judgment in all things. You may talk about doing this for the interest of labor, for the interest of the farmer, for the interest of society, but no one thing can you do that will benefit the laboring man, the farmer and society at large as much as the striking down of this accursed liquor traffic in the state of Ohio.

We are told that Haman offered the king ten thousand talents if he would give him the privilege of killing the Jews. That sum of ten thousand talents would be \$5,-

383,000. The liquor traffic would offer millions to destroy this posthumous babe of ours. I ask you in all seriousness, gentlemen of the Convention, are you going to put the seal of your approval on this father of crime, mother of shame and the child of the devil?

How can you kneel around your sacred altars and offer up your prayer, "Thy kingdom come, Thy will be done, on earth as it is in Heaven," and then vote for this monster to be turned loose upon the state? Day after day from that dais has prayer gone up to God to guide the work of the Fourth Constitutional Convention of Ohio, and if you start out to license this accursed evil you are not approving by your actions the prayers that have been offered up. I ask for the yeas and nays on this and I demand the previous question.

Mr. ANTRIM: I move to lay the amendment on the table.

The PRESIDENT: The question is on the motion to table.

Mr. EVANS: I rise to a point of order. My point of order is that the amendment is not germane and is out of order.

Mr. WATSON: I insist that the question is germane and is in order.

The PRESIDENT: The question is on the motion to table the amendment.

The yeas and nays were regularly demanded; taken, and resulted—yeas 87, nays 24, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Miller, Ottawa,
Antrim,	Halenkamp,	Moore,
Baum,	Harbarger,	Norris,
Beatty, Morrow,	Harris, Ashtabula,	Nye,
Beyer,	Harris, Hamilton,	Okey,
Bowdle,	Harter, Huron,	Partington,
Brattain,	Harter, Stark,	Peck,
Brown, Highland,	Henderson,	Pierce,
Brown, Pike,	Hoffman,	Price,
Campbell,	Holtz,	Redington,
Cassidy,	Hoskins,	Riley,
Collett,	Hursh,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Jones,	Rorick,
Crites,	Kehoe,	Shaffer,
Crosser,	Keller,	Shaw,
Davio,	Kerr,	Smith, Hamilton,
Donahey,	King,	Stamm,
Doty,	Knight,	Stilwell,
Dwyer,	Kunkel,	Stokes,
Earnhart,	Leete,	Taggart,
Elson,	Leslie,	Tallman,
Evans,	Ludey,	Tetlow,
Fackler,	Malin,	Thomas,
Farnsworth,	Marriott,	Ulmer,
Farrell,	Marshall,	Weybrecht,
FitzSimons,	Matthews,	Winn,
Fluke,	Mauck,	Wise,
Fox,	McClelland,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Lambert,	Solether,
Cunningham,	Lampson,	Stalter,
Dunn,	Longstreth,	Stevens,
Fess,	Miller, Crawford,	Stewart,
Halfhill,	Miller, Fairfield,	Tannehill,
Johnson, Williams,	Peters,	Wagner,
Kilpatrick,	Read,	Walker,
Kramer,	Smith, Geauga,	Watson.

So the motion to table was carried.

Mr. WATSON: I offer another amendment.

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The amendment was read as follows:

'In line 43 strike out "against license" and insert "for prohibition to traffic in intoxicating liquors."

Mr. DOTY: I rise to a point of order. That amendment is not germane.

The PRESIDENT: The amendment is out of order.

Mr. KING: I offer an amendment.

Amend Proposal No. 151 as follows:

In line 18 after the word "districts" insert the word "now". I move the previous question on the proposal and the pending amendment.

Mr. WINN: I demand the yeas and nays on the amendment.

The PRESIDENT: The question is, Shall debate close on the amendment and proposal?

The motion for the previous question was carried.

The PRESIDENT: The question is on the adoption of the amendment, to insert the word "now" in line 18.

Mr. PECK: I thought we were through with that an hour ago.

The PRESIDENT: The proposition we are now voting upon was virtually laid on the table.

Mr. KING: We have not had a vote on this question yet.

Mr. PECK: Your amendment was an amendment to an amendment.

Mr. KING: Yes.

Mr. FESS: The other amendment was to line 22 by striking out the word "similar".

Mr. DOTY: Mine was on the word "similar" in line 22 and Mr. Weybrecht's was in line 18, and they were coupled together and laid on the table.

Mr. PECK: And now we start it all over again.

Mr. DOTY: No.

Mr. FESS: Was not yours an amendment to an amendment?

Mr. DOTY: Yes.

Mr. FESS: Was that amendment to the proposal?

Mr. DOTY: Yes.

The PRESIDENT: The question is on the amendment and the yeas and nays have been demanded and the secretary will call the roll.

The yeas and nays were taken, and resulted — yeas 60, nays 51, as follows:

Those who voted in the affirmative are:

Beyer,	Harris, Hamilton,	Peck,
Bowdle,	Harter, Huron,	Pierce,
Brattain,	Harter, Stark,	Price,
Brown, Highland,	Henderson,	Redington,
Brown, Pike,	Hoffman,	Riley,
Collett,	Hoskins,	Roehm,
Cordes,	Hursh,	Rorick,
Crosser,	Johnson, Madison,	Shaffer,
Davio,	Keller,	Smith, Hamilton,
Donahay,	Kerr,	Stalter,
Doty,	King,	Stamm,
Dwyer,	Kunkel,	Stilwell,
Earnhart,	Leslie,	Stokes,
Fackler,	Ludey,	Tallman,
Farrell,	Malin,	Tetlow,
FitzSimons,	Marshall,	Thomas,
Fox,	Matthews,	Ulmer,
Hahn,	Miller, Crawford,	Weybrecht,
Halenkamp,	Moore,	Wise,
Halfhill,	Okey,	Mr. President.

Those who voted in the negative are:

Anderson,	Harris, Ashtabula,	Norris,
Antrim,	Holtz,	Nye,
Baum,	Johnson, Williams,	Partington,
Beatty, Morrow,	Jones,	Peters,
Beatty, Wood,	Kehoe,	Read,
Campbell,	Kilpatrick,	Rockel,
Cassidy,	Knight,	Shaw,
Colton,	Kramer,	Smith, Geauga,
Crites,	Lambert,	Solether,
Cunningham,	Lampson,	Stevens,
Dunn,	Leete,	Stewart,
Elson,	Longstreth,	Taggart,
Evans,	Marriott,	Tannehill,
Farnsworth,	Mauck,	Wagner,
Fess,	McClelland,	Walker,
Fluke,	Miller, Fairfield,	Watson,
Harbarger,	Miller, Ottawa,	Winn.

So the amendment was agreed to.

The PRESIDENT: The question is now on the passage of the proposal.

The yeas and nays were taken, and resulted — yeas 91, nays 18, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Miller, Ottawa,
Antrim,	Harris, Ashtabula,	Moore,
Baum,	Harris, Hamilton,	Norris,
Beatty, Morrow,	Harter, Stark,	Nye,
Beyer,	Henderson,	Okey,
Bowdle,	Hoffman,	Partington,
Brattain,	Holtz,	Peck,
Brown, Highland,	Hoskins,	Pierce,
Brown, Pike,	Hursh,	Price,
Campbell,	Johnson, Madison,	Redington,
Collett,	Johnson, Williams,	Rockel,
Cordes,	Jones,	Roehm,
Crites,	Keller,	Rorick,
Crosser,	Kerr,	Shaffer,
Davio,	King,	Shaw,
Donahay,	Knight,	Smith, Geauga,
Doty,	Kramer,	Smith, Hamilton,
Dwyer,	Kunkel,	Stalter,
Earnhart,	Lambert,	Stamm,
Elson,	Lampson,	Stilwell,
Evans,	Leete,	Stokes,
Fackler,	Leslie,	Taggart,
Farnsworth,	Longstreth,	Tallman,
Farrell,	Ludey,	Tetlow,
Fess,	Malin,	Thomas,
FitzSimons,	Marriott,	Ulmer,
Fluke,	Marshall,	Weybrecht,
Fox,	Matthews,	Winn,
Hahn,	McClelland,	Wise,
Halenkamp,	Miller, Crawford,	Mr. President.
Halfhill,		

Those who voted in the negative are:

Beatty, Wood,	Mauck,	Stevens,
Cassidy,	Miller, Fairfield,	Stewart,
Colton,	Peters,	Tannehill,
Cunningham,	Read,	Wagner,
Dunn,	Riley,	Walker,
Kilpatrick,	Solether,	Watson.

So the proposal passed as follows:

Proposal No. 151 — Mr. Anderson. To submit an amendment to article XV, section 9, of the constitution. — License to traffic in intoxicating liquors.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal shall be submitted to the electors to amend article XV, section 9, of the constitution and that at the time

Traffic in Intoxicating Liquors—Question of Personal Privilege.

when the vote of the electors shall be taken for the adoption or rejection of any revision, alterations, or amendments made to the constitution by this Convention, the following section, independently of the submission of any revision, alteration or other amendments submitted to them shall be separately submitted to the electors in the words following, to-wit:

ARTICLE XV.

SEC. 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local sub-division while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word saloon as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

Resolved further, That at said election a ballot shall be in the following form:

INTOXICATING LIQUORS.

	For License to Traffic in Intoxicating liquors.
	Against License to Traffic in Intoxicating Liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License" if he desires to vote in favor of the article above mentioned and opposite the words "Against License," within the blank space if he desires to vote against said article. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV of the constitution, and the present section 9 of said article, also known as section 48 of the schedule shall be repealed.

Mr. KING: I move that the vote by which Proposal No. 151 was passed be reconsidered and I move to lay that motion on the table.

The motion was carried.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. HARRIS, of Hamilton: I rise to a question of personal privilege, especially as the Convention seems to be in such a good humor. Yesterday afternoon during a controversy of the most pleasant character between Damon and Pythias of the Convention, Judge Peck and Judge Dwyer, on one side and myself on the other—

Mr. DOTY: I rise to a point of order. He has not stated his question of personal privilege.

The PRESIDENT: He has stated it to the president.

Mr. HARRIS, of Hamilton: I have the floor.

Mr. PECK: I have a more personal question than that; I want my dinner.

Mr. HARRIS, of Hamilton: The question, in the most diplomatic manner imaginable, was that I was mistaken in some statements that I had made.

Mr. PECK: State the parliamentary language you used to us.

Mr. HARRIS, of Hamilton: I desire the record to show that the mistake was not on my part and therefore I read a clipping from a Columbus paper of this morning:

DON'T LIKE SETTLEMENT—BRITISH MINERS ILL-PLEASED WITH WAGE COMPROMISE—FEDERATION TO INTERVIEW GOVERNMENT.

London, May 23.—The national conference of the National Federation of Miners late yesterday passed a resolution indicating that the miners are dissatisfied with the settlement of their difficulty with the mine operators and are apparently ready

Question of Personal Privilege—Report of Standing Committee—Resolution for the Payment of Claims.

for another strike. This action was taken after an all-day session devoted to discussion of the recent strike and its settlement. The resolution strongly protests against the awards which are being made by the district wage boards. These boards, the resolution declares, fix the minimum wage for miners at a figure below the reasonable living wage which the government led the men to expect. The executive committee of the federation was instructed to interview the government at once for the purpose of securing immediate action on this point and to report to the national conference.

As I forgave the gentlemen yesterday I also forgive them today.

Mr. DOTY: Inasmuch as there is no question of privilege I move that all reference to that matter be stricken from the record.

Mr. HARRIS, of Hamilton: I mentioned the question of privilege. I said that my statements had been impugned, and I refer to this to show that the questions of fact were just as I said they were and just as they were impugned.

Mr. DOTY: In the interest of peace and harmony in the Cincinnati delegation I withdraw my motion.

Mr. FESS: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 170—Mr. Worthington, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In title strike out all after dash and insert: "Taxation of state and municipal bonds, inheritances, incomes, franchises and production of minerals."

Between lines 3 and 4 insert subhead: ARTICLE XII.

In lines 4, 7, 21, 23, 30, 34 and 36 change "Section" to "Sec".

In lines 4 and 5 strike out "The levying of taxes by the poll is grievous and oppressive; therefore"; capitalize "n" in "no" in line 5.

In line 5 strike out "therein," and change "nor" to "or".

In line 9 after "money" insert a comma.

In line 10 change capital "S" to lower case "s".

In line 17 insert a comma after "dollars" and insert a comma after "may".

In line 23 change "enacted" to "passed".

In line 24 insert a comma after "receive".

In line 24 insert "to" before "succeed".

In line 24 insert a comma after "to" before "estates".

In line 24 change "tax" to "taxation".

In line 25 insert a comma after "receive".

In line 25 insert a comma after "to" before "estates".

In lines 26 and 27 eliminate paragraph.

In line 27 strike out "a"; strike out "or higher"; change "rate" to "rates".

In line 28 strike out "inheritance than" and insert "and".

In line 28 insert a comma after second "inheritances".

In line 29 change "tax" to "taxation".

In line 30 change "enacted" to "passed".

In line 31 change "which tax" to "and such taxation". Strike out "either general or confined" and insert "may be applied to".

In line 32 change comma to semicolon.

In line 32 insert "annual" after "each".

In line 33 strike out "in any one year".

In line 33 change "tax" to "taxation".

In line 35 after the second "and" insert "other".

In line 36 insert comma after "state".

In line 37 strike out comma after "legislation".

In line 37 insert a comma after "unless".

In line 38 after "payment" insert "each year".

In line 40 change "same" to "outstanding principal".

In line 40 strike out "each year".

The report was agreed to.

The proposal was ordered to be engrossed and read the third time tomorrow.

Mr. DOTY: I now move that we recess until 1:45 o'clock p. m.

Mr. KNIGHT: I move to amend that by making it 2 o'clock p. m.

The amendment was accepted.

The motion was carried.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. CASSIDY: I offer a report.

The report was read as follows:

The standing committee on Claims Against the Convention, to which was referred Resolution No. 115—Mr. Cassidy, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Add thereto the following:

"Carl A. Mutschler, postage, \$15.00."

The report was agreed to.

Mr. LAMPSON: I offer an amendment to that resolution as follows:

At the end of the resolution add the following items:

Andrew Earl, supplies, \$17.40.

T. J. Dundon & Co., supplies and hauling \$5.00.

Mr. LAMPSON: At the time one of our invited guests was here, Colonel Roosevelt, a reception committee was appointed consisting of Mr. Brown, of Lucas, and myself and perhaps one other member. I am not certain who it was, but I think it was Mr. Beatty, of Wood. Mr. Brown and myself acted and we were to make arrangements in this hall for the more comfortable seating of our guests. Tickets had been issued to the guests and we authorized the sergeant-at-arms to make

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arrangements to put in benches so that the guests back of the railing could see over the railing and so that the speaker could see the guests and thus avoid confusion and it operated to the entire satisfaction of everybody. There was a bill for that work of \$22.40, which I personally feel under obligation to see paid, but I do not think any one or two delegates to the Convention ought to be responsible for that kind of a bill.

The amendment was agreed to.

The PRESIDENT: The question is on the adoption of the resolution.

The yeas and nays were taken, and resulted—yeas 76, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peters,
Antrim,	Henderson,	Pierce,
Baum,	Hoffman,	Price,
Beatty, Morrow,	Holtz,	Read,
Beatty, Wood,	Hursh,	Redington,
Beyer,	Johnson, Williams,	Riley,
Brown, Highland,	Jones,	Rockel,
Brown, Pike,	Knight,	Rorick,
Campbell,	Kramer,	Shaffer,
Cassidy,	Lampson,	Shaw,
Collett,	Leete,	Smith, Geauga,
Colton,	Leslie,	Smith, Hamilton,
Crites,	Longstreth,	Stalter,
Davio,	Ludey,	Stamm,
Doty,	Marshall,	Stevens,
Dwyer,	Mauck,	Stewart,
Farnsworth,	McClelland,	Stilwell,
Farrell,	Miller, Crawford,	Stokes,
Fess,	Miller, Fairfield,	Taggart,
FitzSimons,	Miller, Ottawa,	Tallman,
Fox,	Norris,	Tetlow,
Hahn,	Nye,	Thomas,
Halenkamp,	Okey,	Ulmer,
Halfhill,	Partington,	Winn.
Harbarger,	Peck,	
Harris, Ashtabula,		

Those who voted in the negative are: Partington, Wagner, Walker, Watson.

The resolution was adopted.

Mr. STOKES: I ask unanimous consent to offer a resolution.

Consent being given the resolution was offered as follows:

Resolution No. 130:

WHEREAS, This Convention on the 2nd day of February, 1912, passed a resolution of tribute and respect to Judge Dennis Dwyer of Montgomery county, the dean of the Convention, on reaching the eighty-second milestone of his life; and

WHEREAS, On the first day of May, 1912, this Convention paused one minute in its deliberations in deference to the gentleman from Ashland, Mr. Fluke, and his bride; and

WHEREAS, There was born to the gentleman from Hamilton, Mr. Starbuck Smith and wife, on the 8th day of May, 1912, a bouncing baby boy; now therefore,

Be it resolved, That this Convention extends its congratulations to the parents, and adopts this Buckeye boy as its ward, and will ever watch his course in life with continued interest.

Mr. STOKES: I move a suspension of the rules, to consider this resolution at once.

The PRESIDENT: The question is on the adoption of the resolution.

The rules were suspended.

The resolution was adopted.

Mr. BROWN, of Highland: I move that this Convention remain in session over tomorrow.

Mr. HALFHILL: I move that when we adjourn today it be until two o'clock p. m. Monday.

Mr. DOTY: I move that when we adjourn we adjourn until nine o'clock tomorrow and on that I demand the yeas and nays.

The PRESIDENT: The president would like to depart from custom and make a speech from the stand upon this question. He very much hopes that the amendment of the delegate from Cuyahoga will be carried and that the Convention will remain and continue its work the rest of the week.

The yeas and nays were taken, and resulted—yeas 47, nays 59, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Hoffman,	Rockel,
Beyer,	Hoskins,	Rorick,
Colton,	Johnson, Madison,	Shaw,
Cunningham,	Johnson, Williams,	Smith, Geauga,
Davio,	Kerr,	Smith, Hamilton,
Donahey,	Kilpatrick,	Stamm,
Doty,	King,	Taggart,
Dwyer,	Lambert,	Tannehill,
Fackler,	Lampson,	Tetlow,
Farnsworth,	Leete,	Thomas,
Fess,	Marshall,	Ulmer,
FitzSimons,	Mauck,	Walker,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, Ottawa,	Mr. President.
Harris, Ashtabula,	Partington,	

Those who voted in the negative are:

Anderson,	Harter, Stark,	Nye,
Baum,	Henderson,	Okey,
Beatty, Wood,	Holtz,	Peters,
Brattain,	Hursh,	Pierce,
Brown, Highland,	Jones,	Price,
Brown, Lucas,	Kehoe,	Read,
Brown, Pike,	Keller,	Redington,
Campbell,	Knight,	Riley,
Cassidy,	Kramer,	Rorick,
Collett,	Kunkel,	Shaffer,
Crites,	Leslie,	Solether,
Dunn,	Longstreth,	Stevens,
Earnhart,	Ludey,	Stewart,
Evans,	Malin,	Stilwell,
Farrell,	Marriott,	Stokes,
Fluke,	Matthews,	Tallman,
Fox,	McClelland,	Wagner,
Halfhill,	Miller, Fairfield,	Watson,
Harbarger,	Moore,	Wise.
Harter, Huron,	Norris,	

So the motion of the delegate from Cuyahoga [Mr. Doty] was lost.

Mr. HALFHILL: Now I move that when we adjourn we adjourn until Monday at two o'clock p. m.

Mr. DOTY: I move that when we adjourn we adjourn until 10 o'clock Monday morning.

Mr. KNIGHT: The motion just voted down was Mr. Doty's motion and the motion of the delegate from Allen is still pending.

Mr. DOTY: The motion to adjourn to a special time takes precedence over the motion of the gentleman from Allen.

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The PRESIDENT: The question is on the adoption of the amendment of the member from Allen that when the Convention adjourn it adjourn until Monday at two o'clock p. m.

Mr. DOTY: A motion to adjourn to a time previous to that takes precedence to that under the rule.

Mr. PECK: You have had your say and lost.

Mr. DOTY: But this is another one.

Mr. HALFHILL: A point of order.

Mr. DOTY: All right; I will see if you can make a point of order.

Mr. HALFHILL: The gentleman from Cuyahoga is debating a motion to adjourn.

The PRESIDENT: Well that motion is debatable.

Mr. DOTY: And I demand the yeas and nays on my motion to adjourn until 10 o'clock Monday. I am willing to withdraw that motion and take a division as between ten o'clock Monday and two o'clock. All I ask is a division.

Mr. BROWN, of Highland: I do not consent to withdraw. I want to see how long Mr. Doty will obstruct the Convention.

Mr. PECK: That is what he is doing.

Mr. DOTY: I rise to a question of privilege. I want to say without egotism that I have done as much as any member in the Convention and far more than the member from Highland to keep the work of the Convention going.

DELEGATES: Agreed.

Mr. DOTY: You will never find any obstruction coming from the members from Cuyahoga. All I want is a division upon the question, whether we shall meet at ten or two. It is simply gaining two hours' more time for work.

The PRESIDENT: The president will put it that way. First, Shall we meet at ten o'clock?

The motion was lost.

The PRESIDENT: The question now is, "Shall we meet at two o'clock?"

The amendment was agreed to.

The motion as amended was carried.

The PRESIDENT: The next matter of business is reading of Proposal No. 96 as amended by the committee.

The proposal was read the third time.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

SCHEDULE NO. 5.

That in the event the above proposal passed by the Convention, be adopted by the electors of the state it shall take effect and become a part of the constitution on the second Monday of July, 1913."

Mr. TAGGART: Mr. President and Gentlemen of the Convention: There is nothing in the proposal that fixes the time when this is to go into effect. It was the desire of the Convention that the present incumbent should not be legislated out of office and the committee on Schedule, or a portion of them, presents an amendment that has been read from the secretary's desk that this article should go into effect on the second Monday of July, 1913, at the expiration of the present in-

cumbent's term of office. That was somewhat arbitrary. It was thought that perhaps the different political parties might make nominations at the approaching convention for election this fall if this part of the constitution would not go into effect until 1915, but we call the attention of the Convention to that to let them settle the question whether it shall go into effect on the second Monday of July, 1913, or the second Monday of July, 1915, thus giving the nominees at the approaching Convention an opportunity to be elected to serve their term.

The amendment was agreed to.

The PRESIDENT: The question is on the proposal.

Mr. FESS: I offer an amendment.

The amendment was read as follows:

In line 8 after "as" insert "are or".

Mr. FESS: The proposal as it was written here would necessitate legislation before the commissioner or superintendent would have any power at all, and it was suggested by some of our legal friends that we ought to put in here that the powers shall be what are now given to the commissioner of common schools, and such other powers, etc. I hope this amendment will carry because we want to have some powers without resorting to the legislature.

Mr. HARRIS, of Ashtabula: I would ask the author of the proposal if it contemplates that the legislature must repeal the law providing for the school commissioner?

Mr. FESS: This provision repeals it.

Mr. HARRIS, of Ashtabula: Not necessarily; it suggests it. I think the suggestion is an excellent one, but at the same time it must be conceded that if the office created by statute known as the school commissioner, which has been for so many years in Ohio an elective office, is not distinctly repealed, while those duties might be assigned to some other office, still that office might remain.

Mr. FESS: In line 4, a superintendent of public instruction to "replace" the state commissioner of common schools. You cannot have both of them.

Mr. HARRIS, of Ashtabula: Then you intend by your amendment to take care of that?

Mr. FESS: That is the way it was passed originally.

Mr. HARRIS, of Ashtabula: You mean in line 5 instead of line 4?

Mr. KNIGHT: The text of that amendment as first read simply covers the intent to transfer the duties of commissioner of common schools to the superintendent of public instruction when appointed, but a careful reading will disclose the fact that it would tie up in the constitution so that it could not change by law all the duties that are now by statute exercised by the state commissioner of common schools. It provides that the superintendent of public instruction shall have all of those present duties and such additional ones as may be conferred, but it would not leave it within the power of the lawmaking body to take away or change in any particular the powers and duties now by statute enjoyed and exercised by the commissioner of common schools. I have not had time to formulate the change of phrasing, but it seems to me what was intended must have been this: That the

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powers now exercised by the state commissioner of common schools, until otherwise changed by law, and such other powers as may be prescribed by law.

Mr. KING: Does not the expression "and such powers as may be prescribed by law," cover all the power which the present commissioner has or that can be given?

Mr. KNIGHT: But would it leave operative the laws now imposing the duties on him?

Mr. KING: The laws now enforced shall remain and apply to this office.

Mr. KNIGHT: But you would lock it up in the constitution.

Mr. KING: Until amended.

Mr. FESS: I think we can meet this difficulty by using the phrase, "such laws as are or may be prescribed." Would not that do? The point is I want to allow the superintendent of public instruction to have the power that the commissioner now has.

Mr. PECK: That will do it.

Mr. ANDERSON: I move that we take a recess for five minutes to permit the professors to fix up the phraseology of this their proposal.

Mr. FESS: I move to amend Proposal No. 96 as follows:

In line 8 after "as" insert "are or".

Mr. PECK: That is all right.

Mr. MAUCK: What powers are now prescribed by law for superintendent of public instruction? I don't think you have corrected it.

Mr. FESS: Where we speak of replacing the school commissioner.

Mr. MAUCK: It replaces the officer, but it does not replace his power. It seems to me the amendment of the gentleman from Franklin is entirely necessary to accomplish the purpose desired.

Mr. Leete, the delegate from Lawrence, here took the chair, as president pro tem.

The PRESIDENT PRO TEM: The gentleman from Greene has not withdrawn his other amendment.

Mr. FESS: I ask the privilege of withdrawing the other amendment and offering this one.

The PRESIDENT PRO TEM: The question is on the amendment of the member from Greehe.

The amendment was agreed to.

Mr. READ: I offer an amendment.

The amendment was read as follows:

In line 7 strike out the word "two" and in lieu thereof insert the word "four."

Mr. READ: This amendment simply restores to that original proposal by the gentleman from Greene the word "four," which was amended out and very hurriedly carried. I think it should be inserted. The office we have here created is as important an office as can be held by anyone in the state of Ohio. No man can lay his plans and perform his work properly if he feels that he is only going to hold the position for two years. This is work that strikes at the very vital interest of the state, and I therefore hope that this word "four" will be reinserted where it was originally.

Mr. DOTY: I trust this amendment will not prevail. The term of office of the governor of Ohio is two

years. If this is made four years every once in a while we will have a man charged with responsibility of the common school system with a subordinate that somebody else appointed. That is a very bad situation.

Mr. READ: If the governor is not re-elected the appointment of the superintendent of instruction will hold, and thus the office will be above politics.

Mr. WINN: I hope that the amendment will prevail and the argument of the distinguished gentleman from Cuyahoga should impress upon all of us the importance of the amendment. He would have a two-year term to the end that every time we have a new governor there will be a vacancy in this important office and filled by political appointment by the governor. If there is any reason in the world why the term should be longer than two years it is that we may take the office as far as possible out of politics. I wish it were longer. I wish it were so that when the governor comes into office he would not look at the office of the commissioner of public schools to see whether he can appoint a democrat or a republican, as the case may be, to repay him for political work.

Mr. HARRIS, of Ashtabula: I would like to have the view of the proponent as to what influenced him in fixing that time?

Mr. FESS: I made it four years for the purpose that was suggested a while ago. I thought it would be a pretty good thing not to have the term of office expiring at the same time as that of the appointing power, and I desire this to avoid possible political influence in the appointment. That is one reason, and then another reason—and this is the supreme one—I believe two years is a little too short to develop any definite constructive policy in the school department, and I really think we do not need to fear the political phase of it, for I do not think any governor would regard any advantage in the appointment of any political head because of his politics. I hope the Convention will adopt the amendment.

Mr. ELSON: I have just come in and did not hear the early part of the debate. I want to say it is very desirable that the term of appointment shall be four years instead of two. It is very important. Here is one argument that seems to me is absolutely conclusive in itself, although it may have been offered before I got in. Presumably the governor will want to appoint the best school man he can find, and for the brief period of two years he cannot secure the best talent. Very few men who would adorn the place would accept an appointment for two years, but if the appointment is for four years he can get the best. It seems to me that almost any school man in the state, or even out of the state, could be induced to accept the position, and I would say that by all means we should not confine ourselves in such appointments to men who live in the state. Such an appointment will be attractive to any school man. I suppose we all know that the governor of New Jersey has appointed a man from Indiana at a salary of \$10,000 to be the head of the public schools in New Jersey. They have a man they are proud of and they went out of the state to get him. We cannot do that unless we make the term sufficiently long to make it attractive to a first-class man.

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The amendment was agreed to.

Mr. MAUCK: I offer an amendment to make it clear, as explained by the member from Franklin, that the powers of the present commissioner shall devolve upon this new officer. I am satisfied under the provision as it now stands no such powers will be granted.

The amendment was read as follows:

Strike out line 8 as amended and insert: "with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law".

Mr. ANDERSON: I hope the amendment will prevail.

Mr. ELSON: I do too.

Mr. ANDERSON: The professors could not get it into proper shape and an attorney has got it in proper shape for them.

Mr. KNIGHT: I think the object that we are trying to get at is that the office of superintendent shall carry with it these duties until the time comes that the legislature shall act.

The amendment was agreed to.

Mr. HOSKINS: Just a word: I do not know the status, but I think we are approaching a vote on the main proposition. Has the Convention stopped to realize what we are doing? You are creating a constitutional office that has never been anything but a statutory office. The present constitution does not provide for any such state officer as commissioner of the common schools. This office was created by the legislature pure and simple and we are attempting to write into the constitution an office that has never been a constitutional office heretofore. My point is that, laying aside the question of whether it should be called commissioner of common schools or superintendent of public instruction or whatever you may call it, it is purely a legislative matter and legislative business can be corrected from time to time. I am opposed to legislating into the constitution a matter which should be taken care of by the legislature. I have no objection to this amendment. I believe that the term should be two years instead of four, but that is a matter that ought not to go into the constitution. Many of us have believed that we should submit as few amendments as possible, so that the people may have a clear understanding of every amendment that goes before them. Every amendment that is unimportant or that could be taken care of in the legislature should be left out. It does that much more to complicate matters, and as it is purely legislative it should not be written into the constitution.

Mr. FESS: Just a word in reference to Mr. Hoskins' remarks: It was for the purpose of making this a constitutional office instead of a legislative office that I offered this proposal. I do not understand why any member here would want to regard the most important function of government outside of that of the governor himself as a matter to be left in the legislature and not a good one to go into the constitution. I do not know whether the member knows anything about the sentiment in the state in comparison with other states in regard to the way this matter has been left, but my under-

standing has been that it is considered that the department of education should be next to that of the governor. There is no department equal to it outside of the governor's. Why should you ignore the development of education in the state and say it must go along with the board of public works and such things? I think it is little short of an outrage to so regard the department of education. The department of education ought to be in the constitution and that is the whole purpose of this.

Mr. HOSKINS: I do not know whether I know or not—I say I do not know what the sentiment is outside of Ohio, but are the public school people here—not the college professors, but the public school people of Ohio—in favor of writing this in the constitution?

Mr. FESS: Almost to an individual they are asking that this be done. The department now headed by Frank Miller wants it done and so far as I know the people who are directly interested in the welfare of the schools are asking for this change. That is the one reason why it is offered. I am getting tired of hearing references to college professors as if they were the butt end of ridicule. My friend from Mahoning has made such a remark three or four times and I am getting weary of it. The amendment of Mr. Mauck was originally as I desired it. It was suggested in order to make it iron-bound and I am willing to take that and then I hope you will adopt the proposal. I ask for a vote.

Mr. MARSHALL: I would like to vote intelligently on this question and in order to do that I ask the gentleman who introduced this proposal to explain to the Convention what defects it will cover and in what way these defects will be remedied by the change. If I am convinced there are defects in the present school system and that they can be remedied by the professor's proposal I am going to vote for it, and if I cannot I will not. I want to be convinced what is right and just and what is for the betterment of every man, woman and child in the state of Ohio—

Mr. DOTY: White or black?

Mr. MARSHALL: Will the gentleman from Greene [Mr. Fess] point out the defects in the system?

Mr. DOTY: A point of order. The gentleman from Greene has spoken once and he can't speak again.

The president resumed the chair.

Mr. FESS: The only thing I wanted to do was to give the present head of the school department more power than simply to be a statistician. Our school head has done a great amount of work with very little authority. We want to give him authority commensurate with the office. I am sure you would be in favor of this if you knew what it is.

Mr. HOSKINS: Why do you use the expression "superintendent of public instruction" instead of retaining the title commissioner of common schools?

Mr. FESS: That was done because Ohio is the only state in the Union that uses this term in connection with the head of the school department. It is superintendent of public instruction everywhere else, which means superintendent of instruction, including public schools, normal schools and any school supported by taxation.

Mr. HOSKINS: What would be his authority over the State University?

Mr. FESS: None whatever. This refers to public

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schools. He is the superintendent of public instruction. He hasn't any jurisdiction over the university.

Mr. FOX: Just a word in reply to what the professor said. I thought everybody was in favor of this system, but we had an ex-school commissioner at our place last Tuesday and he talked very strongly against this. He said all the people of the state of Ohio were opposed to it and he asked that we vote this down. I don't understand where the good points of it are.

Mr. WINN: Is the gentleman you refer to a candidate for renomination to that office?

Mr. FOX: No, sir.

Mr. WINN: Is he not?

Mr. FOX: I do not know.

Mr. FESS: Do not ask that question, it is delicate. But that is the situation exactly.

Mr. WINN: Do you know whether or not he is an agent for the American Book Company?

Mr. FOX: No.

Mr. MARRIOTT: I move the previous question. The main question was ordered.

The PRESIDENT: The question is on the amendment of the delegate from Gallia.

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 84, nays 17, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peters,
Antrim,	Harter, Stark,	Pierce,
Baum,	Henderson,	Read,
Beatty, Morrow,	Hoffman,	Redington,
Beatty, Wood,	Holtz,	Riley,
Campbell,	Hursh,	Rockel,
Cassidy,	Johnson, Madison,	Roehm,
Colton,	Johnson, Williams,	Rorick,
Crites,	Jones,	Shaffer,
Crosser,	Kehoe,	Shaw,
Cunningham,	Kerr,	Smith, Geauga,
Davio,	Kilpatrick,	Smith, Hamilton,
Donahey,	King,	Solether,
Doty,	Knight,	Stamm,
Dunn,	Kramer,	Stewart,
Elson,	Lambert,	Stilwell,
Evans,	Lampson,	Stokes,
Fackler,	Leete,	Taggart,
Farnsworth,	Marriott,	Tannehill,
Farrell,	Marshall,	Tetlow,
Fess,	Matthews,	Thomas,
FitzSimons,	Mauck,	Ulmer,
Fluke,	McClelland,	Wagner,
Hahn,	Miller, Crawford,	Walker,
Halenkamp,	Miller, Fairfield,	Weybrecht,
Harbarger,	Miller, Ottawa,	Winn,
Harris, Ashtabula,	Nye,	Wise,
Harris, Hamilton,	Peck,	Mr. President.

Those who voted in the negative are:

Brattain,	Keller,	Partington,
Brown, Highland,	Kunkel,	Price,
Brown, Pike,	Longstreth,	Stevens,
Collet,	Ludey,	Tallman,
Fox,	Malin,	Watson.
Halhill,	Okey,	

So the proposal passed as follows:

Proposal No. 96—Mr. Fess: To submit an amendment by adding section 4 to article VI, of the constitution.—Creating office of superintendent of public instruction to replace state commissioner of common schools.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VI.

SEC. 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE NO. 5.

That in the event the above proposal passed by the Convention, be adopted by the electors of the state it shall take effect and become a part of the constitution on the second Monday of July, 1913.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 15 is next in order.

The proposal was read the third time.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

Strike out all after the semi-colon in line 17 and all of lines 18, 19, 20, 21 and 22.

Mr. PECK: I hope this will not prevail. These depositions should be taken and this was all discussed and determined on the second reading.

Mr. MARRIOTT: I move to table the amendment.

The motion to table was carried.

Mr. READ: I offer an amendment.

The amendment was read as follows:

In line 8, strike out the words "a capital" and insert the word "homicide".

Mr. READ: This does not in any way change the sense, but it takes out the words "a capital" and inserts "homicide." If capital punishment is abolished we will have no capital crimes.

Mr. PECK: These words that you want to strike out have been in the constitution for fifty years.

The amendment was disagreed to.

Mr. KERR: I offer an amendment.

The amendment was read as follows:

Strike out beginning with the word "but" in line 24 to and including the word "counsel" in line 25.

Mr. KERR: I claim that that is in contradiction to line 23. When he does not testify, to allow comment to be made on it compels him to testify or the fact that he fails to testify will be taken against him and that is not according to the spirit of our constitution.

Mr. TALLMAN: It is well known to everybody that where the prisoner goes upon the witness stand the prosecuting attorney comments upon his interest in the

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case. If the accusation against him involves imprisonment in the penitentiary and they are allowed to comment upon the fact that he does not go upon the witness stand, it is equivalent almost to a conviction whether he is guilty or innocent. If he is guilty he should be allowed to stay off the witness stand. He has a right to be convicted upon the testimony of the state outside of himself without the temptation to commit perjury being put before him. It will only lead to two crimes instead of one in a majority of the cases. I insist that the prisoner at the bar should not be placed under that handicap, that the temptation to commit perjury on the one hand or go to the penitentiary on the other should not be submitted as an alternative. If he chooses to stay off he has a right to be convicted upon outside testimony, but if he goes upon the witness stand and testifies in nine cases out of ten his testimony goes for nothing with the jury because the court charges that they are to look to the interest that the prisoner has in the case, hear his testimony and view his interest in the result of the trial. His testimony, if he goes upon the stand, will count but for little, and if he stays off the stand it counts for absolutely nothing at all. If they are allowed to comment upon that the same as in civil cases, in all these cases we lay before the unfortunate prisoner one of two things—he goes to the penitentiary or goes on the witness stand and commits perjury. Those are the only two alternatives offered, and I submit it is unfair to the prisoner and it will lead in nine cases out of ten to the commission of two crimes instead of one.

Mr. JOHNSON, of Madison: Did you ever in your experience find any innocent man who was afraid to go upon the witness stand?

Mr. TALLMAN: Sometimes circumstances are such that an innocent man cannot go upon the stand.

Mr. PECK: We had a great deal of discussion on this and this is the same speech that was made by the gentleman on the second reading. Certainly it was made by others also. His whole view of the matter is from the standpoint of the criminal. I think this Convention is here in behalf of the state of Ohio and in behalf of the people of Ohio and in behalf of the society of Ohio. We want to make our laws so as to prevent crime.

Mr. HALFHILL: That is the same speech made two or three times by Judge Peck.

Mr. PECK: Yes, and I am following the same habit that somebody else has and I am having the same idiotic interruptions. The quickest way to get through with me is to let me alone. We want to have this matter viewed from the standpoint of the people and not from the standpoint of Mr. Halfhill and other professional defenders of criminals. That is the kind of speech we have just heard made. It is the poor criminal, but you never have any sympathy for the poor victim. Your misplaced sympathies are always for the poor fellow in jail, who should be punished, and not for the victim. I sympathize with the victim and society is the victim. I would like to have this fixed so that we could not have this lagging and delay in criminal jurisprudence, so that matters can be brought out properly and promptly on the trial.

Mr. HALFHILL: I want to ask a question.

Mr. PECK: I decline to answer. I move the previ-

ous question on this amendment. We are all talking over the same thing that we talked on the second reading.

The PRESIDENT: The question is, Shall debate close?

Mr. FESS: I move to lay the amendment on the table before the motion for the previous question is put.

Mr. PECK: Then I withdraw the motion for the previous question.

Mr. FESS: The motion to lay on the table takes precedence on the motion for the previous question, and I hope the Judge will not withdraw the motion for the previous question.

Mr. PECK: All right, I won't then. The motion to lay on the table takes precedence anyway.

The motion to lay on the table was carried.

The motion to close debate was agreed to.

Mr. HALFHILL: I desire a question of privilege, and I desire to put it to the gentleman from Hamilton. Did I understand you to remark that I was either a professional criminal or professional criminal lawyer?

Mr. PECK: I said you were a professional defender of criminals.

Mr. HALFHILL: I deny the charge anyway.

The PRESIDENT: The question is, "Shall debate close?"

The SECRETARY: No, the question is on the proposal.

Mr. FESS: The Convention has ordered the main question. That was done just after my motion to table was carried. The motion to table was carried and then the previous question was carried. If the previous question had been voted on the motion to table would have been out of order.

The PRESIDENT: The question then is on the adoption of the proposal.

The yeas and nays were taken, and resulted—yeas 66, nays 30, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Okey,
Antrim,	Harter, Huron,	Partington,
Baum,	Hoffman,	Peck,
Beatty, Morrow,	Johnson, Madison,	Peters,
Beatty, Wood,	Johnson, Williams,	Redington,
Beyer,	Jones,	Riley,
Bowdle,	Kehoe,	Rockel,
Brown, Highland,	King,	Roehm,
Cassidy,	Knight,	Shaw,
Colton,	Kramer,	Smith, Geauga,
Crites,	Lambert,	Smith, Hamilton,
Cunningham,	Lampson,	Stamm,
Dwyer,	Leete,	Stevens,
Elson,	Longstreth,	Stewart,
Evans,	Ludey,	Stilwell,
Farnsworth,	Marriott,	Stokes,
Fess,	Mauck,	Taggart,
FitzSimons,	McClelland,	Tannehill,
Hahn,	Miller, Crawford,	Wagner,
Halenkamp,	Miller, Mairfield,	Walker,
Harbarger,	Miller, Ottawa,	Watson,
Harris, Ashtabula,	Moore,	Wise.

Those who voted in the negative are:

Brown, Pike,	Farrell,	Kerr,
Campbell,	Fluke,	Kilpatrick,
Collett,	Fox,	Malin,
Crosser,	Halfhill,	Marshall,
Davio,	Hoskins,	Matthews,
Doty,	Hursh,	Norris,
Dunn,	Keller,	Nye,

Deposition by State and Comment on Failure of Accused to Testify in Criminal Cases—Limiting Veto Power of Governor.

Pierce,
Price,
Read,

Solether,
Tallman,
Tetlow,

Thomas,
Weybrecht,
Winn.

So the proposal passed as follows:

Proposal No. 15.—Mr. Riley. To submit an amendment to article I, section 10, of the constitution.—Depositions by state and comment on failure of accused to testify in criminal cases.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SEC. 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

The PRESIDENT: Proposal No. 212 is next in order.

Proposal No. 212—Mr. Johnson, of Williams, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 98, nays none, as follows:

Those who voted in the affirmative are:

Anderson,
Baum,
Beatty, Morrow,
Beatty, Wood,
Beyer,
Bowdle,
Brown, Highland,
Campbell,

Collett,
Colton,
Crites,
Crosser,
Cunningham,
Davio,
Doty,
Dunn,

Dwyer,
Elson,
Farnsworth,
Farrell,
Fess,
FitzSimons,
Fluke,
Fox,

Hahn,
Halenkamp,
Halfhill,
Harbarger,
Harris, Ashtabula,
Harris, Hamilton,
Harter, Huron,
Henderson,
Hoffman,
Holtz,
Hoskins,
Hursh,
Johnson, Madison,
Johnson, Williams,
Jones,
Kehoe,
Keller,
Kerr,
Kilpatrick,
King,
Knight,
Kramer,
Kunkel,
Lambert,
Lampson,

Leete,
Leslie,
Longstreth,
Ludey,
Malin,
Marriott,
Marshall,
Matthews,
Mauck,
McClelland,
Miller, Crawford,
Miller, Fairfield,
Miller, Ottawa,
Moore,
Norris,
Nye,
Okey,
Partington,
Peck,
Peters,
Pierce,
Price,
Read,
Redington,
Riley,

Rockel,
Roehm,
Rorick,
Shaw,
Smith, Geauga,
Smith, Hamilton,
Solether,
Stamm,
Stevens,
Stewart,
Stilwell,
Stokes,
Taggart,
Tallman,
Tannehill,
Tetlow,
Thomas,
Wagner,
Walker,
Watson,
Weybrecht,
Winn,
Wise,
Mr. President.

So the proposal passed as follows:

Proposal No. 212—Mr. Johnson, of Williams. To submit an amendment to article II, section 16, of the constitution.—Limiting veto power of governor.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject; which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor

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nor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

The PRESIDENT: The next is Proposal No. 62, by Mr. Pierce.

Mr. PIERCE: I desire to have that proposal laid over for the reason that there are some twenty-two or twenty-five members absent and a good number of men tell me that they expect to go within a few minutes.

The PRESIDENT: Without objection the proposal will be informally passed. The next is Proposal No. 51—Mr. Miller, of Crawford.

Mr. STEVENS: It is my intention when this matter comes up to introduce the amendment referred to as the state insurance proposition. The Convention will recollect that there were fifty-four to forty-seven against it, a total vote of one hundred. I think the same reason that Mr. Pierce suggests applies to this and I move that it be informally passed.

The PRESIDENT: Without objection that will be done.

Proposal No. 184—Mr. Peck, was informally passed.

Mr. MARRIOTT: In view of the fact that we are going to adjourn until Monday at noon and some of the gentlemen who want to go home want to leave on the 4:30 and 4:40 trains, I move that the Convention do now adjourn.

Mr. FESS: I understand the Judge wants to adjourn for the 4:15 train. There are one or two here that we can get through before that easily.

Mr. MARRIOTT: Then I withdraw the motion to adjourn.

The PRESIDENT: The next proposal is Proposal No. 322, by Mr. Bowdle.

The proposal was read the third time.

Mr. HOSKINS: I would like the privilege of asking Mr. Bowdle a question. The point is not that I have any opposition to it, but I wish somebody would tell me why a constitutional provision of this sort is necessary. It does not provide anything to regulate a certain class of testimony by witnesses. Is not that matter entirely within the discretion of the legislature and haven't they as full power as they will ever have if this is passed? I do not see any reason for it at all. I wish some one would tell me.

The PRESIDENT: The question is on the adoption of the proposal.

Mr. HOSKINS: I would ask that the author would explain that.

Mr. FESS: I did not know that there was any opposition to it. I think it would be entirely wrong to vote upon this when Mr. Bowdle is absent.

Mr. HOSKINS: I will not say that I am opposed

to it, but we are doing a number of things or a good many things that some members think unnecessary. There is no use of crowding the ballot and I am in favor of a short ballot.

Mr. DWYER: I agree with the member from Auglaize that the courts have now the power that is provided here. I have seen a number of cases where expert witnesses were limited.

Mr. HOSKINS: Do you know of any limitation on the present authority of the legislature to do just what this says it can do?

Mr. DWYER: No; the courts exercise that power now.

Mr. KNIGHT: Is not there some doubt on this point? At the present time is not there a doubt as to whether the courts will not hold that the courts and the courts only have the right to determine that and that it is not within the power of the legislature to regulate? In other words, it is a judicial question. I know some courts have held that the legislature cannot touch it. Is not that the motive of this?

Mr. DWYER: I agree with you thoroughly that the legislature can fix and control the introduction of expert testimony.

The PRESIDENT: The question is on the adoption of the proposal.

Mr. ELSON: I have been waiting for many days to come up to something where the gentleman from Auglaize was on the right side and I think he has finally got on the right side.

Mr. DOTY: That's not so sure just because you are on the same side.

Mr. ELSON: I do not see the necessity of this and if we can cut down forty-two proposals to a smaller number it would be a right thing to do. Of course we do not wish to keep out anything that should be placed in, but for my part I would like to see this kept out.

Mr. MAUCK: I do not think it is clear, as the member from Athens and the member from Auglaize assume, that the general assembly has the power to provide against such testimony as we at present use expert witnesses in criminal cases. Section 1 of the bill of rights provides that any one accused of crime may have compulsory process of witnesses. If that means anything it means that it may not only compel the attendance of the witnesses, but that those witnesses may be compelled to testify to any question raised by the indictment or plea thereto. I doubt very much whether under the existing constitution a man accused of crime has the power under the bill of rights to compel the attendance of expert witnesses, say upon the question of insanity, or could be prevented from using those witnesses to establish the fact that the accused was at the time the offense was committed insane, not because it may not be necessary, but for an entirely different reason. It limits the regulation of expert witnesses' testimony to criminal trials and proceedings. In other words, if we had a civil will case, where the question was as to the capacity of the testator, those interested in that question could bring in all sorts of experts to establish simply the fact, but when it came to something that was far more important, as to whether or not a will was a forgery, you would limit the accused to such experts as the court by appointment of a commission or other-

Petitions and Memorials.

wise might provide. In other words, you are throwing an obstacle in the way of a man defending his life or liberty that you do not throw in the way of a man who is merely defending his property rights. I see no reason why experts should be eliminated from criminal prosecutions and continued in civil cases.

Mr. SMITH, of Hamilton: I am as anxious as any member of the Convention to expedite the work of the Convention, but I believe it is a discourtesy to my colleague [Mr. BOWDLE] and I move that the matter be informally passed.

The motion was carried.

Mr. DOTY: I move that further consideration be postponed until tomorrow and that it retain its place on the calendar.

The motion was carried.

Mr. LAMPSON: Here is Proposal No. 331 to abolish the board of public works, passed by practically a unanimous vote, and I now call that up.

The PRESIDENT: Without objection Proposal No. 331 will be called up.

Mr. TAGGART: I have no particular objection, but I am prepared to present an amendment and the Convention will have to decide whether to legislate one member of the board of public works out of office or to legislate two in, and that is a question that has not been before the Convention yet.

Mr. LAMPSON: I withdraw the request then.

PETITIONS AND MEMORIALS.

Mr. Bigelow presented the petitions of H. C. Smith and eighty other citizens of Liberty Center; of E. J. St. Clair and ten other citizens of Dresden; of the Rev. Frank Hall and twenty-three other citizens of Columbus; of E. E. Ditch and forty-five other citizens of Mansfield; of P. L. Snyder and fifty other citizens of Springfield; of J. M. Anders and seventy-five other citizens of Leesburg; of P. P. Schell and one hundred forty other citizens of Cleveland; of Florence Hartsock and fifteen other citizens of Alliance; of A. C. Gray and fifty other citizens of Coshocton; of C. W. Penn and sixty-five other citizens of Fredericktown; of F. R. James and fifty other citizens of Franklin county;

of C. G. Atterholt and forty other citizens of Youngstown; of T. Myers and twenty-five other citizens of Lorain county; of Park A. Soule and twenty-five other citizens of Ashland county; of B. Gilson and fifty other citizens of Lorain county; of C. A. Beebe and fifty other citizens of Norwalk; of J. B. Poole and fifty other citizens of W. Clarksfield; of Al Gibson and sixty-five other citizens of Wakeman; of Wm. Thorton and ninety other citizens of Washington C. H., protesting against the passage of Proposals No. 65 and 321; which were referred to the committee on Education.

Mr. Bigelow presented the remonstrances of the Rev. W. J. Young, of Piqua; of the Rev. John Montgomery, of Piqua; of F. B. Neel and many other other citizens of Piqua, asking that the word "similar" be stricken from the liquor proposal; which were referred to the committee on Liquor Traffic.

Mr. Bigelow presented the petitions of the Rev. Oliver L. Utter, of Eaton; of the Rev. M. I. Comfort, of Eaton; of the Rev. McD. Howard, of Eaton, asking the Convention to carefully consider home rule Proposal No. 272, section 3, relative to temperance laws; which were referred to the committee on Liquor Traffic.

Mr. Bigelow presented the petitions of H. J. Perks, of Toledo; of Frank E. White, of Salem; of George Wilson, Akron; of Geo. Van Atten, of Newark; of O. M. Corson, of Middletown; of M. T. Evans, of Youngstown; of J. C. Unzicker, of Hamilton; of F. W. Flowers, of Columbus, asking the delegates to secure the Ohio Federation of Labor amendments to the initiative and referendum proposal; which were referred to the committee on Initiative and Referendum.

Mr. Bigelow presented the petition of Jacob Katz and eighty-five other citizens of Cleveland, relative to a weekly pay day clause in the new constitution; which was referred to the committee on Labor.

Leave of absence for Monday, Tuesday and Wednesday was granted to Mr. Tallman.

Indefinite leave of absence was granted to Mr. Cordes and Mr. Eby.

Mr. MARRIOTT: I now move that we adjourn.

The motion was carried and the Convention adjourned until two o'clock Monday, May 27, 1912.

SEVENTY-SIXTH DAY

AFTERNOON SESSION.

MONDAY, May 27, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. D. A. Clark, of Columbus, Ohio.

The journal of Friday was read and approved.

Mr. DOTY: I want to call your attention to an error in the printed journal that is correct in the journal itself. In Proposal No. 151 you will find the order of the vote given "Against License" first and "For License" below. That is just the other way and the journal itself is correct, but the printed journal is wrong.

Mr. Harbarger asked and obtained leave of absence for Mr. Knight.

Mr. DOTY: I now move that we proceed with third readings.

The PRESIDENT: If there is no objection the Convention will proceed to third readings.

THIRD READING OF PROPOSALS.

Mr. TAGGART: Proposal No. 340 should be moved along by reference to the committee on Phraseology.

Mr. DOTY: Is not that the schedule that provides the time for the schedule to go into effect?

Mr. TAGGART: Yes.

Mr. DOTY: Do you not think it is better to wait and see all the proposals that are passed before we go into that?

Mr. TAGGART: The only purpose that I had in view was that it might go to the committee on Phraseology and come back and be ready for third reading and amendment.

The PRESIDENT: Proposal No. 62 is the next in order.

The proposal was read the third time.

Mr. CRITES: I offer an amendment.

The amendment was read as follows:

In line 10 after the word "life" add the following:

" , without pardon unless at some future time found to be innocent."

Mr. CRITES: The only objection that I have heard from my people on this proposal is that they say there would be too many pardons and I think this amendment will make it difficult and secure more votes for our work.

Mr. DOTY: This amendment says "found to be innocent." By whom found? Do you mean a trial? If you take the pardoning power away, there is little hope of their ever getting out.

Mr. ANDERSON: Why would not this cover it: Shall be imprisoned for life unless the innocence be made to appear beyond the existence of a reasonable doubt.

Mr. DOTY: To whom?

Mr. ANDERSON: To the pardoning board or to whatever board it may be.

Mr. DOTY: We haven't any board to pardon anybody.

Mr. ANDERSON: It may mean the pardoning board, subject, I suppose, to proper revision.

Mr. DOTY: I would not want to be guilty of living in a state that denied the pardoning power to its governor. That would be barbarous. My friend from Pickaway could not have thought that out. That is a perfectly barbarous proposition, and I move to lay the amendment on the table.

The motion was carried.

Mr. OKEY: I offer an amendment.

The amendment was read as follows:

In the sixth line after the word "of" strike out the word "homicide" and in lieu thereof insert the word "murder".

Mr. OKEY: My reason for offering this amendment is that the word "homicide" is an improper word from my standpoint to be used in this connection. The word "homicide" has a legal significance, and it includes any kind of killing whether accidental or otherwise. I had a couple of judges call my attention to this: Under this proposal, as we have it, nobody could be admitted to bail, and the word "homicide", as I stated before includes all grades of killing. It is the killing of a human being, but it does not necessarily imply an unlawful killing. Homicide does not necessarily mean a crime. That has received judicial construction, the meaning of it is well defined and for that reason and that only, in order that the proposal may mean something, I offer this amendment.

Mr. PECK: "Homicide" is all right. It has always been there, and we don't know whether it is murder or something else until the man is tried.

Mr. HOSKINS: I believe that the amendment of the delegate from Noble [Mr. Okey] should be adopted. It never struck me until just now, but if that proposal passes as here written there will be no such thing as bail in a case of homicide.

Mr. PECK: That is the way the constitution has been for years.

Mr. HOSKINS: No, sir. A "capital offense" it was, which means one where the death penalty is provided. We have abolished capital punishment now.

Mr. LAMPSON: Would not your amendment or the amendment of the gentleman from Noble prevent bailing of persons accused of murder in the second degree?

Mr. PECK: How are you going to determine whether it is murder, manslaughter or merely excusable homicide until the man is tried? The bail has to be given in advance. A homicide may be a murder and it may be something less. And there is where they say, when the proof is clear and the presumption great, bail may be denied. I do not see what other words you could use.

Mr. KING: I do not like the word "homicide", and "murder" would not be much better. The common law crime of murder is divided into two degrees and always

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was. "Manslaughter" is another offense. If the word "murder" were inserted, I do not see how bail could be granted in all cases where the charge is second degree. I understand these charges are usually first degree, but at the same time murder in the second degree has never been a capital offense and the phrase "capital offense" is used in our present constitution and the one preceding that. If you insert "murder", say "murder in the first degree", which has a common law definition.

Mr. WINN: Do you make any distinction between the word homicide and murder?

Mr. KING: Yes.

Mr. WINN: I notice Webster does not, and I wondered whether the lawyers differed from Webster.

Mr. KING: There is a well-defined difference.

Mr. JOHNSON, of Williams: I would like to make a few remarks defining my position on this question. It is the duty of the state to protect its citizens, and if the capital punishment or the fear of it would deter criminals from committing murder it should not be abolished. I do not like to hear the assertion that the state commits murder when it executes a criminal for the protection of society. It seems to me that such an assertion is unjust to the state and too sympathetic for the criminal. If society is better protected because of capital punishment it is the duty of the state to execute the criminal. In my opinion the recent execution of Richeson in Massachusetts was not only better for the criminal but better for the citizens of the state. It is said by many that they would rather be executed than imprisoned for life. If criminals as a rule were of that opinion I think that capital punishment might safely be abandoned, but the worst sort of criminals would rather have capital punishment abolished and take their chances of making an escape. Only yesterday I met a gentleman who said that he would have murdered his family at one time if it had not been for a fear of death. He told me that he knew plenty of criminals that were deterred from committing murder because of their fear of death. One man told the gentleman to whom I have just referred that he would have murdered his whole family if it were not for the fear of being executed.

Is there anybody in the United States who does not believe that we have better order and protection than in Italy?

Mr. DOTY: And more murders.

Mr. JOHNSON, of Williams: I dislike capital punishment as much as anybody here. I was foolish enough and silly enough until I was twenty-five or thirty years of age to say that if it were a question of my killing somebody or somebody killing me I would be willing to die. I have gotten over that. If a set of bandits rushed into this room and commenced trying to kill us I would be the first one to shoot them and I would not have any compunctions of conscience. I dislike the sentiment connected with this. Then there is one more objection. It has been admitted by everybody that this is statutory, that it could all be accomplished without a constitutional amendment. I might be in favor of submitting this question because I am not afraid to let the people rule, but if the legislature of the state has the same authority to do this that we have and there is no great demand for it, why should

we take it up? I dislike this proposal being mentioned along with other proposals to weaken the work that we have done here. I am not opposed to capital punishment. I repeat that I would be willing to let the people have an opportunity to vote for or against it if this thing were needed to correct the constitution, but it is not. All of you can see that there is something wrong with this provision, because here they are attempting to amend it right and left already. Now if we put anything in the constitution it will be beyond amendment. Why do a foolish thing when we can do the right thing at the proper time? I only rose to defend my position and not to take up time.

A reading of the amendment was called for and it was again read.

Mr. OKEY: That ought to have "murder in the first degree" inserted. I agreed to that when Judge King mentioned it.

The SECRETARY: It was not sent to the secretary's desk.

By unanimous consent the words "first degree" were added to the amendment, and the amendment was then read as follows:

Strike out the word "homicide" in line 6 and insert in lieu thereof "murder in the first degree".

The amendment was agreed to.

Mr. MILLER, of Crawford: I offer an amendment. The amendment was read as follows:

At the end of the proposal add: "Neither the governor nor the legislature shall have power to grant a pardon to any person convicted of murder, unless upon the written recommendation of the majority of the judges of the supreme court."

Mr. MILLER, of Crawford: I voted for this proposal believing that the state was not justified in taking human life, but we ought not to let our compunctions override the rightful protection of society. It seems to me that the pardoning power should not be used except under extenuating circumstances. This amendment of mine is copied from the constitution of California where a person is convicted the second time of a felony and I believe this amendment will strengthen this proposal before the people.

Mr. WINN: Does your amendment propose that the supreme court of the state of Ohio shall be a pardoning board?

Mr. MILLER, of Crawford: If they find a party was innocent they would be authorized to say so.

The amendment was disagreed to.

Mr. DUNN: I offer an amendment.

The amendment was read as follows:

In line 10 after the word "imprisonment" insert the words "at hard labor," and at end of line 10 change period to a comma and add the sentence "and part or all of his net earnings may be paid to the dependents of his victim."

Mr. DUNN: I would like to see the proposal abolishing capital punishment adopted, but I believe there is a great deal of sentiment throughout the state against it. I believe it needs a little strengthening to

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make it popular with the people. I believe it would have been better if we would have permitted eleven out of twelve jurors to convict where a life will not any longer be at stake. This would prevent the bribery of one juror resulting in a mistrial and would bring about fewer mistrials, and by my amendment the people of the state will understand that those persons convicted for life are not going to be put into the idle house, but are going to work. If a person who meditates murder understands that he is almost sure of conviction and that he will be compelled to work for the dependents of his victim the rest of his life, he will be apt to hesitate, and it will be a blessing to the dependents of his victim if he be imprisoned for life instead of being executed and made to work for their support. I know some will laugh because you will say there will be no net earnings, but there ought to be. The state of Ohio ought to be able to make a man earn his own living and a little for the dependants of his victim. I am sure that this amendment will add popularity to this measure before the farmers.

Mr. DOTY: I am very grateful that the member has said what he has and it marks him as humane, but the only trouble is there is no definition of "net earnings." We talk about gross earnings and net earnings on things that we can figure. And even bookkeepers differ greatly on these. What is "net earnings" of a man? I do not believe that the member himself has worked out what that means. It does not mean anything.

Mr. WINN: Suppose that the proposal now pending before us, which does away with contract prison labor, is adopted and the prisoners are confined in a particular institution and are required to work only for the state, will there be any net earnings?

Mr. DOTY: That is a question of bookkeeping. The question of net earnings is a very hard one to get at, and if that proposal goes through it will be more indefinite than under the contract system. To put that word in, in my opinion, is worse than useless.

Mr. HARRIS, of Ashtabula: As I understand the amendment of the member from Clermont [Mr. DUNN] there are two questions involved. First, that the prisoner shall not be subject to pardon. Is that correct?

Mr. DOTY: No.

Mr. HARRIS, of Ashtabula: The governor cannot pardon him?

Mr. DOTY: That was another that has already been voted down.

Mr. HARRIS, of Ashtabula: Then with regard to the proposition of net earnings, I agree for once with the member from Cuyahoga [Mr. DOTY] and the gentleman from Defiance [Mr. WINN] that this is altogether too indeterminate to be a part of the constitution. What may be determined in the future about it we do not know, but we cannot make any provision about these net earnings under present conditions.

Mr. LEETE: I move to lay the amendment on the table.

The motion was carried and the amendment tabled.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

After the word "life" in line 10 insert: "and no such person shall ever be pardoned or released

unless his innocence shall be made to appear beyond a reasonable doubt."

Mr. ANDERSON: The presumption of innocence under the law surrounds everybody. In other words, no person can be convicted of a crime unless his guilt is made to appear beyond the existence of a reasonable doubt. Consequently what is meant by "beyond the existence of a reasonable doubt" is well understood in law and has many times been defined. So before you can find a person guilty who is accused of a capital offense you must establish his guilt beyond the existence of a reasonable doubt. After that guilt has been established and since we have taken away the right of the state to take his life, it seems to me that before he should be pardoned his innocence should be made to appear beyond the existence of a reasonable doubt. In other words, the state as such has to carry the burden of proving him guilty beyond the existence of a reasonable doubt, and next, if this amendment be adopted, it seems to me that the burden should shift and rest upon the shoulders of the prisoner, requiring him to prove his innocence beyond the existence of a reasonable doubt before he could be pardoned. I suggest this. I have not much feeling about it one way or the other, but it seems to me that if we take the protection away from the state, as we have done, we should give the state some protection in the matter and let it be reasonably certain that when a man is once found guilty of a capital offense his innocence must be made to appear beyond a reasonable doubt before he can get clear.

Mr. ELSON: If this amendment is adopted I fear that it will tend to popularize the proposal. I hope it will not be popularized because I hope it will be killed by the people.

Mr. ANDERSON: Then your position as to the amendment is that the amendment does improve the proposal?

Mr. ELSON: Yes. I have heard most serious objection to this proposal. Now, in spite of the fact that our friend from Cincinnati [Mr. BOWDLE] may ridicule me as he did the preachers because of their inhumanity, I want to express myself on this. I think this is nothing but maudlin, morbid sentimentalism.

Mr. DOTY: Did you vote for it?

Mr. ELSON: I do not remember, but if I did I have changed my mind. I believe that we should look to the welfare and protection of society rather than the murderer. The first law of nature is self-protection, and that applies to society as a whole just as much as to an individual. The state is merely society organized. The state can go into a man's home and can take him up from his fireside and put him in the forefront of battle with a musket in his hand there to lay down his life for the preservation of the state, and yet here we are trying to forbid the state from taking the life of a miserable scoundrel who violates the law of the state when he knows that the penalty is death. Take those auto-bandits of Paris a few weeks ago. They have killed a half hundred people and what does society owe them? Life? Certainly not. We are told that "if thy right arm offend thee cut it off and cast it from thee." Why should not these creatures be executed? Take the McNamara case in California. Would those

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men ever have confessed that crime if there had been no capital punishment? They would doubtless have gone to prison protesting innocence and thousands and thousands would have believed them innocent.

Take lonely farmers and outrages against them. We don't have many of them in this state, but in New York and New Jersey it is not an unusual thing for a criminal to come along and murder the inmates of a farm house. Do not the farmers want all the protection that they can get from organized society?

Mr. DWYER: I rise to a point of order. The gentleman is not talking to his amendment.

Mr. MARSHALL: I want to ask the gentleman a question.

The PRESIDENT: The gentleman's time is up.

Mr. HARRIS, of Hamilton: I trust that the Convention will adopt the amendment of the member from Mahoning, not because it is popular or unpopular, but because it is essentially just and wise. The conscience of the people of the state has been aroused since the Convention first adopted the proposal, and it has received more hearty commendation from the great majority of the people than any other proposal that we have adopted. We can judge from the editorials of the leading newspapers of the state. The public conscience is aroused; and the carnivora are running to cover; the people of the state will appreciate that this Convention is not blood-thirsty, no matter what else some of its detractors may say of it.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out the last four words of the amendment.

Mr. PECK: I want to call the attention of the gentlemen who are offering these amendments to the fact that the clause that they are amending is only a temporary one and their amendments will pass away as soon as the legislature passes upon this. If they will read that clause to which Mr. Anderson's amendment applies they will find it reads that until otherwise provided by law persons convicted of crime heretofore punishable by death shall be imprisoned, etc. The expectation is that the general assembly will take up the matter and determine about these things and thus all of these amendments will be to something that does not longer apply.

Mr. LAMPSON: The Fackler amendment means nothing. Strike out and leave it that the innocence must appear! To whom and how proved? With what degree of proof would it be satisfied?

Mr. FACKLER: It would be the ordinary proof by a preponderance of the evidence.

Mr. ANDERSON: I want it stronger than that. When the accused is found guilty before a life sentence is imposed his guilt must appear beyond a reasonable doubt; not by a probability, but beyond a reasonable doubt. Consequently, after the state has overcome that great burden and handicap in convicting him, I say that the prisoner ought to have the same burden placed upon him before he can be pardoned. In other words, not by a mere probability to show his innocence, because that is just exactly the object of my amendment, to get away from any probability in letting a man out after he is once convicted. I want his innocence to appear beyond a rea-

sonable doubt, and I move to table the Fackler amendment.

The motion to table was carried.

Mr. DOTY: We have the authority of the member from Mahoning that the amendment of Mr. Fackler was meaningless and we voted that down. We now have the statement of the chairman of the committee that the amendment of the delegate from Mahoning is meaningless in that it amends the wrong part of the proposal, as I understand.

Mr. HARRIS, of Ashtabula: By whose authority did you say you had that.

Mr. DOTY: The member from Hamilton, the chairman of the committee.

Mr. HARRIS, of Ashtabula: Well, well.

Mr. DOTY: You may learn something from him if you try. I have. The member from Hamilton [Mr. PECK] says that the amendment of the member from Mahoning amounts only to a temporary thing.

Mr. ANDERSON: I didn't hear Judge Peck say that. Was not Judge Peck's statement that the legislature can do what I proposed? That is true. The legislature can do it.

Mr. DOTY: I didn't understand the judge to say that. Your amendment is tied on to the last sentence and that reads "until otherwise provided by law persons heretofore convicted of crime punishable by death shall be imprisoned in the penitentiary for life", etc. The chairman of the Judiciary committee and three other members have explained and spoken against this, and if the member from Mahoning consults the professors he will find out that he is wrong about it. I move that his amendment be laid on the table.

The motion to table was carried.

Mr. MOORE: I offer an amendment.

The amendment was read as follows:

Strike out all after the period in line 8.

Mr. MOORE: This proposal abolishes capital punishment in the state of Ohio, but the latter part is legislative. It does not belong in a constitutional provision and I think it should be dropped.

Mr. DOTY: Then what would you say would happen to a man who committed murder in the first degree the last day of August and is tried and convicted on the tenth of October if this amendment is adopted the third day of September and promulgated the first of October? What becomes of him? Would not you have to turn him loose? This takes care of it in the meantime.

Mr. FACKLER: I move that the amendment be tabled.

The motion to table was carried.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

In line 5 strike out "in cases" and in line 6 strike out the first word "of" and insert "those charged with".

Mr. COLTON: The intent of this amendment is to overcome the objection raised some time ago that we do not know at the start of what degree of murder the man is guilty. If this amendment is inserted it will read "all persons shall be bailable by sufficient surety except those charged with murder in the first degree".

Mr. HOSKINS: I call attention to the fact relative

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to the amendment just offered that if you insert "those charged with" it simply refers to the charge and not to the remainder where it says "the proof is evident or the presumption great."

Mr. DOTY: Is not that the time when we ought to begin to define what should be bailable and what not?

Mr. HOSKINS: Those charged with, where the proof is evident or the presumption great. You charge him with it. I take it that the meaning is that whenever the charge of first degree murder is in the affidavit it shall not be bailable. I cannot see what else Mr. Colton means.

Mr. FACKLER: He must be charged with murder in the first degree and where the proof is evident or the presumption great.

Mr. PIERCE: I think the amendment of Mr. Colton should carry. I believe it is correct.

The amendment was agreed to.

Mr. WOODS: Gentlemen of the Convention: I only want a minute of your time. You know I am against this proposition. But there are a couple of points here that I do not think the Convention has fairly considered. There is not a man on this floor who, while in favor of abolishing capital punishment, does not admit that it is a statutory matter. It is not a matter that should be taken care of in the constitution. I say to you, in all fairness, you have tried in this proposal to take care of existing statutes if this becomes part of the constitution, but I do not think that you have done it. You cannot do it except by taking out of the statutes the first section and setting it right in the constitution. I believe that if you put this in the constitution and the people ratify it at the polls you will find that no man can be convicted of first degree murder who has been committed between the time this is adopted and the time the general assembly makes the statute. You say in this proposal that the first degree murder statute is in addition. You certainly do that, do you not?

Mr. DOTY: No.

Mr. WOODS: You do. You say "nor shall life be taken as a punishment for crime." How are you going to hold that first degree murder statute is constitutional in the face of this provision of the constitution? I say you cannot do it, and if you pass this proposal you cannot punish a man for first degree murder committed between the time this is adopted and the time the legislature passes the law.

There is another thing in this proposal to which I wish to call attention. The three lines "until otherwise provided by law, persons convicted of crimes heretofore punishable"—not now, but heretofore. When was that? Was it one hundred years ago when a man lost his life if he committed burglary? I want to say that you are interfering with a great deal here and you are going to leave the matter in such shape that no man can be convicted of first degree murder until after the general assembly has enacted a law. I don't think you ought to do this. You have the initiative and referendum and if the people of the state of Ohio want to abolish capital punishment and the general assembly will not do it, why do you not do it through the initiative and referendum? Let us not get in such shape that men cannot be punished for first degree murder. Why should this Constitutional Convention spend its time trying to lessen the

punishment for the most serious of all crimes? Nobody has been clamoring for it. I think you will lose ground if this thing is passed. Most all of you know it is very unpopular. The people of the state of Ohio are not anxious to have anything like this done. I am not afraid that it cannot be taken care of at the polls, but if we should happen to pass it the murder statute will be balled up and in about as bad shape as possible.

Mr. STEVENS: I move the previous question.

The main question was ordered.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 65, nays 39, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Miller, Crawford,
Antrim,	Hahn,	Miller, Ottawa,
Baum,	Halenkamp,	Moore,
Beatty, Morrow,	Halfhill,	Peck,
Beatty, Wood,	Harbarger,	Pierce,
Beyer,	Harris, Hamilton,	Price,
Bowdle,	Harter, Huron,	Read,
Cassidy,	Harter, Stark,	Redington,
Cody,	Hoffman,	Shaffer,
Crosser,	Hoskins,	Smith, Geauga,
Davio,	Hursh,	Solether,
Doty,	Keller,	Stamm,
Dunlap,	Kramer,	Stevens,
Dunn,	Kunkel,	Stilwell,
Dwyer,	Lambert,	Tannehill,
Earnhart,	Leete,	Tetlow,
Fackler,	Leslie,	Thomas,
Farnsworth,	Ludey,	Wagner,
Farrell,	Malin,	Winn,
Fess,	Marriott,	Wise,
FitzSimons,	Marshall,	Mr. President.
Fluke,	Matthews,	

Those who voted in the negative are:

Brattain,	Johnson, Williams,	Pettit,
Brown, Highland,	Jones,	Riley,
Collett,	Kehoe,	Rockel,
Colton,	Kerr,	Roehm,
Cordes,	King,	Rorick,
Crites,	Longstreth,	Shaw,
Cunningham,	Mauck,	Smith, Hamilton,
Donahay,	McClelland,	Stewart,
Elson,	Miller, Fairfield,	Stokes,
Evans,	Norris,	Taggart,
Harris, Ashtabula,	Okey,	Walker,
Henderson,	Partington,	Watson,
Johnson, Madison,	Peters,	Woods.

So the proposal passed as follows:

Proposal No. 62—Mr. Pierce. To submit an amendment to article I, section 9, of the constitution.—Abolition of capital punishment.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SEC. 9. All persons shall be bailable by sufficient sureties, except those charged with murder in the first degree, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted; nor shall life be taken as a punishment for crime. Until otherwise provided by law, persons convicted of crimes

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heretofore punishable by death shall be punished by imprisonment in the penitentiary during life.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 51—Mr. Miller, of Crawford, is next.

The proposal was read the third time.

Mr. MILLER, of Crawford: I offer an amendment.

The amendment was read as follows:

Strike out the word "fire" in line 10.

Mr. MILLER, of Crawford: In the report from the committee this word "fire" was stricken out, but in re-submitting it and in the substitute offered the word "fire" was left in. We have three or four strong mutual companies in the state that insure against storms and I would like the word "fire" cut out.

The amendment was agreed to.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

After the period at the end of line 13, add the following:

"Laws may be passed to establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident, and other insurance to the citizens of the state."

Mr. STEVENS: I do not desire to say anything further than to state this is what has been known on the floor of the Convention as the state insurance proposal. It gives the lawmaking authority in this state at any time it so desires the power to establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident and other insurance to the citizens of the state. I do not care to discuss it further than that. I think you understand it and I think the subject has been thoroughly discussed.

Mr. WINN: At the time this amendment was offered before I took occasion to call the attention of the Convention to the fact that while Ohio heretofore has been backward as far as the insurance business is concerned, different companies are now being organized in the state, and it will not be many years before Ohio will take front rank in the insurance business, both life and fire. I know of at least four splendid life insurance companies that have just entered upon what promises to be successful business.

Mr. STEVENS: Do you not suppose that those four insurance companies just being organized will do business in exactly the same way that all the rest of them have been doing for twenty-five years?

Mr. WINN: I undertake to say whenever it is known to the people of the state that the legislature of Ohio has authority to go into the insurance business there is not the remotest possibility of the organization of either a life or a fire insurance company in Ohio until that possibility has been removed. I cannot think of anything that is more serious than this amendment. Therefore I move that it be laid on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 61, nays 41, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Matthews,
Antrim,	Halfhill,	Mauck,
Baum,	Harris, Hamilton,	Miller, Crawford,
Beatty, Morrow,	Harter, Stark,	Miller, Fairfield,
Beyer,	Henderson,	Miller, Ottawa,
Brown, Highland,	Holtz,	Partington,
Campbell,	Hoskins,	Peck,
Cody,	Johnson, Madison,	Peters,
Collett,	Johnson, Williams,	Price,
Colton,	Jones,	Redington,
Cordes,	Keohoe,	Roehm,
Crites,	Keller,	Rorick,
Cunningham,	Kerr,	Shaw,
Dunlap,	King,	Smith, Hamilton,
Dwyer,	Kramer,	Solether,
Earnhart,	Longstreth,	Stewart,
Elson,	Ludey,	Stokes,
Farnsworth,	Malin,	Taggart,
Fess,	Marrfott,	Winn,
Fluke,	Marshall,	Wise.
Fox,		

Those who voted in the negative are:

Beatty, Wood,	Harter, Huron,	Rockel,
Cassidy,	Hoffman,	Shaffer,
Crosser,	Hursh,	Smith, Geauga,
Davio,	Kunkel,	Stamm,
Donahay,	Lambert,	Stevens,
Doty,	Leete,	Stilwell,
Dunn,	Leslie,	Tannehill,
Evans,	McClelland,	Tetlow,
Fackler,	Moore,	Thomas,
Farrell,	Okey,	Ulmer,
FitzSimons,	Pettit,	Walker,
Halenkamp,	Pierce,	Watson,
Harbarger,	Read,	Woods.
Harris, Ashtabula,	Riley,	

The roll call was verified.

So the amendment was tabled.

Mr. DUNN: I offer an amendment.

The amendment was read as follows:

Add after line 13 the following: "The state may insure citizens against sickness, invalidism and old age."

Mr. DUNN: Gentlemen: Just a moment. I suppose a great majority of the members of this Convention are fully aware that we are creatures of prejudice. Our surroundings in life affect our views of things. If you have noticed what I have been trying to do in the way of proposals during my service in this Convention you will conclude that it has all been in the direction of the betterment of the poorer class, or common people. If there is any class of persons in Ohio who look up, who are ambitious, and who are trying to climb over difficulties in life's pathway, if there is any man who deserves help, it is the man who loves his family and rushes into debt for the sake of having a home for his wife and children, and if there are any people in the state who deserve sympathy it is the father and mother who are anxious to be able to send their children to college. There are hundreds of such people in Ohio. If you will notice we have been talking of classifying property for taxation and one would think certainly now the poor man is going to have some chance to live, that he is going to have some hope in life's struggle. But it is in favor of the rich man to take the burden from the money of the rich and place the entire burden on the poor. It is not in favor of the poor man at all, and I

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want to say now that there are some people in Ohio that do not want anybody to pay their taxes. It is said on this floor or hinted that there is no man who would not be willing to escape his taxes if he could. I know there is one man who is going to pay his own taxes and pay far more than his own taxes. I have tried in some way or other in different ways to relieve the struggling farmer and home-owner who is in debt. I have tried in some way to relieve him of paying more than his own taxes, and yet I am laughed at and scorned because I say such a thing. Some of my best friends on the floor laugh at the idea of finding any way at all to relieve the man who is in debt of paying taxes on his debts as well as on what he owns. I have tried to get a proposal through for an old-age pension, because the poorer common people have been paying more taxes all along than they ought to and more than the very rich, the dishonest men who are hiding their property and are not paying taxes. The main work of this Convention has been toward the common people. In fact, a graduated income tax—

Mr. PETTIT: I rise to a point of order.

The PRESIDENT: State the point.

Mr. PETTIT: He is not talking to the amendment he offered at all. He is talking on taxation.

The PRESIDENT: Under the limitation of time under which each member speaks the chair does not feel that he should hold any member down too closely to the subject and the member will proceed.

Mr. DUNN: I would rather have the proposal passed for an old-age pension, not as charity, but as giving to the common people something that has been taken from them, and if this Convention looks at this matter right and provides an old-age pension fund, as you have already passed a graded income tax, you would be returning in some degree the money taken from the common people by the very rich and passing it back to where it belongs.

Mr. DWYER: I move the previous question.

The main question was ordered.

The amendment of the delegate from Clermont was lost.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 97, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Earnhart,	Johnson, Williams,
Antrim,	Elson,	Kehoe,
Baum,	Fackler,	Keller,
Beatty, Morrow,	Farnsworth,	Kerr,
Beatty, Wood,	Farrell,	King,
Beyer,	Fess,	Kramer,
Bowdle,	FitzSimons,	Kunkel,
Brown, Highland,	Fluke,	Lambert,
Campbell,	Fox,	Lampson,
Cody,	Hahn,	Leete,
Collett,	Halenkamp,	Leslie,
Colton,	Halfhill,	Longstreth,
Cordes,	Harbarger,	Ludey,
Crites,	Harris, Ashtabula,	Marriott,
Crosser,	Harris, Hamilton,	Marshall,
Cunningham,	Harter, Huron,	Matthews,
Davio,	Harter, Stark,	Mauck,
Donahay,	Hoffman,	McClelland,
Dunlap,	Holtz,	Miller, Crawford,
Dunn,	Hursh,	Miller, Fairfield,
Dwyer,	Johnson, Madison,	Miller, Ottawa,

Okey,
Partington,
Peck,
Peters,
Pettit,
Pierce,
Price,
Read,
Redington,
Riley,
Rockel,
Roehm,

Rorick,
Shaffer,
Shaw,
Smith, Geauga,
Smith, Hamilton,
Solether,
Stamm,
Stevens,
Stewart,
Stilwell,
Stokes,

Taggart,
Tannehill,
Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Watson,
Winn,
Wise,
Woods.

Those who voted in the negative are: Messrs. Doty, Henderson, Hoskins, Moore.

So the proposal passed as follows:

Proposal No. 51—Mr. Miller, of Crawford: To submit an amendment to article VIII, section 6, of the constitution.—Regulating insurance.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VIII.

SEC. 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. Ulmer arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Ulmer voted "aye."

Mr. HOSKINS: I rise to a point of order. As this roll was called I watched and saw that a large number of votes were cast from behind the railing. This has been done on a great many proposals and there is no assurance from the secretary's desk that the votes are votes of the members. I make the point that no member can vote unless he is in his seat or where the secretary and the Convention can see him.

The PRESIDENT: The point of order is well taken. A member must be in sight or his vote will not be received. The only way to vote is by being where the rest of us can see you. The next proposal is Proposal No. 184 and the question is, Shall the report of the committee be agreed to?

The report was agreed to.

The proposal was ordered to be engrossed and read the third time at once.

The PRESIDENT: If there is no objection the proposal will now be read for the third time. The chair hears none.

Proposal No. 184 was read the third time.

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Mr. PECK: It is necessary to amend this proposal somewhat and I offer an amendment.

The amendment was read as follows:

After the period in line 44 insert the following: "Until otherwise provided by law the term of office of such judges shall be six years."

Mr. PECK: That was made necessary by an omission in transcribing the proposal as originally introduced. The amendment was agreed to.

Mr. PECK: I offer another amendment.

The amendment was read as follows:

At the end of section 2, line 34, add the following:

"All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law."

Mr. PECK: It was thought at the time this proposal was voted on before that this matter of pending cases might be provided for in the schedule, but upon consultation with some of the members of the Phraseology committee and some of the members of the Judiciary committee, it was thought best to put it in here to take care of pending cases in the supreme court, because if this amendment should be adopted and nothing is said about those cases it would deprive the court of jurisdiction and the court could do nothing but dismiss them and they ought to proceed to judgment.

The amendment was agreed to.

Mr. JONES: I offer an amendment.

The amendment was read as follows:

In line 55, after the word "appeals," insert: "and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be".

Mr. JONES: The purpose of this amendment is to take care of cases that may be pending in the circuit court at the time of the taking effect of this proposal. The language now is that the pending cases shall proceed to judgment and be determined by the respective courts of appeals subject to the provisions hereof. That would deprive of a trial a party who had a case pending in the circuit court which had been brought there on appeal. He may have tried the case in the common pleas court formally only. Now, when this provision goes into effect cases in the court of appeals can only be heard upon record. They cannot be heard as we have been hearing them. The object of this provision is simply to preserve the present procedure with reference to all cases that may be pending in the circuit court at the time this provision goes into effect, and that all cases coming into the court of appeals after this constitutional provision takes effect will be subject to the provisions of it. I might explain that this language with reference to the supreme court is inserted here so as to provide for a review by some other court of a case that is in the circuit court at the time of the taking effect of this constitutional provision. In a case that was pending to be tried in the circuit court on appeal, unless this provision is made that it might be reviewed in the

supreme court, the party would be deprived of his right of review.

Mr. KING: Is it your understanding that this amendment is to affect any case that will be pending in the court of common pleas at the time of the taking effect of this amendment?

Mr. JONES: No.

Mr. KING: Why should it not? Why should not the cases pending in the court of common pleas when this goes into effect be entitled to the same procedure and trial in the court of appeals that they are entitled to now and when they were commenced?

Mr. JONES: That matter was fully considered and this conclusion was reached in regard to it, that the cases pending in the circuit court at the time this constitutional provision takes effect would clearly be entitled to the same procedure we now have or else the parties would be cut out of their right of review in many cases, but cases in the common pleas court could be tried with reference to this constitutional provision. Parties in trying a case, if it were an appeal case, could try it in the common pleas court in anticipation of the adoption of this judiciary proposal.

The PRESIDENT: The member's time is up.

Mr. MAUCK: I would like to ask the gentleman a question.

The PRESIDENT: The gentleman's time is up.

Mr. MAUCK: Then if I cannot ask a question I will make a statement. It seems to me that parties ought to be protected in cases where they are now entitled to a trial. Suppose they try their case in the court of common pleas, what becomes of it then? The court has rendered its decision, but the time within which they may appeal or have a bill of exceptions signed or file a petition in error has not expired. They can do either or both under the present law, and if this amendment goes into effect where does it leave such cases? Why should they not have the right they now have to retry in the appellate court?

Mr. JONES: Those cases that were tried in the common pleas court that would be error cases in the reviewing court could be prosecuted to the court of appeals just as effectively in the way of securing their rights as they could to the circuit court. They could not be prejudiced. Only equity cases could be tried in the common pleas court, and it was thought that parties with the knowledge that this proposal might be adopted could, without much inconvenience, try those cases so that if it were adopted they could go to the appellate court with a full record and have a review just as they would with cases after that time.

Mr. KING: I think we can take care of that better in Proposal No. 340, for we have made that absolutely general, covering every case in every court.

Mr. JONES: It does not cover these cases.

Mr. KING: "All cases pending in the courts at the time this amendment takes effect shall be heard and tried in the same manner and with the same procedure as now exists by law."

Mr. PECK: If that fixes it, why worry about it here?

Mr. KING: You are taking it away line by line. I do not think it would affect this if this is not adopted.

Mr. ANDERSON: The Convention needs no better evidence of the confusion that would exist provided this

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amendment prevails than the confusion among the gentlemen here discussing it. It will only confuse and not clarify. If anything this Convention has done has received more praise than everything else it has been Proposal No. 184. And it has received more critical examination than any other proposal. There are very few attorneys who have not received copies. I move that the amendment offered by Mr. Jones be tabled.

Mr. JONES: Will you allow me to ask a question? It is suggested that it is taken care of in Proposal No. 340. That is a separate proposal. Suppose Proposal No. 340 does not carry and this does; where will you be? It is absolutely necessary to have this provision adopted as part of the Peck proposal or you leave in very bad condition every case pending in the court of appeals at the time of the adoption.

Mr. ANDERSON: And if you do pass it every pending case, provided it goes to the supreme court and then back again, years from now, will have a different rule of procedure provided the Jones amendment carries than the other cases, provided the Peck proposal carries, which will mean endless confusion. I maintain every case that has been tried in the common pleas court and determined and then goes to the circuit court has gone exactly the same way as if the Peck proposal was a law when tried in the common pleas court and no hardship is entailed at all. All we have in the Peck proposal is one trial and one review and all litigants will get that. I move to table the amendment of Mr. Jones.

The motion to table was lost.

The PRESIDENT: The question is, Shall the amendment of the gentleman from Fayette prevail?

Mr. KRAMER: I want to ask the member from Mahoning a question.

The PRESIDENT: The member from Mahoning has not the floor and his time has expired.

Mr. KRAMER: Take these two circuit courts where they have not been requiring a record be taken. That is the way in our county and circuit. Suppose there is a murder case that has been tried and it has gone to the circuit court on appeal. The people have absolutely no chance at all to have that case even reviewed, because our circuit court has always been allowing us to try the second time or de novo.

The PRESIDENT PRO TEM [Mr. Doty]: That is out of order. The delegate from Highland [Mr. Brown] is not here.

Mr. KRAMER: Under this we would be shut out, because the attorneys have made no effort to prepare the record below for the purpose of having the case reviewed in the circuit court.

The amendment was agreed to.

Mr. HALFHILL: I offer an amendment.

The amendment was read as follows:

After the word "jurisdiction" in line 59 insert: "in the trial of chancery cases, and,".

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: The amendment I offered is for the purpose of giving to the circuit court the right to retry chancery cases that have been heard and determined in the court of common pleas. There was some attempt to present an amendment of that kind at the time this proposal was at the stage of second reading, and at that time it was discussed here or suggested here that in the

larger counties of Cuyahoga and Hamilton the circuit court had for some years past adopted a plan of having these cases which under the law are retriable by introducing the witnesses, heard by these courts by review upon the printed record. This in no way interferes with that arrangement in those counties because they are doing that under a rule of court and are actually usurping the law in that respect, but so far as the client and parties are bound by acquiescing therein, it answers the same purpose. We do the same frequently in other circuits, but that is by agreement of parties, usually made by their counsel.

Now many a time where I have had a client who was financially able to have the testimony printed out as it was heard in the court of common pleas, I have by agreement with the party on the other side, had that testimony extended and presented to the circuit court as a basis for the trial there, but we always had a right to supplement it with oral testimony. We have been used to this right of appeal in chancery cases for a great many years in Ohio. By inserting the amendment I in no way whatever conflict with the principal workings of this proposal as framed, because what I propose by this amendment, is simply a method of review. You are not giving an additional trial. You are giving only the two trials, a review by way of a trial instead of a review by way of printed record, and there is no chance to take that case any further unless it is within the exceptions named in the proposal or unless it is a felony or a case involving a constitutional question, and of course a felony case is not a chancery case. A constitutional question is only occasionally raised in a chancery case, so this does not at all interfere with the proposal as framed. There is no reason why it should be objected to. It was argued by the chairman of the Judiciary committee on second reading that nobody wanted this right of appeal but the lawyers, and "when did the the lawyers ever do anything for the purpose of reforming judicial procedure?" That is a loose and reckless and slanderous statement, doing a great wrong to our profession, because the lawyers have at all times been to the very forefront in the changing and reforming of judicial procedure. Why, David Dudley Field, of New York, framed the code of civil procedure, joined the common law actions and equity procedure into a civil action commenced by filing a "petition", and we followed that plan in 1851 in this state and that is our court procedure in Ohio today, and every bar association, not only of our own state, but of every state in the Union as well as the American Bar Association, as is known to everyone of any observation, has its committees constantly looking after judicial procedure and reforming it.

The amendment was agreed to.

Mr. PECK: I wanted a word before that was put. This is an important matter and I move to reconsider the vote by which that motion was carried.

Mr. WINN: I make the point of order that the member who makes the motion did not vote in favor of the amendment.

The PRESIDENT PRO TEM: The point is not well taken. There was no record vote. No man knows how the Judge voted and nobody has a right to ask him. The question is on reconsidering the vote by which the amendment of the gentleman from Allen was adopted.

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Mr. PECK: I want to be heard and I want to answer the objections of Mr. Halfhill. There has been so much discussion of so many things that probably a good many of the members have forgotten that this matter was all fought out on the second reading of the proposal and fought out at considerable length. The amendment that Mr. Halfhill puts forward was considered and voted down.

This simply gives two trials to one class of cases, and a large class of cases, and it violates the fundamental principle of this proposal, that a man shall have one trial and one review. It puts in a large class of exceptions to that principle. If this amendment prevails those cases will have two trials, one in the common pleas court and one in the court of appeals, and will have no review.

Mr. HALFHILL: Does it not go simply to the method of review? We review it by a trial.

Mr. PECK: It goes to the method and you ought to leave it alone. My method is as good as yours. The review now would be just the same sort of review that every man who has any sort of a case at law has, and there is no earthly reason why that review is not as good as any other. It is now resorted to in nearly all sorts of cases. They nearly all review on the record taken by the shorthand writer. It has become a very rare thing that the circuit court hears any oral testimony in many of the circuits of the state; so the amendment ought not to prevail. It merely weakens the proposition and is a step backwards. It introduces two trials and no review instead of one trial and a review in a large class of cases.

Mr. BROWN, of Highland: On the contrary, I think this amendment ought to pass.

Mr. PECK: Well, what do you know about it?

Mr. BROWN, of Highland: A good deal; and that is the trouble with the lawyers, that they think laymen do not know anything about anything connected with the law and that the lawyer knows everything. The fact is what the lawyer knows is partisan knowledge. The fact that I have been dubbed "a de novo" brings to my mind that in the second reading I tried to get this thing in by advocating an amendment giving a right to trial de novo on the ground that a party might not have secured a proper trial in the court below or that the court below was probably unjust by reason of certain influences, and further, on the ground that witnesses may have testified that were credible and witnesses may have testified that were not credible, and that fact could not be known except by actual contact and analysis of the individuals who testified; that the upper court, if the case were submitted on the record, would be utterly unable to give proper consideration to it; that it would probably give to discredited witnesses as much credit as accredited witnesses and that would result in injustice.

Mr. CROSSER: There are several reasons why I would like to see the amendment adopted. This is not proposing any more trials than the present proposition because it simply provides a different means of having the second trial. If the proposal is adopted as it stands at the present time there are innumerable persons who will never be able to go to the court of appeals simply because they are not able to buy the record. A record

costs anywhere from thirty or forty to several hundred dollars, according to the length of time the case takes to be tried. That is one reason why the amendment should be adopted. It will help the poor man and it will let him have a chance to have a retrial as well as the man who can pay for the record.

Another reason is that the upper court has an opportunity to see the witnesses, watch their behavior and determine how much credence should be placed in the statements of any particular witness in the case on trial, an opportunity it cannot have by the plain old printed record. I think for these two reasons the proposition should be passed.

Mr. KING: I do not think the question of whether we shall allow appeals of trials in the appellate court of cases that have been once tried in the common pleas court is of such great importance that those who believe in that method of procedure should undertake to force it into this proposal so as to destroy the whole proposal. I believe it will have that effect. At least it will contribute largely to it. Personally, having had experience at both ends of the game, both in trying cases and hearing them tried, I have no prejudice one way or the other, but my contention has always been that one trial was enough. I know that the legal profession of Ohio generally, outside perhaps of the larger cities, are wedded to the theory of a trial on appeal, and the only objection that has been urged to me to this proposal has been the objection of the lawyers because the right to try their cases upon an appeal has been taken away. But do not let anybody make the mistake that the lawyers of Ohio, if they make up their minds on this question, have no influence. They will call in their clients and explain the proposition and get them to vote against it. I think there are more important things in the proposal than the question of whether you try a case on appeal, and therefore I am in favor of leaving the appeals where they stand right now. Let the court of appeals enforce them and let the trial be by new witnesses where the court wants them. Therefore I hope that the vote by which this amendment was carried will not be reconsidered.

Mr. JONES: Since we are by this proposed amendment establishing the court of appeals as the court of last resort in practically all of the cases, would it not be an anomaly to have a court of last resort a trial court? Did you ever hear anywhere in any jurisdiction in this country of a court of last resort being a trial court in any sort of a case except one of original jurisdiction?

Mr. KING: It is not usual, but we are doing some things differently here from what they are doing them in other states. This whole proposal is based upon a different proposition than you will find in force in most of the states of the Union, but I am for the main feature of it and I believe it should be adopted. It will benefit the legal procedure in this state, and I would not hazard the success of that by taking out of it the right to appeal which the people enjoyed. That is too small a thing to be talked about a moment.

Mr. PETTIT: I am heartily in favor of the amendment offered by Mr. Halfhill for reasons I have given heretofore, but which I will repeat briefly. It does not take any longer time under this amendment to try a case on appeal than it will on error. I do not want the laymen of the Convention to forget that proposition. It

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has been discussed by the gentleman from Hamilton that it will consume more time and will cost more. I do not assent to that. I say it will cost less. What is the transcript worth telling what a man testified to? One man's testimony on paper looks as well as another's, although it may be all perjured, and when the judges come to charge the jury with reference to the testimony they hear they say, "Look at the witnesses, scrutinize their conduct and behavior and see whether they know what they are testifying about." I say that is all in the interest of the people. There was a howl before that only the lawyers were in favor of this. That is a base slander.

Mr. BOWDLE: I am opposed to the amendment and I am in favor of the proposal as it stands. It is a mistake to suppose that it is of very great value in the administration of justice for courts to look into the faces of witnesses. In the first place about half of the witnesses who get on the stand are accomplished liars, and the more accomplished liars they are the more impressive is their testimony. It would be a fine thing in all trials if all testimony were taken down in advance and carefully reduced to typewriting and presented to the judges. I am opposed to seeing the witnesses generally, and one thing that is particularly offensive to me is for courts to have the ability to easily see whether the lawyer before them is a democrat or a republican.

In the administration of justice in Athens in the court of the Areopagus, the Athenians held court in outer darkness so that the judges could not see the witnesses or the lawyers, and when people went to hold court they carried a lantern and their night clothes. I believe one trial is quite sufficient and I believe it would be a mistake to have two trials.

Mr. OKEY: I am in favor of the Peck proposal and also in favor of the amendment offered by the gentleman from Allen county [Mr. HALFHILL]. When this proposition was before us a few weeks ago I discovered that a great many men voted under a misapprehension of what this proposal means. The amendment that was offered by the gentleman from Allen does not injure in the least degree the Peck proposal, but it only strengthens it. I realize that a man frequently views legal procedure from the custom that prevails in his time, but I tell you when you are taking away from the rights of the people of this country the right to appeal you are doing something that we ought not to do. Sometimes we want a retrial and we have a right to bring the witnesses before the appellate court. It sometimes happens that a man is not able to procure the record to go up, and if he is compelled to have the record and is not permitted to use witnesses he cannot go up. Therefore I hope that the members of this Convention will see the object that we have in view and the sole object of giving the right to the people to appeal. I would like to appeal a case when I want to, and it will not only be less costly, but it will give the right we want the people to enjoy and will not impair the proposition in the least.

Mr. HOSKINS: Just a word on this subject. It has not been made evident here and for the benefit of those who do not practice law I hope you will understand what is meant by a chancery case. We will have, if this amendment prevails, the right to appeal a chancery case to the appellate court where there has been no trial by

jury and where you have no right of trial by jury. In hundreds of cases we are compelled to try the cases before the common pleas judges, who are the sole judges of facts. All judges are not perfect. Justice can be arrived at only approximately at the best, and we are compelled to try cases in a local community where there may be political or personal prejudice. That does not cut much figure where you submit to twelve men, but in a chancery case you submit to only one man. Now, under the proposal as it stands, you must pay the expenses of the record to take that up in printed or typewritten form to the appellate court. I will state for the benefit of the laymen that that is more expensive than the right to take your witnesses before the court of appeals and have your witnesses heard originally, a right we have enjoyed for sixty years. You are not increasing the number of hearings or the cost. You are decreasing the cost, making litigation more simple and arriving nearer at justice, because you can hear your case before these three men and they are not subject to the prejudice which the single man may be subject to who hears the case in the court below. Now we have had that right for sixty years. There has not been any complaint about that right. It is the dragging of the cases along that makes the complaint, but when you realize you have not increased the cost, but have preserved to the litigant a right he has enjoyed for sixty years, the right of having an appeal to the upper court, where he must submit his controversy in the common pleas court to a single man—the judge—we ask you, gentlemen, to give us this right of appeal and nothing short of this will meet the demands of the people.

Mr. HURSH: You remember that Mr. Halfhill in the original argument said that it was charged that lawyers did not—

Mr. HOSKINS: I cannot have you taking up my time.

Mr. HURSH:—generally properly prepare the case on the first trial?

Mr. HOSKINS: I don't think that happens. You could not provide against that anyhow. That has nothing to do with the case.

Mr. NYE: Mr. President and Gentlemen of the Convention: It seems to me that the nearer you can get the courts to the people the more satisfactory your courts are to the people. I am therefore in favor of the amendment proposed by the gentleman from Allen, because if the litigants and their witnesses can go before the circuit court and can be heard by the circuit court they get nearer to the court and the court is nearer to the people than it would be if they tried the cases in any other way. I do not believe that you can do anything for this proposal that would make it more popular with the people and get more votes for it than to adopt this amendment proposed by the gentleman from Allen. I have just come from the people and I have talked with the people and with the attorneys about this amendment and about this very proposal. They are in favor of having this appeal where you can try the case originally and have the court hear the witnesses testify. The gentleman from Hamilton [Mr. BOWDLE] said that he believes that witnesses generally are liars. From my experience on the bench for ten years I do not concur in that opinion. I believe generally that witnesses are honest and as a

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general thing are seeking to get at the truth, and I know of no better way in which they can get at the truth than to hear the witnesses and see them face to face. I am therefore in favor of the amendment.

Mr. JONES: Gentlemen of the Convention: It seems strange that in so short a time since the second reading of this proposal and its passage there could be such an apparent change of sentiment. The main purpose and object of this judiciary proposal is to facilitate the administration of justice and make it possible to cheapen it. Therefore the slogan has been adopted, one trial and one review. No lawyer, I think, if he would consider for a moment, would say that any case should be finally tried without an opportunity for a review. That is a thing we have had in English jurisprudence for hundreds and hundreds of years, and there has been no jurisdiction that has adopted the plan of finally disposing of cases without an opportunity for review. There is good reason for that, because in reviewing cases, with the whole record before the court, the court can sift out and determine the questions of law involved and arrive at a correct solution of the facts better than in the hurry of a trial with witnesses before it. Here is a trial in the common pleas court of two or three weeks, and for the purpose of facilitating these cases through the courts you say that you are going to have a repetition of that three weeks' trial in the court of appeals and call all the witnesses back again and have them say the same things over again which they have once said and which in ninety-nine cases out of a hundred has been reduced to typewriting. We do not any longer try cases without having them reported. All the evidence is taken, and for the purposes of the second trial, as we now have it, the second trial is merely a review of the case on the evidence taken in the court below. Now, if we do not want to thwart the purpose of this proposal—and I at first had some prejudice against it, but upon further reflection have taken a different view—if we want to accomplish the main purpose of this proposal, we should facilitate the prompt disposition of the case, so that if a litigant has a controversy with his neighbor he can have the one good trial and the one good review and get through with the matter in a year.

Mr. WINN: Gentlemen: I quite agree with the member from Fayette that where one good trial has been obtained litigants and counsel should be satisfied, but my objection to this proposal and my reasons for favoring the proposed amendment are that sometimes, yes, many times, litigants are deprived of one good trial. I have in mind a judge who declined to vacate the bench when affidavits of prejudice were filed against him under the provisions of the statute. He persisted in sitting on the bench and deciding the cases when the parties objected to him because of his alleged prejudice.

Mr. PECK: Under this proposal you could go into the supreme court and get a writ of prohibition against him.

Mr. WINN: And yet there was no method by which that judge could be removed. Now suppose a litigant has a case of that sort and brings it before a judge where he knows the judge is biased or prejudiced. What is he to do? Must he submit his case whether or no? Some one says that is all we have in a jury case, but that is not so. In a jury case we examine every juror

and want to know in advance whether or not he has prejudged the case, whether he has any opinion upon it and whether he has any bias or prejudice, but we never examine the judges, who are just common men, who sit here and hear testimony as jurors do, and who are influenced by the same considerations that influence jurors. Judges are men after all, and so it is that in many cases a good trial is not obtained. Now it will not hurry litigation to an end to provide for this trial and review as is this proposal. The member from Erie [Mr. KING] said when the subject was under debate that after a long term of experience on the bench he found to meet the witnesses face to face hurried the business rather than retarded it. Lately I had a trial in Northwestern Ohio and there were just thirty-one hundred pages of typewritten record. It cost a little more than \$600 to obtain a transcript of the record for the purpose of review in the circuit court. The one who was defeated below and who finally succeeded upon review of the case was totally unable to pay any part of that. That is not an unusual occurrence. In that instance one whose rights should have prevailed and that did finally prevail, because others came to her assistance, was then unable to pay the cost of the transcript. Now that happens many times. I have known a good many cases in which litigants were unable to pay the expenses of the transcript, and so the business may be hurried along if the appeal and retrial are allowed, and besides all that it does give litigants at least one good trial.

Now I am not surprised that there are a good many that have changed their opinions, because the member from Fayette told me just before he told you that when this debate opened he was of the same opinion that I am, but he changed his mind upon the subject, and it is not surprising, therefore, that others changed their minds.

It has been urged that this in no wise injures this proposition. I said when this final vote was taken that thus far there was but one proposition to which I could not give my hearty support and that was this one. It was because I believed that the litigants of this state had been deprived of their most valuable right, the right of one fair and impartial trial. That appeal will not be asked in many cases. It is only when counsel for parties believe that the client has not been given one fair trial that he will ask by appeal a retrial upon the evidence. Otherwise he will be satisfied with the ordinary review that prevails.

Mr. FACKLER: I notice that all the speeches that have been made upon this amendment have been made by those who previously were of the same opinion which they expressed here, and I noticed from page 4 of the journal of April 10 that the men who were opposed to this proposition at that time have spoken in opposition to it today and those who at that time spoke in favor of it are still in favor of it. I do not believe that the Convention can gain anything by a further rehash, and I move the previous question on the motion to reconsider and on the amendment. I demand the yeas and nays on that question.

The PRESIDENT: The question is, Shall the vote be reconsidered by which the amendment was carried? The yeas and nays are demanded.

Mr. HOSKINS: May I make a statement? We

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have the matter mixed around here and we would like to have the chair straighten it out.

The PRESIDENT: An amendment offered by the gentleman from Allen was carried. The member from Hamilton moved to reconsider that action. That is the question now before the Convention. The yeas and nays have been demanded and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 38, nays 59, as follows:

Those who voted in the affirmative are:

Baum,	Harter, Huron,	Rochm,
Bowdle,	Hoffman,	Shaffer,
Colton,	Hursh,	Smith, Geauga,
Davio,	Johnson, Williams,	Smith, Hamilton,
Doty,	Jones,	Stevens,
Dwyer,	Kunkel,	Stewart,
Fackler,	Lambert,	Stilwell,
Farnsworth,	Leete,	Taggart,
Farrell,	Leslie,	Tetlow,
Fess,	McClelland,	Thomas,
Hahn,	Miller, Fairfield,	Woods,
Halenkamp,	Peck,	Mr. President.
Harbarger,	Riley,	

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Nye,
Beatty, Morrow,	Harter, Stark,	Okey,
Beatty, Wood,	Holtz,	Partington,
Beyer,	Hoskins,	Peters,
Brattain,	Johnson, Madison,	Pettit,
Brown, Highland,	Kehoe,	Pierce,
Campbell,	Kerr,	Price,
Collett,	King,	Read,
Crites,	Kramer,	Redington,
Crosser,	Lampson,	Rockel,
Cunningham,	Longstreth,	Shaw,
Donahey,	Ludey,	Stamm,
Dunlap,	Malin,	Stokes,
Earnhart,	Marriott,	Tannehill,
Elson,	Marshall,	Ulmer,
Evans,	Matthews,	Walker,
Fluke,	Mauck,	Watson,
Fox,	Miller, Crawford,	Winn,
Halfhill,	Moore,	Wise.
Harris, Ashtabula,	Norris,	

So the motion to reconsider was lost.

Mr. MAUCK: I offer an amendment.

The amendment was read as follows:

In line 74 strike out the words "and courts of appeals".

Mr. MAUCK: The purpose of this is to prevent the requiring of the courts of appeals to report all of their cases. Something like eighteen hundred to two thousand cases are disposed of by the circuit courts of Ohio each year. A publication of all those opinions would result in a needless multiplication of useless books. There are no reporters for those courts. There is no way provided by law for their publication and the publication depends solely upon private enterprise. I doubt whether anyone engaged in the book publishing business cares to get out all of these opinions, and therefore I suggest that that be stricken out. I entertain grave doubt whether the Constitutional Convention ought to require the supreme court to publish all of its opinions, but any one familiar with the circuit court practice knows that a large part of the business in the circuit courts goes to review and with it the testimony of the lower court. It would be absolutely nonsensical to require that the judgment of all the circuit courts be published.

The amendment was agreed to.

Mr. MAUCK: I offer another amendment.

The amendment was read as follows:

At the end of section 2 add:

"No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court."

Mr. MAUCK: The supreme court has very little original jurisdiction. It is fair to assume that the purpose in giving the supreme court this original jurisdiction was for the benefit of the litigant and not for the benefit of the court. The supreme court has been laboring with congested dockets and for a number of years has required anyone seeking to invade the jurisdiction to first get the consent of the court to file his appeal. The result has been in quo warranto and mandamus and other cases in which original jurisdiction has been invoked, the court has required suitors to go to the circuit court. One result has been that in many cases brought by the attorney general he has been required to go to the circuit court of Franklin county. This has, therefore, added largely to the work of this circuit, and after all it has not put on the supreme court any considerable amount of work because cases of that kind generally wind up in the court of final resort. We have taken from the supreme court one-half or more of all its jurisdiction when we have secured a ratification of the Peck proposal, and that being so there is no longer any reason why the supreme court cannot exercise the jurisdiction conferred upon it by this amendment to the constitution.

The amendment was agreed to.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

Strike out all after the period in line 73 and all of line 74 and insert:

"All decisions of the supreme court and courts of appeals, declarative of principles not previously adjudicated by the supreme court, shall be fully reported."

Mr. STEVENS: If you will notice after the period in line 73 is the matter concerning the reported cases, and the language in the proposal is that the decisions in all cases in the supreme court and courts of appeals shall be reported. It will be easily seen that the multiplication of reports is going to reach tremendous figures. There will be no end to it. All that is necessary is to have the decision in the cases announcing new principles of law properly adjudicated and reported and that is what this amendment seeks to do. Whenever the court of appeals announces a principle that has not been previously adjudicated by the higher court it will be the duty of the court to have that case reported. I think the amendment explains itself.

Mr. PECK: Are you not aware that an amendment striking out the courts of appeals has been adopted so that we now do not have to deal with that?

Mr. STEVENS: Yes.

Mr. PECK: Now who is going to determine about this?

Mr. STEVENS: The judges themselves.

Mr. PECK: How many cases are there in which there

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are a great many questions in which some principles, some principles new, some partially new and some old, are mixed up?

Mr. STEVENS: I would rather miss an occasional new principle than to have my office filled with books that contained nothing but chaff. This refers only to new principles.

Mr. LAMPSON: Would it not be simply the application in a somewhat different way of an old principle?

Mr. STEVENS: Substantially that. This has constitutional sanction and it has been the practice in the supreme court of avoiding repetition of principles adopted from time to time.

Mr. PECK: That is what the supreme courts say they have been doing.

The amendment was lost.

On motion the Convention here recessed until seven o'clock this evening.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

The PRESIDENT: The question is on the adoption of Proposal No. 184.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

In line 9 after the word "of" insert "a chief justice and".

At the end of the proposal add the following:

"The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court."

Mr. TAGGART: Mr. President and Gentlemen of the Convention: At the time of the second reading of this proposal I voted against the proposal, but I am satisfied that this proposal in some form will carry at the approaching election. It is my desire that it be as efficient as it is possible to make it, and therefore I have presented the amendments just read from the desk. I presented them to the chairman of the Judiciary committee and I beg leave now to state my reasons for these amendments. The proposal as passed and as it will be adopted by the people creates at least eight courts of last resort. There is no union between those eight courts. Each court is independent and separate from every other court. There is no means of communication between the two. Under the present system of the circuit courts of the state the circuit courts meet in the fall of the year and elect a chief justice. He has supervisory power over the judges of the courts of the circuit, but he has no power to enforce any of his orders. He may assign a judge from Cleveland to Hamilton county, but if that judge does not see fit to go the chief justice has no power to make him go.

Now the amendment I suggest at the end of this is making the supervisory powers over the courts of appeals vest in the chief justice of the state. He then can supervise and direct the judges of the various courts to

hold courts in any county of the state, and this will be effective and will add efficiency to the court. I know from experience that there are certain judges of circuit courts that have refused and declined to leave their own circuits even with the admonition and direction of the chief justice of the court. It is not desirable that the chief justice be elected from the courts of appeals. He should be a chief justice outside of the courts of appeals, so that a power that could be enforced would be vested in some other person. That being true, the efficiency of your court will be increased. Therefore you must have a chief justice. The chief justice now is simply a legislative office. It ought to be a constitutional office so as to conform to the provisions of this proposal. In addition to that the proposal introduced by the gentleman from Allen county provided that the chief justice of the supreme court shall supervise the judges of the courts of common pleas. Therefore it is only reasonable and rational that he would supervise the judges of the courts of appeals as well, and having this all under control he can bring these courts in direct connection with and bring them close to the people and have them under his control. In order that this chief justice should have this control he should be a constitutional officer and he should be a member of the supreme court, supervising the business of the court and of the courts of appeals and of the common pleas courts, and therefore the other amendment that I suggest is that there should be a chief justice and six judges which will constitute the supreme court. I know that this will add efficiency to this proposal. I know it will be to the great advantage of jurisprudence in this state. I am sure the tendency would be, instead of having eight courts in a state, one court deciding a matter one way and another court deciding it another way, that the chief justice by circulating these judges would bring about uniformity in jurisprudence, which is a great and desirable result to be accomplished.

Mr. PECK: I agree to this motion to amend. I have no objection to it. This matter of a chief justice has been under consideration for a long time and has been adopted and rejected by the committee two or three times. There is a great difference of opinion about it, but finally, due to the conservative feeling perhaps, it would be better to leave the court just as it is. But I have always felt that a chief justice is very desirable and I concur in the motion.

The amendment was agreed to.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Change the period in line 74 to a comma and add: "and laws may be passed providing for the reporting of cases in the courts of appeals."

Mr. KNIGHT: This afternoon the Convention adopted an amendment offered by the delegate from Gallia [Mr. MAUCK] striking out the words "and courts of appeals" in line 74 where it was made mandatory that all cases in the courts of appeals should be reported. However, with the adoption of that amendment, it leaves the constitution this way, that no laws, no matter how many may be adopted by the lawmaking power of the state, can force the courts of appeals to report any case because the courts have uniformly held that the

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question of the matter of reporting cases was entirely within the control of the judiciary department. This amendment now offered simply makes it clear that, on such terms and conditions as may seem wise to the lawmaking power, laws may be enacted for the reporting of cases, which is different from making it mandatory that all cases shall be reported. It seems to me unwise to leave it to the courts of appeals to decide whether they will report any case, and it seems to me that the lawmaking body should have the right to make provisions.

Mr. DOTY: I demand the previous question on the whole proposal.

The main question was ordered.

The amendment of the delegate from Franklin [Mr. KNIGHT] was agreed to.

The PRESIDENT: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 97, nays 5, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Okey,
Antrim,	Harris, Ashtabula,	Peck,
Baum,	Harris, Hamilton,	Peters,
Beatty, Morrow,	Harter, Huron,	Pettit,
Beatty, Wood,	Henderson,	Pierce,
Beyer,	Hoffman,	Price,
Bowdle,	Holtz,	Read,
Brown, Highland,	Hoskins,	Riley,
Campbell,	Hursh,	Rockel,
Cassidy,	Johnson, Madison,	Roehm,
Cody,	Jones,	Rorick,
Collett,	Kehoe,	Shaffer,
Colton,	Keller,	Shaw,
Cordes,	Kerr,	Smith, Geauga,
Crites,	King,	Smith, Hamilton,
Crosser,	Knight,	Solther,
Cunningham,	Kramer,	Stamm,
Davio,	Kunkel,	Stewart,
Donahay,	Lambert,	Stilwell,
Doty,	Lampson,	Stokes,
Dunlap,	Leete,	Taggart,
Dunn,	Longstreth,	Tannehill,
Dwyer,	Ludey,	Tetlow,
Elson,	Malin,	Thomas,
Farnsworth,	Marshall,	Ulmer,
Farrell,	Matthews,	Wagner,
Fess,	Mauck,	Walker,
FitzSimons,	McClelland,	Watson,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Halfhill,		

Those who voted in the negative are: Evans, Johnson, of Williams, Nye, Partington, Stevens.

So the proposal passed as follows:

Proposal No. 184—Mr. Peck, to submit an amendment to article IV, sections 1, 2 and 6, of the constitution.—Change in judicial system.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE IV.

SEC. 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and

such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in case of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties

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thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof, and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualifi-

cation of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. Knight arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Knight voted "aye."

Mr. Nye arose to a question of privilege, and asked that his name be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Nye voted "aye."

Mr. COLTON: Since Proposal No. 184 was considerably changed by amendment, I move that the usual number be printed.

The motion was carried.

The PRESIDENT: The next business is Proposal No. 322—Mr. Bowdle, which the secretary will read.

The proposal was read the third time.

Mr. BOWDLE: This matter was thoroughly discussed the other day. There was a good deal of debate and I am not inclined to add anything to what has been said. I was apprised, however, that the gentleman from Auglaize [Mr. HOSKINS] had asked questions in my absence as to what reason there was for this proposal. The answer is this, that the supreme court of Michigan has passed upon an effort of the legislature of Michigan to control medical expert testimony. The legislature of the state of Michigan attempted to do just what we are now empowering the legislature to do, and the supreme court of Michigan said it was unconstitutional under a constitution precisely like ours in Ohio. The difficulty seemed to be, at least as detected by the supreme court of Michigan, that any effort of the legislature of the state to do the thing that we are now seeking to empower the legislature to do, amounted to the creation of a new order of witnesses. To make that clear to those who have not studied law and whose minds have not, therefore, become narrowed as the gentleman from Highland implies our minds have become, let me say just a word. In a trial, especially a criminal trial, the state offers its witnesses and in offering its witnesses it vouches for those witnesses, that they are worthy of belief, that they are credible men. When the accused comes on with his testimony he vouches for his witnesses, that they are worthy of belief by the jury. Now, a law of the legislature of Michigan sought to create a board of experts, allowing the court to appoint experts to testify in such cases, and the supreme court held that such a law as that brings into being a special order of witnesses that is not vouched for by the state, because the state does not offer the testimony, nor by the accused, because the accused does not offer the testimony, but it brings into being a class of witnesses vouched for by the court or the judge, and the supreme court of Michigan said that is absolutely contrary to the common law, the Declaration of Independence, the constitution of the United States, Washington's Farewell Address to the Army, Plymouth Rock, Liberty Bell and all the other things that we are bound by. It is, therefore, necessary for us, if we are going to stop the scandal of high priced expert witnesses paid for by the state in given cases, to free the hands of the legislature and allow the legislature to pass just such an excellent act as the legislature at-

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tempted to pass in the state of Michigan. Of course, even in the state of Michigan there was no effort on the part of the legislature to prevent the accused from bringing on such expert testimony as he cared to bring on, but the act accomplished this good at least, that it allowed the twelve jurors the satisfaction of hearing men who had been appointed by the court and who were unbiased, men who had no interest in the money of either side, and allowed the satisfaction to the jury of hearing men who have no interest in the case other than to tell the truth.

Mr. ANDERSON: Would it not clarify this case to say where the accused had a number of experts and the state had a number and the jury could not decide, that the court might appoint a certain number to clarify the situation?

Mr. BOWDLE: Very well stated, and that is the reason for this proposal. Without further discussion I am willing to leave to the Convention this proposal. It is an effort to get ahead in the administration of the criminal law.

Mr. BROWN, of Highland: I move to amend Proposal No. 322 as follows:

In line 6 strike out the word "criminal" and insert the word "all."

Mr. BROWN, of Highland: No one realizes the necessity of the control of expert witnesses more than I do. I have had considerable experience with experts in criminal cases and I wish to confess that in criminal cases or any other cases the expert witness is hired to pettifog the case just like a lawyer, and if we allow them to testify freely in criminal cases and allow both sides to have the unrestrained use of experts where there is both a civil and a criminal case growing out of the same matter we would have a different kind of testimony in each of the two cases. I think if we allow them in one case we ought to allow them in all.

Mr. ANDERSON: The lawyers that Dr. Brown mentioned must have been the kind of lawyers he read law with. But let me direct your attention to this amendment to the amendment. Let us see the situation. Say there is a question of who signed a note or check for a good many thousand dollars. If Mr. Bowdle will permit me I will try to give an example. Say Mr. Bowdle is notified by the bank that a certain note is due for several thousand dollars. Mr. Bowdle claims he didn't sign the note. What is the question to be decided? Whether or not that is his signature. Now the court under Dr. Brown's amendment could appoint two experts on handwriting, the testimony of those experts would be conclusive and those two experts would end the case one way or the other. I am only using this as an illustration of what could be done in civil cases, and many cases where experts are used in civil cases will come to your mind. We threshed this amendment out and it was overwhelmingly defeated. It seems to me extremely dangerous to have this rule prevail in civil cases, and therefore I move that the Brown amendment be tabled.

The motion to table was carried.

Mr. HOSKINS: Just a word on this proposition and to follow up the argument of the gentleman from Mahoning on the amendment to eliminate this from

civil cases on which you just voted and for which I voted. I wanted to vote to eliminate the entire matter from the constitution. I do not think it is a constitutional matter. Suppose Mr. Bowdle is charged with forgery. Are you going to allow the court to appoint two experts to say whether or not that is his signature on the note? The main argument of the gentleman from Mahoning would apply in a criminal case as in a civil case. I raised this question the other day in the absence of the proponent of this proposal for the reason I did not see any necessity for the adoption of a matter of this kind. It doesn't do anything except to authorize the legislature to pass legislation of a certain character which I am thoroughly convinced there is nothing in the constitution now to prevent them from doing, and it seems to me that it is a proposition that is not necessary to be brought up to the people.

Mr. DWYER: I believe as the gentleman from Auglaize [Mr. HOSKINS] suggests, that the law is ample to authorize the court to appoint experts in all matters, whether civil or criminal. I know during my term on the bench I had experts in many cases, especially on one where a man was accused of poisoning his wife. He was tried for murder in the first degree and the embalming fluid in which she was embalmed contained some of the same poison he was accused of having administered to her. I had some of the very best experts in Ohio in that case. I remember I had Dr. Reed, of Cincinnati, one of the most prominent men in the whole state. These witnesses were called. We recognized our power to call them as experts to testify in the case and they did testify, and no one said that we didn't have the power. I think the court has the power and can exercise it whenever it desires.

Mr. BOWDLE: It cannot be that Judge Dwyer wants the Convention to understand that a court today in Ohio in a criminal case where the defense is insanity can call experts and foist those experts with their testimony upon the accused and upon the jury. There is no such power. Gentlemen, the great defect in our administration of justice in the matter of crime is that the court seems to have lost control of the cases. The great thing in English jurisprudence, especially as relating to the criminal side of it, is that the courts have control of the cases. You never hear of any scandals surrounding the introduction of expert testimony in a criminal case in England, and the reason is that the courts have just the control over experts that we seek to give the courts here through the process that I have suggested.

Mr. DWYER: Do you claim the courts have not the power under the present law to call experts in all cases that they desire to?

Mr. BOWDLE: I never heard of such a thing in the state of Ohio or any other American commonwealth. The only effort made to do that was in Michigan and Oklahoma and the courts declared it unconstitutional. Neither party, plaintiff nor defendant, in Ohio or elsewhere, has power to exclude such witnesses as a party thinks beneficial, and a party cannot have foisted on him a class of witnesses that he does not vouch for. I am absolutely certain under our present constitution that cannot be done.

Mr. DWYER: I have done it and I have seen it done in other courts.

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Mr. BOWDLE: But were not those witnesses called by the prosecuting attorney?

Mr. DWYER: Certainly.

Mr. BOWDLE: Exactly so, and that is the distinction. I desire the Convention to bear in mind that I would call them for the defense, just as well for the defense as for the prosecution, and as far as insanity is concerned, anybody is an expert in insanity. I can now call here anybody as an expert on insanity.

Mr. HARTER, of Huron: Does this preclude the plaintiff from calling expert testimony?

Mr. BOWDLE: No, sir; it does not preclude anything of that sort. It does not commit the legislature to any scheme of things. This is just the permission to the legislature to take up this matter and investigate it and pass some sort of reasonable provision.

Mr. HALFHILL: Was it your idea that a law might be passed whereby a corps of expert witnesses might be brought into being and they could arrange as to these matters?

Mr. BOWDLE: That is somewhat my idea, but that is not wrapped up in the words used. This power we give the legislature does not commit us or them to any kind of process. They may adopt the Michigan scheme, and the Michigan scheme did not preclude the parties from introducing such expert testimony as they might desire.

Mr. LAMPSON: Would this proposal of yours lead to putting it into the hands of the court to determine who these expert witnesses for the defendant should be?

Mr. BOWDLE: It might lead to that. It would lead to the court appointing some expert, but that would not be to the exclusion of those that the defendant wished. In case he was not satisfied with such experts he might call those that he deemed proper. And I might say that this proposition is framed because of the original demand in the medical literature of the country and the demand from medical societies of all sorts for just such a provision.

Mr. PECK: Is that an unusual practice?

Mr. BOWDLE: Yes.

Mr. WINN: Before we recessed for dinner, in the discussion of some case you said that half, or more of the witnesses who appeared in the trials are liars. Are you of the opinion that that term will apply to experts, especially medical experts?

Mr. BOWDLE: I say the ordinary medical expert purchased by a fat pocketbook is not worthy of belief, and I want to cross-examine him with great care before I accept him as a witness at all. He is a special pleader seated in the witness box.

Mr. HALFHILL: I believe that this proposal before us is absolutely unnecessary under the present constitution. I have not heard any argument advanced here at all that could not be met by a law which would be perfectly competent to be passed under the existing constitution; that is to say, the legislature prescribes all rules of evidence so far as competency of evidence is concerned. The legislature now says on this great question of reputation and on the question of whom shall testify in a suit against the administrator and the situation is such that the legislature can define rules as they apply to expert witnesses or expert testimony in criminal trials

or anywhere else. I maintain if it is the intention, as I heard it by the proponent to a question put to him, to create a board which will pass upon the questions of fact, that that would plainly be contravention of many other provisions of the constitution, because the jury passes upon the questions of fact, and if you are going to create a board which is suggested here you usurp the province of the jury. Now it is true that expert witnesses testify to certain conclusions and to a certain extent each expert tells what his opinion is, and the reasons for his opinion. I submit that all of the argument that has been advanced here for the necessity of this thing falls under existing power.

Mr. ANDERSON: Is not this the fact, that as the constitution now stands in any criminal case the accused can call any witness he pleases and the prosecuting attorney may do the same? Do you mean to say that under our constitution the court or any one else can say to this, that or the other person, "You can be a witness in this case?"

Mr. HALFHILL: I do not understand that is the duty of the court.

Mr. ANDERSON: The prosecuting attorney calls any witness he pleases and the state pays?

Mr. HALFHILL: Yes.

Mr. ANDERSON: The accused can call anyone as an expert that he chooses?

Mr. HALFHILL: Yes.

Mr. ANDERSON: Under the present constitution the court as such can not appoint any person to testify?

Mr. HALFHILL: And the court ought not to have authority to appoint a board, and I understand that the proponent says certain eminent medical gentlemen have suggested that. I know that is true. It has been suggested by the American Medical Association that there ought to be a board appointed for the purpose of shutting off the employment of expert witnesses, and when you create that board for the purpose of shutting off the employment of expert witnesses then you have created something extra constitutional, over and above and beyond the jury, and you are piling on the jury, which is bound to decide upon the evidence, evidence of a creative board, and that is in direct conflict with other provisions of the constitution.

Mr. PECK: You don't find anything of that kind here.

Mr. HALFHILL: I find that in the argument for the defense.

Mr. PECK: I am speaking of the language of the proposal.

Mr. HALFHILL: Now another question, and I want to preface it by a statement. As I understand it the practice in England is very reasonable. If a party wants an expert witness in either a civil or a criminal case he applies to the court. He says, "I would like to have two or three doctors"—or experts on penmanship, or this, that or the other thing—"and I would like to have the court designate the persons who will testify on the matter." The court makes the order designating an expert or experts, and they are called on by the party. Is not that good practice? It furnishes experts who are not under suspicion all of the time of being tampered with by the party calling them. Would you contend for a mo-

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ment that that power does not exist and that the legislature could not provide for it now?

Mr. PECK: I rather think they could.

Mr. HALFHILL: Do you not admit that they could do it?

Mr. PECK: We passed a proposal the other day which provides that laws may be passed prescribing the rules and regulations for the conduct of business, and I think under that the legislature might act.

Mr. HALFHILL: I think we have ample power to do this under the existing constitution. That is why I object to this.

Mr. STAMM: In the Richeson case did the governor or the court appoint experts?

Mr. HALFHILL: I am unable to answer that question because, notwithstanding the declaration that I am a criminal lawyer, I do not know much about it in this state or in any other state.

Mr. STAMM: Under the present constitution can an expert be examined in insanity cases that is appointed by the court?

Mr. HALFHILL: My contention is that the legislature under existing circumstances has a perfect right to prescribe such a rule and if such a rule is not in existence the power is here to create it.

Mr. STAMM: Is it done in Ohio?

Mr. HALFHILL: It has been by some courts.

Mr. STAMM: Has there not been a demand for years by the medical profession to have it done, and isn't it a fact that the legislature hasn't done it?

Mr. HALFHILL: I do not know whether the legislature has done it or not.

Mr. STAMM: For fifteen years the medical profession has fought for this and no attention has been paid to them.

Mr. HALFHILL: Certainly there is not any rule laid down in the proposal to meet the suggestion you make.

Mr. STAMM: Could it not be put in the constitution so that every one will know it can and ought to be done?

Mr. NORRIS: What has the medical profession to do with it?

Mr. HALFHILL: Of course, the medical profession has nothing to do with the trial of a criminal case, any more than they would be called as expert witnesses, and while they may have their own ideas how they would like to be called or upon whose part, I do not know that it would assist the medical profession. I understand that they recently tried to get a national board of health, very much to the disgust of the Christian Science people.

Mr. CASSIDY: I demand the previous question.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 74, nays 32, as follows:

Those who voted in the affirmative are:

Anderson,	Bowdle,	Cordes,
Antrim,	Brown, Highland,	Crosser,
Baum,	Cassidy,	Davio,
Beatty, Wood,	Cody,	Donahey,
Beyer,	Colton,	Doty,

Dunlap,	Jones,	Riley,
Dunn,	Kehoe,	Roehm,
Dwyer,	King,	Rorick,
Elson,	Kunkel,	Shaffer,
Farnsworth,	Lambert,	Shaw,
Farrell,	Leete,	Smith, Geauga,
Fess,	Leslie,	Smith, Hamilton,
FitzSimons,	Ludey,	Solether,
Fox,	Marshall,	Stamm,
Hahn,	Mauck,	Stilwell,
Halenkamp,	McClelland,	Stokes,
Harbarger,	Miller, Crawford,	Tannehill,
Harris, Ashtabula,	Miller, Fairfield,	Tetlow,
Harris, Hamilton,	Miller, Ottawa,	Thomas,
Harter, Huron,	Moore,	Ulmer,
Harter, Stark,	Peck,	Watson,
Henderson,	Peters,	Winn,
Hoffman,	Pettit,	Woods,
Hursh,	Read,	Mr. President.
Johnson, Williams,	Redington,	

Those who voted in the negative are:

Beatty, Morrow,	Johnson, Madison,	Partington,
Brattain,	Kerr,	Pierce,
Campbell,	Knight,	Price,
Collett,	Kramer,	Rockel,
Crites,	Lampson,	Stevens,
Cunningham,	Malin,	Stewart,
Evans,	Marriott,	Taggart,
Fluke,	Matthews,	Wagner,
Halfhill,	Norris,	Walker,
Holtz,	Nye,	Wise.
Hoskins,	Okey,	

So the proposal passed as follows:

Proposal No. 322—Mr. Bowdle. To submit an amendment by adding section 39 to article II, of the constitution.—Regulating expert testimony in criminal trials.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

The PRESIDENT; Proposal No. 64, Mr. Miller, of Fairfield, is next.

The proposal was read the third time.

Mr. MILLER, of Fairfield: I do not think it is necessary for me to go into any extended argument for the passage of this proposal. I believe that with this body of men in this day, when conservation congresses are being held at the call of the president and with the assistance of the governors, and when it is considered that this proposal reaches to all corners of the state of Ohio and appeals to every man who builds a home and to every man who burns electric lights or who has to supply food in the future, no argument is needed to convince them of the necessity of adopting this proposal. We have no right to waste our natural resources and thereby deprive the people of the future of that which belongs to them. I have an amendment to offer and I understand that there will be one or two others. I leave this with you and hope you will see the necessity for its passage.

Mr. LEETE: I offer an amendment.

The amendment was read as follows:

Conservation of Natural Resources.

In line 10 after the word "including" insert: "streams, lakes, submerged and swamp lands and".

And in line 11, after the second "of", insert: "drainage and".

And in line 13, strike out the words "all minerals" and insert in lieu thereof the words "coal, oil, gas and all other minerals."

Mr. LEETE: Mr. President and Members of the Convention: I think these amendments are necessary. These are the same words that were stricken from the original proposal as it was originally written. After consulting with a number of the best attorneys here I find it is their unanimous opinion that the words "streams, lakes, submerged and swamp lands" should be inserted after the word "inclusive". Further, in line 11, after the second "of," insert "drainage and". In line 13 strike out the words "all minerals" and insert in lieu thereof the words "coal, oil, gas and other minerals."

In the proposal, as we have it here, it reads "Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempt in whole or in part from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including the development and regulation of water power and the formation of conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing all minerals." This amendment in line ten would change the reading as follows: "Also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, and the development and regulation of water power and the formation of drainage and conservation districts." That will, beyond question, give the power to the state to control the drainage problems of the state, especially swamp districts where several counties are involved. There the state can control and govern the drainage system. Furthermore, the last amendment is made necessary by the passing of the Worthington amendment, Proposal No. 170. I believe in section 9 authority is conferred for the enactment of laws providing for excise and franchise taxes and for the imposition of taxes on the production of coal, oil, gas and other minerals. So it is necessary for this proposal to have the same language. I hope this amendment will pass and I think it strengthens the proposal very much.

The amendment was agreed to.

Mr. BEYER: I offer an amendment.

The amendment was read as follows:

In line 9 after the word "purpose" insert "by the state or counties".

Mr. BEYER: When we had this proposal before us on second reading we were trying to go too fast. We were in too much of a hurry. We granted the right to the state to have the poor worn-out land planted into forest reserves as state reservations, but we did not

give the counties the right to do so. Now I read from the official report of the department of agriculture about some of our counties. Adams county, for instance, has 6,110 acres of worn-out land and 20,000 acres of waste land. Gallia has 10,000 acres of worn-out land and 20,000 acres of waste land. Hocking has 14,000 acres of worn-out land and 20,000 acres of waste land.

Mr. HARRIS, of Ashtabula: What are you reading from?

Mr. BEYER: From a report of the department of agriculture of the state of Ohio.

Mr. LAMPSON: Do you not think this would result in a conflict as to forestry between the states and the counties, giving to both the state and the counties power to do the same thing?

Mr. BEYER: I understand the state has the paramount authority, but if the state does not do it then the counties can.

Mr. LAMPSON: You propose to amend it so as to give both the state and the counties a right which will necessarily result in a conflict of authority.

Mr. BEYER: No, sir; but if the state does not take hold of this matter and any county does want to take hold of it, it seems to me that the county should have the right. Indeed, I think the county should have the first right.

Mr. LAMPSON: But suppose the state wants to control the whole system. We are providing a system of conservation to be under the control of the state, and under your amendment you would make it possible for a system of conservation under the control of each county.

Mr. BEYER: I understand that it can be done, but the county should have the right. If the state will replant the land and maintain it forty years, the state will get the timber, sell it and distribute the money for the benefit of the whole state, and the rich counties would have the benefit and the poor counties would have to pay taxes all through the forty years and get nothing from their lands. This is done in other states. The state of New York has a provision in this direction and the state of Pennsylvania has such a law. I have the figures and reports here from Harrisburg and they show that they have fine young forests planted by counties.

Mr. LAMPSON: Are the counties allowed to do that over there?

Mr. BEYER: Yes.

Mr. LAMPSON: Independent of the state?

Mr. BEYER: The county has the first right over there and then the state.

Mr. ANDERSON: Your idea is wherever a county wants to go into the timber-raising business, it as a unit could do so?

Mr. BEYER: Yes.

Mr. ANDERSON: Entirely independent of the state or any other counties?

Mr. BEYER: Yes.

Mr. ANDERSON: Is it not true that the best lands for this purpose are the poorest lands and the counties would have to tax themselves to go into the business?

Mr. BEYER: Yes.

Mr. LAMPSON: The poorest county would be the least able to tax itself?

Mr. BEYER: Yes.

Conservation of Natural Resources—Contempt Proceedings and Injunctions.

Mr. LAMPSON: Wouldn't that put the burden on them?

Mr. BEYER: Yes; but there would be an income from it finally.

Mr. LAMPSON: Yes, in the third generation.

Mr. BEYER: It could not do any harm that I see.

Mr. LAMPSON: Would it not cause an extra burden to be upon the poorest counties of the state and the counties least able to expend a large amount of money?

Mr. BEYER: They are not forced to do it. They only have the right. If they don't want to do it the state can do it, but we should not take the right from the counties. We should not make them give their land to the state and get nothing themselves. I hope the majority will consider this question and pass it.

Mr. HARBARGER: I move that this amendment be laid upon the table.

The motion was carried.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 109, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Norris,
Antrim,	Harbarger,	Nye,
Baum,	Harris, Ashtabula,	Okey,
Beatty, Morrow,	Harris, Hamilton,	Partington,
Beatty, Wood,	Harter, Huron,	Peck,
Beyer,	Harter, Stark,	Peters,
Bowdle,	Henderson,	Pettit,
Brattain,	Hoffman,	Pierce,
Brown, Highland,	Holtz,	Price,
Brown, Lucas,	Hoskins,	Read,
Brown, Pike,	Hursh,	Redington,
Campbell,	Johnson, Madison,	Riley,
Cassidy,	Johnson, Williams,	Rockel,
Cody,	Jones,	Roehm,
Collett,	Kehoe,	Rorick,
Colton,	Keller,	Shaffer,
Cordes,	Kerr,	Shaw,
Crites,	King,	Smith, Geauga,
Crosser,	Knight,	Smith, Hamilton,
Cunningham,	Kramer,	Solether,
Davio,	Kunkel,	Stamm,
Donahey,	Lambert,	Stevens,
Doty,	Lampson,	Stewart,
Dunlap,	Leete,	Stilwell,
Dunn,	Leslie,	Stokes,
Dwyer,	Longstreth,	Taggart,
Elson,	Ludey,	Tannehill,
Evans,	Malin,	Tetlow,
Fackler,	Marriott,	Thomas,
Farnsworth,	Marshall,	Ulmer,
Farrell,	Matthews,	Wagner,
Fess,	McClelland,	Walker,
FitzSimons,	Miller, Crawford,	Watson,
Fluke,	Miller, Fairfield,	Winn,
Fox,	Miller, Ottawa,	Wise,
Hahn,	Moore,	Mr. President.
Halenkamp,		

Mr. Woods voted in the negative.

So the proposal passed as follows:

Proposal No. 64—Mr. Miller, of Fairfield. To submit an amendment by adding section 36 to article II, of the constitution.—Conservation of natural resources.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

The proposal was referred to the committee on Arrangement and Phraseology.

Proposal No. 134—Mr. Halenkamp, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 94, nays 9, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Henderson,	Pettit,
Beyer,	Hoffman,	Pierce,
Bowdle,	Hoskins,	Price,
Brown, Higland,	Hursh,	Read,
Cassidy,	Johnson, Madison,	Redington,
Cody,	Johnson, Williams,	Riley,
Colton,	Jones,	Rockel,
Cordes,	Kehoe,	Roehm,
Crosser,	Keller,	Rorick,
Davio,	Kerr,	Shaffer,
Donahey,	King,	Shaw,
Doty,	Knight,	Smith, Geauga,
Dunlap,	Kunkel,	Smith, Hamilton,
Dunn,	Lambert,	Solether,
Dwyer,	Lampson,	Stevens,
Earnhart,	Leete,	Stewart,
Elson,	Leslie,	Stilwell,
Evans,	Longstreth,	Stokes,
Fackler,	Ludey,	Tannehill,
Farnsworth,	Malin,	Tetlow,
Farrell,	Marshall,	Thomas,
Fess,	Matthews,	Ulmer,
FitzSimons,	Mauck,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Okey,	Woods,
Harbarger,	Partington,	Mr. President.
Harris, Hamilton,		

Those who voted in the negative are:

Brattain,	Cunningham,	McClelland,
Brown, Pike,	Kramer,	Norris,
Collett,	Marriott,	Nye.

So the proposal passed as follows:

Proposal No. 134—Mr. Halenkamp. To submit an amendment by adding section 21 to article IV, of the constitution.—Contempt proceedings and injunctions.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the

Contempt Proceedings and Injunctions—Abolishing Prison Contract Labor.

constitution shall be submitted to the electors to read as follows:

ARTICLE IV.

SEC. 21. Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating proceedings in contempt, and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in such controversies shall, upon demand, be granted a trial by jury as in criminal cases.

The PRESIDENT: The next is Proposal No. 34, by Mr. Thomas.

The proposal was read the third time.

Mr. STILWELL: I offer an amendment.

The amendment was read as follows:

In line 17 change the period to a semi-colon and add the words: "and the products of such labor disposed of to the state or any political subdivision thereof owned or managed and controlled by the state or any political subdivision thereof shall not be marked 'prison made.'"

Mr. STILWELL: Just a word of explanation. It was not the intention of the framers of this proposal that in the interchange of the products of prison labor between the several state institutions the products should be marked "prison made," and this simply eliminates that objectionable feature.

Mr. ELSON: I am not quite sure that I understand you. Do you mean it would eliminate these from the products of the reformatory?

Mr. STILWELL: It eliminates the marking of the goods "prison-made" when there is an interchange between the institutions of the state.

Mr. ELSON: You mean where goods are made, in one public institution and are sent to another institution for use?

Mr. STILWELL: Yes.

Mr. KNIGHT: I do not like the wording "to the state or any political subdivision thereof". Would it not be better to have it any public institution, or is it broad enough to cover a specific case like that which confronted the institution with which I happened to be connected two years ago? The printing of all the bulletins and catalogues for the State University was the matter involved. I think two years ago that was intended to be done at the Mansfield Reformatory, and of course there was a contract between the trustees of one institution, namely, the State University, and the trustees and board of managers of the other state institution, the Mansfield Reformatory, by which they printed these bulletins and furnished all the material and did all the work on state account, but the State University and its board of trustees paid for the matter. Now, the practical question is this: Is this proposal, even with this amendment, such that it is certain that if the lawmaking power of this state should reenact such a law in the future it is

clear that the catalogues and bulletins, amounting into thousands of dollars each year, that are sent to the young men and women seeking admission to the university or inquiring about it—and the same would be true with reference to the institution with which the gentleman from Athens is connected—is it clear that this proposal with this amendment would not require all of those catalogues sent out to those people wanting to enter college to be marked "prison made" on the cover? If there is any doubt about that I do not think any proposal should be adopted that will make it mandatory to put such words as that on literature sent out from the colleges. Here this proposal says "no institution owned or controlled by the state or any political subdivision thereof"—I would prefer to have inserted after the word "thereof" "or to any public institution owned, managed or controlled by the state or any political subdivision thereof."

Mr. STILWELL: That is perfectly agreeable.

Mr. KNIGHT: It was an oversight on my part that I did not call attention to that before.

The PRESIDENT: Is this an amendment or a substitute.

Mr. STILWELL: A substitute, but I accept it.

The amendment of Mr. Stilwell with this amendment was then read as follows:

In line 17 change the period to a semi-colon and add the words: "and the products of such labor disposed of to the state or any political subdivision thereof or to any public institution owned or managed and controlled by the state or any political subdivision thereof shall not be marked 'prison made.'"

The amendment was agreed to.

Mr. McCLELLAND: I offer an amendment.

The amendment was read as follows:

In line 10 strike out the word "sold" and the comma following it.

Mr. McCLELLAND: I want to call attention to the title of this proposal, "Abolishing prison contract labor." It not only does that, however, but a good deal more. That will prohibit the state selling any prison-made goods in the state outside of selling them to other state institutions or the different subdivisions thereof. The state cannot sell it in the open market no matter what surplus may be made or what the laws may be otherwise. You will notice if this were a law and had such a title and such contents, every court in the state would pronounce it unconstitutional and this Convention cannot afford to go before the voters of the state with a title which is so utterly misleading in regard to this proposal. The title specifies that it is to abolish contract prison labor. We are all in favor of that—every one of us. No one will object to abolishing contract prison labor, but if the state in the manufacture of certain goods should overstock, this absolutely prohibits that overstock of goods being sold in the open market under any consideration whatever.

Then the next sentence is "contracted". So that it simply on the face of it seems to be out of harmony with that just given "and goods made by persons under sen-

Abolishing Prison Contract Labor.

tence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same is conspicuously marked "prison made." That is placed there, no doubt, to avoid having this declared unconstitutional, under the interstate commerce provision of the United States constitution, but if this word "sold" were stricken out very little advantage would result in the manufacture in our penal institutions and it would avoid that seeming conflict as well as avoid the difficulty which results in the penal institutions from occasional overstocking of goods. It would avoid the construction which would be necessarily placed on that succeeding sentence which any court or lawyer would say is an attempt to dodge the interstate commerce provisions of the United States constitution. Therefore, it seems to me desirous, in the interest of the proposal and in the interest of our people and of the structure of the proposal, that that word "sold" after the comma should be stricken out.

Mr. THOMAS: The whole object of the proposal would be destroyed if this amendment were agreed to. The object of this proposal is to abolish contract prison labor and protect the citizens and workers of the state against the competition of prison labor in the open market. The amount sold in the state is not one-tenth—probably far less than that—of one per cent of the goods that are manufactured in the state, but the fact is where contract prison labor is used it is used in one or two lines of business and drives from those lines of business everybody else in the state. New York has had this in its constitution since 1894 and has worked it out to the entire satisfaction of that state. The prisoners are worked for state use, supplying other state institutions, and the thing has worked out admirably and to the satisfaction of everybody and we want the same thing to be put in vogue here. I move that the amendment be laid upon the table.

The motion was carried.

Mr. FESS: I was absent when this was discussed on second reading and I would like to have an interpretation of one line. It seems to me that it is in contravention of the constitution of the United States. Suppose goods were made in Elmira, New York, in the reformatory there. Do we say that they cannot be sold in this state? I do not think we have any authority to do that.

Mr. THOMAS: Under the present status of United States law we would not have the right here to say that, but a bill has passed the national house of representatives prescribing that any convict-made goods that are being sent from one state to another shall be subject to the laws of that state. I have a letter from the chairman of the National Consumers League which states that he expects the bill to pass in the near future, and if that bill passes this provision in our constitution will become applicable.

Mr. KNIGHT: Then the constitutionality of this clause depends upon whether there is an act of congress?

Mr. THOMAS: Yes.

Mr. KNIGHT: Unless congress enacts that law this is not constitutional, and if congress afterwards repeals that law our provision will become unconstitutional?

Mr. THOMAS: It hardly goes that far.

Mr. KNIGHT: One other question: It was stated a moment ago by the gentleman from Cuyahoga [Mr.

THOMAS] that this was substantially the provision of the New York constitution. Is there anything in the New York constitution touching the subject of labeling goods "prison made"?

Mr. THOMAS: No, but there is in the New York law.

Mr. KNIGHT: Then that is not derived from the New York constitution?

Mr. THOMAS: No.

Mr. COLTON: There is no class of proposals against which I dislike to cast my vote more than the proposals introduced by the labor delegates. I concede to them earnestness of purpose in doing that which they think is best for the working men. With that I am in hearty sympathy, but I was compelled to vote against this proposal on its other reading and I shall vote against it again. It appears to accomplish two things:

1. It forbids the use of contract prison labor.
2. It avoids the competition of convict labor by providing that the goods must be branded "prison made."

I agree with the gentleman from Athens that the value resulting from all this is too small to be made the subject of constitutional enactment. There are twelve hundred thousand voters and in the penal institutions there are two thousand, so that there is about one man in six hundred working in the penal institutions of the state. I submit that the product of one in six hundred is too small a matter to be taken care of by a constitutional amendment.

Mr. THOMAS: Suppose these six hundred were engaged in one industry?

Mr. COLTON: While the supposition is not true I still say the same thing. There is no use of having a big stick to kill a flea.

Mr. THOMAS: Well, suppose you had been trying for twenty years to kill the flea?

Mr. COLTON: We have a law prohibiting convict labor. A constitutional provision is no more forcible than that?

Mr. KRAMER: I would like to vote for this, but I am afraid of the first part of the proposal as against the latter part. The first part absolutely forbids the sale and then the second part comes along and says that nothing herein shall be construed to prevent the passage of laws providing for the sale of goods to the state or any political subdivision thereof. I can readily see if this constitutional provision is adopted that the inmates of the penal institutions will be absolutely forbidden from engaging in any industry. That is what is bothering me. It says "unless laws are passed."

Mr. THOMAS: The laws are on the books now.

Mr. KRAMER: There is another thing that bothers me. In Richland county we have the finest shale in the state of Ohio and we have eight or nine hundred men that ought to be engaged in making brick for the purpose of making good roads. I cannot see how that can be done. They cannot be sold. If they cannot be farmed out and if they cannot be contracted how can the reformatory at Mansfield make bricks and give them to any contractor or sell them to any contractor or contract with any contractor for the use of those bricks? If I could see any way under this provision for the good roads system to go forward I would support it. Does

Abolishing Prison Contract Labor—Double Liability of Bank Stockholders and Inspection of Private Banks.

the state of New York make good roads with their prisoners?

Mr. THOMAS: They use them in manufacturing school desks.

Mr. KRAMER: Can they make good roads?

Mr. THOMAS: Yes.

Mr. KRAMER: Do they?

Mr. THOMAS: They do to a certain extent.

Mr. KRAMER: Well, here is a gentleman who says he knows they do not.

Mr. THOMAS: This provision is word for word as in the constitution of New York with the exception of the marking, "prison made".

Mr. KRAMER: Well, what I can't understand is that they have a provision absolutely forbidding the sale or the giving away in the first part and then in the latter part it says it shall not be construed to prevent the passage of laws allowing that.

Mr. KING: Did you read that exactly right?

Mr. KRAMER: It says in the tenth line "or the product or profit of his work, shall be sold, farmed out," etc.

Mr. KING: The prohibition is on the working, not on the goods.

Mr. KRAMER: If a man cannot work at making bricks, that is what I object to. It says positively here it shall not be sold.

Mr. KING: You cannot find that in the provision.

Mr. KRAMER: Let us read it:

No person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry, or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory, either within or without the state of Ohio, shall not be sold within this state unless the same are conspicuously marked "prison made".

Mr. LEETE: I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas, 71, nays 33, as follows:

Those who voted in the affirmative are:

Anderson,	FitzSimons,	Leete,
Beatty, Wood,	Hahn,	Leslie,
Beyer,	Halenkamp,	Longstreth,
Bowdle,	Halfhill,	Malin,
Brown, Highland,	Harbarger,	Marshall,
Cody,	Harris, Hamilton,	Matthews,
Cordes,	Harter, Huron,	Miller, Crawford,
Crosser,	Harter, Stark,	Moore,
Davio,	Henderson,	Okey,
Donahay,	Hoffman,	Peck,
Doty,	Hursh,	Pierce,
Dunlap,	Johnson, Madison,	Price,
Dunn,	Jones,	Read,
Dwyer,	Keller,	Redington,
Earnhart,	Kerr,	Riley,
Fackler,	King,	Rockel,
Farnsworth,	Kunkel,	Roehm,
Farrell,	Lambert,	Shaffer,
Fess,	Lampson,	Smith, Hamilton,

Stamm,
Stevens,
Stewart,
Stilwell,
Stokes,

Tannehill,
Tetlow,
Thomas,
Ulmer,
Watson,

Winn,
Wise,
Woods,
Mr. President.

Those who voted in the negative are:

Antrim,
Beatty, Morrow,
Brattain,
Brown, Pike,
Campbell,
Collett,
Colton,
Crites,
Cunningham,
Elson,
Fluke,

Fox,
Harris, Ashtabula,
Holtz,
Johnson, Williams,
Kehoe,
Knight,
Kramer,
Ludey,
Marriott,
Mauck,
Miller, Ottawa,

Norris,
Nye,
Partington,
Peters,
Pettit,
Shaw,
Smith, Geauga,
Solether,
Taggart,
Wagner,
Walker,

So the proposal passed as follows:

Proposal No. 34.—Mr. Thomas. To submit an amendment by adding section 41 to article II, of the constitution.—Abolishing prison contract labor.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory shall be required or allowed while under sentence thereto to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same are conspicuously marked "prison made". Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political subdivision thereof; and the products of such labor disposed of to the state or any political subdivision thereof, or to any public institution owned or managed and controlled by the state or any political subdivision thereof shall not be marked "prison made".

The proposal was referred to the committee on Arrangement and Phraseology.

Proposal No. 93—Mr. Earnhart, was read the third time.

Mr. MILLER, of Crawford: I offer an amendment. The amendment was read as follows:

Strike out all of the proposal after the word "first" where the same occurs in line 16 and insert in lieu thereof the following:

Double Liability of Bank Stockholders and Inspection of Private Banks.

"and thereafter in each year at the times provided by law for reports from state banks, submit to the superintendent of banks and banking a sworn statement in detail showing that they have a paid in and unimpaired capital of at least \$10,000.00, and that they are worth in the aggregate, above all liabilities, not less than \$50,000.00, in addition to the \$10,000.00 paid in capital. And the superintendent of banks and banking is authorized to make the necessary examinations for the purpose of verifying the correctness of such statements, and if found incorrect he may cause the business of the parties so offending to be discontinued."

Mr. MILLER, of Crawford: I think this is a very proper amendment. Many of the strong, safe private banks in the state are doing just exactly what this amendment provides for. These banks have adopted certain rules and maintain certain policies and this would not inconvenience any private banks at all, but only afford means whereby the state will prevent irresponsible persons from going into the banking business. Now with this proposal and the other provisions of the law by which we provide for supervision by the state banking department, it seems to me that we have not only protected the depositors, but the good banks of the state as well, and my interest is entirely in the state banks. I do not want to impose impossibilities on the state banks and I hope this amendment will prevail.

Mr. LAMPSON: I am unable to understand by what authority the state can proceed to inspect private business. The United States never makes rules for an inspection of private banks. It would be an infringement upon their constitutional right. I think that we have as much right to say that a dry-goods merchant should not use the term "dry-goods store" and place it over his place of business unless he at first submitted to certain inspection as to say that a man engaged in the private banking business must submit to an inspection before he uses the word "bank" or "banking institution." I think we are undertaking to do something that we have no authority to do if we attempt to pass this amendment. If we keep on, after a while the individual will have no rights at all. I offer an amendment.

The amendment was read as follows:

In line 12 after the word "shares" strike out the remainder of line 12 and all of lines 13 to 17 inclusive."

Mr. LAMPSON: That strikes out all after the period in line 12.

Mr. ELSON: I fully agree with Mr. Miller that there is no disposition on the part of the Convention to annoy the private banks. It is true that many private bankers are perfectly honorable and responsible men and there is no intention to annoy them, but the idea is to get at the business of the private banks. In answer to Mr. Lampson I would say that there is a great deal of difference between a private bank and a dry-goods merchant. The private banker calls upon the people for deposits of their money. Why should such a thing be permitted unless there is some sort of notice taken of it by the state? We do not permit the medi-

cine vender under the pure-food act to sell what he pleases and make whatever claims he chooses as to the effect of taking his medicine. I believe the individual ought to be protected by this examination. Under our present laws no examination whatever can be had of the private banks and if the people are foolish enough to put their money in them they run the risk of losing. I believe they should be protected and that every institution of that sort ought to be under state supervision. I am perfectly willing for my part to accept the amendment of the gentleman from Crawford, but as to the amendment of Mr. Lampson I hope it will be voted down and the other amendment adopted.

Mr. LAMPSON: Do you not know that under the amendment offered by the delegate from Crawford [Mr. MILLER] a private banker would have to have a larger capital than is now required by a national bank? There would necessarily have to be \$60,000, whereas any five men can organize a national bank with \$25,000 capital.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

At the end of the amendment add: "provided, however, laws may be passed to further regulate private banks or the use of the words "bank", "banker", or "banking".

Mr. WOODS: Gentlemen of the Convention: I only want to say a few words. I have talked about this since it first came up. I have no interest in this except what I think is best for the people.

We have three kinds of banks:

National banks, organized under the laws of the United States.

State banks, organized under the laws of the state. Those banks are subject to inspection and regulation of national and state officers.

Private banks.

Now, I do not believe that I need to argue to these one hundred and nineteen men that we should regulate and protect the public as against persons that hold themselves out and ask the public to leave their money with them. I do not care who goes into that sort of business, in my judgment they should be subject to the laws of the state regulating that business. We protect the public in so doing. I do not believe that half the people of the state of Ohio ever stopped to think or know that there is a difference in banking between state banks and private banks. For instance, I think it is perfectly ridiculous that the state of Ohio in the year 1912 should allow me when I may not be worth two cents to have an office on a main street and a sign up "Farmer's Bank" or "Woods' Bank" or any other person's name similarly fixed, and thus try to get the people to come in and leave their money. I think that is all wrong. All I want is to have these banks subject to state regulation, and I think this Convention ought to do it. I know the private bankers don't want it, but nobody wants his own business regulated. It is like paying taxes—let the other fellow do it. I believe we should do something here. I believe we ought to say in this constitution that the general assembly shall have the right to regulate this matter. Now, if the bank is right, it is not afraid of regulation. I do not want to hurt

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any private banker, but if somebody is doing a private banking business and is not good, I do want to hurt him. We all want to hurt that sort of a fellow and under the laws now it is a great question. We tried to do it in the general assembly when we passed a state bank inspection bill. We tried to figure out some way that we could regulate private banks. We came to the conclusion that we did not have a right to do it without authority in the constitution. Now when I put this amendment in this proposal the other time the amendment didn't go far. It does not put out of business any private banker, but simply says if he wants to use the word "bank" or "banker" he must submit to an inspection and regulation. If they don't want to submit to an inspection and regulation they can keep on doing the banking business, but they can not use those words. That amendment didn't go as far as it ought to go to protect the people. I have been up against this proposition in a legislative body before. I was here once before when we tried to take care of those private bankers in a small way, and we could not touch that proposition without stirring up a hornets' nest, and when this went in we did stir up a hornets' nest and the private bankers are asking that it be taken out. I do not like the amendment of the gentleman from Crawford because there are things in it that ought not to be in the constitution. If you are going to adopt Mr. Miller's amendment you ought to adopt the amendment I sent up to the desk, which simply provides that the general assembly may further regulate bankers or anybody else using the word "bank" or "bankers." That cannot hurt anything. Do you think that the general assembly of the state of Ohio is going to put private banks out of business? The state banks simply stood up and hallooed when we passed the Thomas bank inspection bill. You would have thought we were going to put out of business all of the state banks. Yet it was a good thing for them as well as for the people of the state, and the private bankers, after they got to working under the regulation, found out it was a good thing for them. I would not for a minute stand on this floor and ask you to put the private banks out of business, because I know there are as many private bankers as there are state and national bankers, and I say anybody who is advertising himself to the world as a banker ought to submit himself to regulation and examination, and I insist that the general assembly should have the right to pass laws for inspection and regulation.

Mr. KING: I want to ask Mr. Woods if the last two lines of the proposal as reported back are not substantially what he has in his amendment?

Mr. WOODS: Yes.

Mr. KING: Then in the interest of phraseology, if the Miller amendment is voted down, it would be in better shape, would it not?

Mr. LAMPSON: Does the gentleman not know that in a great many country places, back ten miles or more from the cities, there are merchants who do a little banking business for the accommodation of the community and who would be put out of business by this?

Mr. WOODS: They would not be put out under this amendment.

Mr. KNIGHT: I would like to speak for a moment

to the amendment of the gentleman from Crawford [Mr. MILLER].

In the first place, it makes a constitutional officer of the superintendent of banking. He is now purely a legislative officer, absolutely unknown to the constitution, and yet it proposes to insert him in the constitution, and, therefore, the legislature could not abolish the office of the superintendent of banks. Then it puts private concerns out of the right to use the word "banker" and also from the right to do business. All the original proposal undertook to do was to forbid the use of the word "bank" or "banker," and this amendment forbids the carrying on of any business like a banking business. Not only forbids the use of the name, but stops the business. This is pure legislation.

Mr. HARTER, of Stark: Would that not apply to Mr. Wood's amendment as well?

Mr. KNIGHT: I think that the purpose of both the proposal and amendment can be accomplished by striking out one word from the present proposal instead of adding anything, and that would be to strike out the word "first" in line 16. Doing that accomplishes in principle everything which is undertaken by both the amendments of the gentleman from Crawford and the gentleman, from Medina, because it provides then that they cannot use the term "bank" or "banker" unless they shall submit to an inspection and examination and regulation as is now or may be hereafter provided by law. The only thing it does not do is to provide the minimum capital stock or the minimum of reserve, and it seems to me it accomplishes all that is undertaken by this much larger number of words and that it is preferable. If it is in order I move that both the pending amendments be tabled.

Mr. LAMPSON: I desire a yea and nay vote on my amendment.

Mr. KNIGHT: I move that the amendment of the gentleman from Medina and that of the gentleman from Crawford be laid upon the table.

Mr. MILLER, of Crawford: Before that motion is made may I make a statement?

The PRESIDENT: It is not in order except by unanimous consent.

By unanimous consent the gentleman was allowed to make a statement.

Mr. MILLER, of Crawford: This amendment is what the private banks of Ohio have asked.

Mr. WINN: Where do you get that information?

Mr. MILLER, of Crawford: From their organization.

Mr. WINN: Where do you get your information?

Mr. MILLER, of Crawford: From the private bankers in the Convention and they have handed this amendment to me.

Mr. WINN: Who handed you the amendment? Was it Mr. Jones, a member of the Convention?

Mr. MILLER, of Crawford: Mr. Harter was one. Under the proposal in the book the small banks cannot make the loans that they are required to make and they have asked for this amendment to be substituted for the one in the book.

The motion to table the amendments offered by the delegate from Medina and the delegate from Crawford was carried.

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Mr. LAMPSON: Now I demand the yeas and nays upon my amendment.

Mr. ANDERSON: Before that I want to ask Mr. Lampson a question. If your amendment carries will it permit any private banks using the word "bank" to go without inspection?

Mr. LAMPSON: Yes. It leaves the proposal as originally reported by the committee, simply making a double liability against the bank.

Mr. ANDERSON: I want to give an example to the Convention of what happened in Youngstown since this Convention has been in session. The highest-priced property in Youngstown is along Federal street, where the property is worth \$5,000 to \$6,000 a foot. The Commercial National Bank, which did business in a building for years and years, moved out to other quarters. A firm or a few men came in there and put up the word "bank." Hundreds and hundreds of our citizens deposited their money in that place because it was centrally located and a big building and well advertised and because it had the word "bank." What was the result? They lost every penny. These people would not have put their money in there but for the word "bank." Now we passed the blue-sky proposal and why? To protect the citizens of Ohio against buying stocks that were worthless, and yet now, apparently, you refuse to protect the people against depositing their money in a bank that is worthless—the same kind of advertisement, the same thing on the window, and people hunting a bank to put their money in where it will be kept safely. It is a poor man who deposits his money. The rich man invests his money and he knows where to put it.

Mr. LAMPSON: Do you not think it would increase the credit of that bank to have it reported that it was investigated and that the state certified to its soundness?

Mr. ANDERSON: I do not know whether the state would certify to its soundness or not. If that is true of a bank of this description it is doubly true of every other kind of bank.

Mr. LAMPSON: What authority has the state to be giving a certificate of soundness to a private banker unincorporated?

Mr. ANDERSON: What right had we to protect the people against buying worthless stock as we did in the blue-sky proposal?

Mr. LAMPSON: I say you increase the danger by giving a certificate of soundness to the kind of bank you are describing.

Mr. ANDERSON: The point I am making is this: that a place without inspection and without reasonable regulation and without laws passed by the legislature to protect depositors, has no right to use the word "bank." I apprehend that those people who deposit their money in a place of that kind will not know whether it has been inspected by the state or not, but will deposit because the word "bank" is on the window, and if the Convention has a right to prohibit such person from using that word, which means so much to the poor man, who has little money to deposit, the state ought certainly to do it.

Mr. LAMPSON: And then when you drive that sort of a concern out of business would not that very

kind of bank that you describe change to a trust company or something similar?

The PRESIDENT: The time of the member has expired.

Mr. MAUCK: I have a hundred and forty-three reasons for objecting to private individuals using the word "bank", having recently lost that many dollars in that sort of an institution. It doesn't satisfy me at all that I am assured by the member from Ashtabula that the proposed regulation of these private institutions infringes some of the rights of the operators. The restrictions proposed by all of these amendments are in my judgment entirely unconstitutional. I shall offer an amendment to insert a period after the word "state" in line 15 and strike out all the remaining portion of the paragraph and the proposal, so that no man or combination of men may use the word "bank" or "banker" in connection with their institution unless it be incorporated under the laws of this state or of the United States. The suggestion that some merchants out ten miles in a village accommodates his neighbors by doing a quasi banking business is scarcely in point, because those men do not trade upon the word "bank", "banker" or "banking". But when men hold themselves out as bankers, as operating a bank exempt from inspection, and as I have unhappily learned exempt from the operation of the criminal laws that prevent incorporated institutions from accepting deposits under penalty of the criminal statutes when the institution is known to be insolvent, it seems to me time that we should put in not only the restrictions suggested by the gentleman from Medina [Mr. Woods], but very much more drastic ones, such as the one I now send to the secretary's desk.

The amendment was read as follows:

Insert a period after the word "state" in line 15 and strike out all thereafter.

Mr. HARRIS, of Hamilton: It ought to be an axiom of public morality that the business of a private banker is a proper subject for public inspection. There ought not be any disagreement on the proposition. There is no intention here and should not be any to destroy the private banker who has his well recognized place among the banking institutions of the world. I think if the member from Ashtabula and the member from Gallia will withdraw their amendments I have an amendment which will probably cover the wishes of the private bankers throughout the state and meet their objections to this proposal and at the same time in no way cripple the proposal itself. The amendment I now offer to the original proposal is self-explanatory. In this connection I would add that the real objection of the private bankers to the proposal in its present form is that it would limit them in the amount of money they may be allowed to lend to any one individual firm or corporation.

Mr. ANDERSON: A national bank cannot lend any individual any more than ten per cent of its capital—

Mr. HARRIS, of Hamilton: And surplus.

Mr. ANDERSON: Is there anything to prevent the legislature from changing that?

Mr. HARRIS, of Hamilton: That is a federal statute referring only to national banks, but the law in Ohio limits the amount any incorporated bank may lend to

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twenty per cent of the capital and surplus, and where the capital is small, say \$25,000, and the surplus say \$250,000, the bank could only at the present time lend to any borrower \$55,000 notwithstanding that the banker's deposits might be a million dollars and the borrower's credit and necessities justified a loan of \$100,000. I offer this amendment.

The amendment was read as follows:

Change the period at the end of line 17 to a comma and add: "save and except that the limitation of amount or amounts that may be loaned to any person, firm or corporation shall not apply."

Mr. HARTER, of Stark: It seems to be the opinion of the Convention that there are no good private bankers. Any bank is just as good as the people behind it and no better. It seems to me that this amendment is offered hastily and without understanding the functions of a private bank. Several gentlemen speaking here tonight have touched upon that matter and have covered it pretty well, but no one man completely. Now this is the situation: I do not want to name the town nor the people who make this objection to the amendment, but this is what it was. Down in the county that Mr. Elson is from there is a small bank with a capital of \$25,000. They started a national bank in that place and some of the stockholders of the national bank gave up their accounts with the private bank and commenced to do business with their own bank. They found they could not borrow more than \$2,500, whereas the other bank would lend them \$15,000 of \$20,000. The private bank had other funds besides its capital, which was \$25,000, and they would accommodate their customers, and the result was they got all of the good customers of the community; the national bank does not pay, while the other bank is a good paying institution and lends money to accommodate the customers. The consequence was that the stockholders of the national bank had to go back to the private bank to do business or else go out of the community to borrow the money. That is one of the functions of the private banker.

Mr. LAMPSON: Is not the largest bank in the state of Ohio a private bank?

Mr. HARTER, of Stark: If you refer to the Society for Savings I can hardly answer that question, and I do not think that affects the question. I think the majority of the private banks of Ohio will be satisfied with Mr. Miller's amendment and I think it makes them safer than the amendment that Mr. Woods offers.

Not long ago the state banking department of the state of Ohio received from the state of Wisconsin a report to the effect that private bankers ought not to be given the privilege of doing business within their state, that it would make them all go into the state banking business. Now I want to say that if you will listen you will see what a fine state of affairs they have in Wisconsin, where they argue to this Convention that because the state banking superintendent of Wisconsin is against private banks they ought not to exist in the state of Ohio. Here are the state banks in Wisconsin: Six of \$5,000; one of \$6,000; one of \$7,000; one of \$8,500; 265 of \$10,000; one of \$10,200; one of \$10,500;

eleven of \$12,000; two of \$12,500; one of \$13,000; seventy of \$15,000.

There is the condition of the state banks of the state of Wisconsin. They have not been in existence long enough to know whether they can stand a panic or not. Behind the private bank there is a matter of pride to keep them running. Suppose those small country private banks are made up simply of stockholders comprising good farmers and merchants and some working people, and all have a little stock. Say a panic comes along and the bank gets in deep water; the stockholders would make a sacrifice for it. I know that private bankers have gone into their pockets to keep up. I know that a great many banks in the state of Ohio and in a great many other states have done that. The Miller amendment makes these banks as good as the average bank in Wisconsin or Minnesota.

Mr. EARNHART: I fear gentlemen lose sight of the object of this proposal. The object of the proposal and the amendment to it is to protect the depositors. It seems to me if a banker intends to do a fair business he ought not to object to inspection. Any man engaged in any business, if he is doing a fair, square business, ought not to object to having his business regulated if the business is one in which other people's interests are vitally at stake. Private banks will not be subjected to any hardship whatever. They continue to do business just the same. It does not interfere with the business, but protects the man with money, so that he may know when he wants his money he can get it. I commend the judgment of the committee on Arrangement and Phraseology. I indorse the proposal as they have reported it here, and I hope the Convention will pass it without making any amendments to it whatever. It is good enough as it is and I therefore move the previous question.

Mr. ELSON: I have an amendment that I would like to offer.

The PRESIDENT: The question is, "Shall the debate now close?"

The motion to close debate was lost.

Mr. BROWN, of Highland: I am very much in hopes that this Convention may see its way clear to relieve private banks in this state from having to submit to the same regulation to which the national and state banks have to submit. That is all they are asking for. They do not ask for any exemption from regulation or inspection for soundness of their business, but the private banks of this state are on an average older and safer than any other banks in the state. I discovered when I went back to Highland county after inadvertently subscribing to the amendment of Mr. Woods to the Earnhart proposal, that our private banks in Highland county are decidedly stronger than the other banks and they have more behind them to make them stronger. The biggest bank in Highland county is the Greenfield bank. That has a capital of \$25,000 and on the day that I looked at its books the deposits amounted to \$873,000. This bank has behind it all the assets of the stockholders of the bank, which gives it a solidity equal to \$2,000,000 or \$3,000,000. They have a very large business in Greenfield and that business is conducted through its banks. It is absolutely necessary at times for some of the men who have large businesses in

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Greenfield to borrow large amounts of money, and the way they do it is to take their collateral—municipal and national bonds—and go into this bank and deposit \$100,000 as collateral and borrow \$100,000 from this bank that has a capital of \$25,000. That bank fills a business necessity that cannot be met by a national or state bank which has not an enormous capital. A bank would have to have \$500,000 or \$1,000,000 of capital to run the business of Greenfield if the business men of Greenfield secured from them the necessary accommodations. They say that would absolutely ruin the business of Greenfield, and the same objection exists in Hillsboro and Lexington and two or three other places. There the banks have a capital of \$10,000—they do I know at Lexington—and they have behind that enough estates of stockholders to pay off a loss of \$200,000 or \$300,000, which no bank in the county under state or national regulation can do. Now I trust that this Convention will see this matter as I see it and take a reasonable view of it and protect those banks and will not alter their business methods to the extent of an entire revolution.

Mr. WOODS: Do you think it is safe to let a banker lend all of the money of the bank to one person? Is that taking a reasonable view of the matter?

Mr. BROWN, of Highland: It is if the ability and business of the man who owns the stock is sufficient to warrant it. These banks are not objecting to proper inspection as to soundness, but they do not want to be subjected to the narrow limits of national or state restrictions. I hope you will see it that way.

Mr. JONES: Gentlemen of the Convention: As you all remember, upon second reading an amendment was introduced by Mr. Woods, a motion was made for its adoption and it was agreed to here without any opportunity for argument or discussion. Now the effect of that amendment is much more far-reaching than has been understood by the members who have spoken on the subject. The effect of it is to destroy every private bank in Ohio, and here is the way it will be done. It provides that no person or persons or associations can use the word "bank" or "banker" unless they submit to inspection and regulation as now provided by the banking laws of Ohio or those that may be hereafter provided. The result will be, as already suggested by the gentleman from Highland, that no private bank can conduct its business under the regulations applicable to state banks. These private banks are organized to meet a peculiar condition. In our county we have only one national bank and one state bank and we have nine or ten private banks. In my own little village the bank, with less than \$10,000 of capital, has back of it fifteen or twenty farmers and there are more than half a million dollars behind every debt of that bank. Every bank in our county is similarly situated. They are organized in small villages where you could not have a bank of \$25,000 or \$50,000 capital, because the business would not enable the paying of dividends upon that amount of capital stock.

Mr. NYE: I want to ask you what you mean by saying that your bank has a capital of from \$6,000 to \$10,000. Is it a private bank or is it organized under the laws?

Mr. JONES: It is a private bank, with paid-in capital. There are a few private banks that have no paid-in capital, but there is not one in twenty that has not.

Mr. NYE: Is it a partnership?

Mr. JONES: Yes, sir; with paid-in capital, and in addition to that, with the individual responsibility of every member of the partnership back of it. Now what we have in our little county of Fayette exists in many other rural counties. We have more, as shown by the tax duplicate, behind the bank deposits in the private banks of Fayette county than there is in all the banks in Columbus and Franklin county, and that is due to the fact that all but two of our banks are private banks with the unlimited liability of the stockholders, making them so sound that no one can question them.

There has not been one dollar lost in private banks where there have been ten in state and national banks. There are a few instances like the one that the gentleman from Mahoning [Mr. ANDERSON] cited where there have been losses, and I concede that those cases ought to be provided for. Men who engage in the banking business should be required to make a showing that they have some capital behind their institution and some amount of assets in the way of property that will be liable for the debts of the bank. I submit that the Miller amendment thoroughly met that whole contention and objection made at the time, and this amendment if adopted will do all that can be reasonably asked. The ordinary private banker of Ohio has not inflicted any injury upon anybody. There have been practically no losses compared with the losses in the other institutions. Why can they not submit to this same regulation? First, they cannot because they have to lend more. In our community a man comes in and wants to borrow \$25,000. He puts up absolute security. He may go in and get it on ground, a security that he cannot use in a state or national bank. Many banks lend on mortgages, the safest form of all collateral, better than municipal bonds. There are other and many other reasons why a private bank cannot exist that has to be subject to these regulations. It has been suggested there is no objection from the private banker as to the examination for soundness. Suppose he has a certain amount of property behind it and he must submit for the purpose of ascertaining whether that statement is true. There cannot be any objection to that, but what the banks object to is that they shall be subjected to all the regulations and inspections that obtain as to state and national banks, for that would put them out of the banking business. It would destroy their opportunity to do what they do now in the way of making large loans.

Mr. KEHOE: The discussion here has been largely on the theory that all of the private banks are absolutely secure and that nothing can be better, and that there is absolute security for every dollar deposited. I think Mr. Jones' bank and Mr. Harter's bank may be banks of that character, but while that is true there are some banks that a puff of wind will blow over. That is the trouble. The good ones are above suspicion and they feel that they ought to be above examination, while the poorer ones would not stand an examination or inspection. On such an examination and inspection they would have to make good or get out of the business. There is absolutely nothing of substance in some of

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them and they are not entitled to exist. There is the trouble. The two extremes are so widely apart.

Mr. ULMER: Do you not know that there are more private banks than any other kind of banks?

Mr. BROWN, of Highland: Don't you think that any private banker would object to working under the regulations of the national or state laws with reference to the percentages as to loans?

Mr. KEHOE: That is the thing that the most of the private bankers object to, being restricted in the amount of loans as the national and state banks are. That is the principal objection to the proposition and the thing they feel would hurt them most. If that objection could be removed in any way there would not be much trouble about it, but it is that feature of the banking laws of the state and nation that they do not like.

Mr. WOODS: Do you not understand that under my amendment neither the federal laws nor the state laws would obtain, but that the general assembly would have to pass laws to regulate the private banks?

Mr. KEHOE: I understand the general assembly would have it under their control to do as they wished. That is what the private banks do not like. They don't like to be restricted in that particular—that is, the big banks do not. I believe the amendment offered by Mr. Miller, of Crawford, would be a hardship on some of the little banks, but they would simply stiffen up beyond the limit of some of the small national banks. It would not hurt the large private banks, but it would force the small private banks to stiffen up.

Mr. FESS: I move the previous question on the pending amendment of Mr. Harris, of Hamilton.

The main question was ordered.

The PRESIDENT: The question is, Shall the amendment offered by the delegate from Hamilton [Mr. HARRIS] be agreed to?

Mr. ANDERSON: Are not there other amendments besides this one?

The PRESIDENT: Yes.

Mr. ANDERSON: Assuming that this carries what is the parliamentary situation?

The PRESIDENT: Debate is open on the rest of it.

Mr. ANDERSON: Then suppose the other amendment should carry?

The PRESIDENT: The last amendment carried would determine the matter. The previous question is upon this amendment.

The amendment offered by the delegate from Hamilton [Mr. HARRIS] was disagreed to.

Mr. EARNHART: I move that all pending amendments be laid on the table.

Mr. MILLER, of Crawford: On that I call for the yeas and nays.

Mr. HOSKINS: What are the amendments?

The PRESIDENT: By the member from Gallia [Mr. MAUCK] and the member from Ashtabula [Mr. LAMPSON.]

Mr. HOSKINS: What became of the Miller amendment?

The PRESIDENT: That was tabled.

Mr. BROWN, of Highland: I ask for a division.

The PRESIDENT: Very well. The question is,

"Shall the amendment of the member from Gallia lie upon the table?"

The motion to table was carried.

The PRESIDENT: Now the question is, Shall the amendment of Mr. Lampson lie on the table?

The motion was carried.

Mr. BROWN, of Highland: I move that the proposal be laid on the table.

Mr. ELSON: I wish to offer an amendment. It is quite evident that neither of the two extremes can come together and that neither of the two extremes can carry a vote of the Convention. Therefore it seems to me a compromise is necessary, and I think the best thing we can do is to shift the responsibility on the legislature to make such laws—make it mandatory on the legislature to do it to get through with this debate.

The amendment offered by the delegate from Athens [Mr. ELSON] was read as follows:

Strike out all after "shares" in line 12 and insert "The general assembly shall pass laws to regulate private banks and trust companies."

Mr. KNIGHT: In an effort to try to bring the two extremes a little nearer I want to offer an amendment and take a moment to explain it.

The amendment was read as follows:

In line 16 strike out the word "first". In lines 16 and 17 strike out "is now or,". In line 17 strike out the word "hereafter".

Mr. KNIGHT: That amendment would make it read as follows, beginning at line 15: "may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may be provided by the laws of this state."

Several gentlemen who have spoken this evening have spoken as if the regulation provided for in the proposal was the regulation now governing state banks. It is not. It does not so state. It says to be regulated by law, and in order to make it perfectly clear that it is not to be governed by the laws regulating state banks it puts it in the hands of the lawmaking power to make the kind of regulation for private banks distinct from that of state banks.

The amendment was agreed to.

Mr. MILLER, of Crawford: I offer an amendment. The amendment was read as follows:

Strike out of line 14 the word "or" where it first occurs, substitute therefor a comma, and insert after the word "banker" the words "or banking".

The amendment was agreed to.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

After the word "banking" in line 14 insert "or words of similar meaning in any foreign language."

Mr. FACKLER: That is to meet a situation that occurs in large cities where foreign banks are used.

The amendment was agreed to.

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Mr. DOTY: I move that the amendment of the delegate from Athens be laid on the table.

The motion was carried.

Mr. KNIGHT: I move the previous question on the amendments and proposal.

The motion was lost.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

Insert the word "twice" before the last word "the" in line 10.

Mr. COLTON: If this amendment were adopted it would read "to the extent of twice the amount of their stock therein at the par value thereof."

Mr. DOTY: Does that not amount to triple liability?

Mr. COLTON: I think not.

Mr. HARRIS, of Hamilton: Are you aware that the language has been changed by the committee on Phraseology and that the liability now is copied word for word from the national liability for double liability? I would suggest that not a word shall be changed.

Mr. COLTON: In line 11, in adding to the amount invested in such shares, the question is whether they have bought the shares at fifty per cent of par value or whether the amount they actually paid might not be construed to be the amount invested.

Mr. DOTY: If a man subscribes for stock and pays half in he has to pay the other half. That is the situation now.

Mr. COLTON: I withdraw the amendment.

Mr. HOSKINS: Mr. President and Gentlemen of the Convention: Professor Knight and the president together shut me off a few minutes ago and did exactly what I wanted to do and a little bit more. I want to offer an amendment to restore what Professor Knight struck out and which I do not believe should be stricken out. It leaves doubt. I coincide with his amendment, but I want to insert in line 17 after the word "may" the word "hereafter" so that there can be no doubt of the proposition that the regulations applying to private banks are laws to be hereafter passed. The word "may" after taking out the word "hereafter," leaves that matter in doubt. I want the word "hereafter" in there.

The amendment was agreed to.

Mr. WINN: Gentlemen of the Convention: When this subject was under discussion perhaps two or three weeks ago I gave it as my opinion that the enactment of this amendment would not in any way affect existing state banks. It was then stated that this question had been left to a committee and that the committee had reported that the terms and provisions of the proposal would apply to all banking corporations in existence. That opinion was based upon section 2 of article XIII of the constitution, which provides that corporations may be formed under general laws, but all such laws may from time to time be altered or repealed. The committee must have assumed that we are engaged in repealing or amending laws instead of making a constitution. Anyhow their premises must have been wrong for their conclusion is just as wrong as it can be. I was astonished when I looked up the law on this subject. I was not only surprised to find that the weight of authority is

against the opinion of the committee, but I find that every single reported case is against it and that there are no cases recorded in favor of the report of the committee. I have prepared a brief upon the subject which I intended to inflict on you, but I spare you that this evening. I find that the decisions of the supreme court of Ohio are unanimous upon the question and that there are three or four decisions of the supreme court of the United States to the same effect, one of which went up from the state of Ohio, involving the state of Ohio as one of the parties to the controversy. There are two decisions from the state of Kentucky, and so far as I have been able to ascertain I find that no decision in any state under a similar provision of the constitution supports the opinion of the committee referred to, which is that the passage of this proposal now will bring within its provisions, if ratified at the polls, the existing banking corporations. I say now what I have said before, that this amendment will if ratified apply to banks hereafter incorporated, but has no application to existing state banks.

Mr. DWYER: This provides for a double liability in the interest of creditors of the corporation. That is the only way the courts have construed the double liability to affect the stockholders in the interest of creditors of the corporation. It is not a debt of the corporation, but it is to the interest of the creditors. Suppose a corporation becomes insolvent. The first inquiry is, Have the stockholders paid up the face value of their stock? That is the first thing. That is a debt of the corporation, and after that the creditors can go on and assess them at the face value of their stock a second time as security for the debts of the corporation. That is what we want it to be. Now that ought to be the law. Take that as the law and apply it to the language here. This language certainly needs to be amended. It says here that "Dues for private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable or otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." Now the word "invested" there is an ambiguous word. In addition to the face value of their stock? Suppose the shares are \$100 each and a man has invested only \$50. Then there will be no provision to collect the other \$50 before they proceed to the double liability. And suppose he has invested \$105 a share, which is often done. Now he would not be required to pay another \$100, but he would simply be required to pay an amount over and above what he has paid, so as to make the stock equal twice its face value. Now the word "invested" there is not a proper word and should be omitted. I have an amendment that I desire to offer striking out "the amount invested in" and inserting "the full paid-up face value of," so that his liability will be equal to the full paid-up value of the stock. First, they must pay the full amount and then proceed to the double liability, and the word "invested" does not cover that. I offer this amendment

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to cover that and make it plain what the provisions are, that is, that they will be liable for the stock fully paid.

The amendment was read as follows:

In lines 11 and 12 strike out "the amount invested in" and insert "the full paid-up face value of".

Mr. MOORE: I move the previous question on the amendment and the proposal.

The main question was ordered.

The amendment offered by the delegate from Montgomery [Mr. DWYER] was lost.

The PRESIDENT: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 77, nays 27, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Partington,
Antrim,	Harter, Huron,	Read,
Beatty, Morrow,	Hoffman,	Redington,
Beatty, Wood,	Holtz,	Riley,
Beyer,	Hoskins,	Roehm,
Campbell,	Hursh,	Rorick,
Colton,	Johnson, Williams,	Shaw,
Cordes,	Kehoe,	Smith, Geauga,
Crosser,	Kerr,	Smith, Hamilton,
Cunningham,	King,	Soletcher,
Davio,	Knight,	Stamm,
Donahey,	Kramer,	Stevens,
Doty,	Kunkel,	Stewart,
Earnhart,	Lambert,	Stilwell,
Elson,	Lampson,	Stokes,
Fackler,	Leete,	Tannehill,
Farnsworth,	Leslie,	Tetlow,
Farrell,	Ludey,	Thomas,
Fess,	Malin,	Ulmer,
FitzSimons,	Mauck,	Wagner,
Fluke,	McClelland,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Wise,
Halenkamp,	Moore,	Woods,
Harbarger,	Nye,	Mr. President.
Harris, Ashtabula,	Okey,	

Those who voted in the negative are:

Baum,	Halfhill,	Miller, Crawford,
Brattain,	Harter, Stark,	Norris,
Brown, Highland,	Henderson,	Peck,
Brown, Pike,	Johnson, Madison,	Pierce,
Cassidy,	Jones,	Price,
Collett,	Keller,	Rockel,
Dunlap,	Longstreth,	Shaffer,
Dunn,	Marriott,	Taggart,
Dwyer,	Matthews,	Winn.

So the proposal passed as follows:

Proposal No. 93 — Mr. Earnhart. To submit an amendment to article XIII, section 3, of the constitution. — Double liability of bank stockholders and inspection of private banks.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XIII.

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stock-

holders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank", "banker" or "banking" or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

The proposal was referred to the committee on Arrangement and Phraseology.

By unanimous consent Resolution No. 129 by Mr. Lampson was taken up and was read as follows:

Resolution No. 129:

WHEREAS, The contract of the official reporter was not made with any idea of night sessions other than Monday nights, and

WHEREAS, The Convention has held and intends to hold other night sessions; therefore

Be it resolved, That the official reporter be and is hereby allowed the additional sum of thirty dollars for each night session, other than Monday nights.

Mr. LAMPSON: I am informed by the official stenographer that there have been six of these night sessions. I will read his letter:

The letter was read as follows:

COLUMBUS, Ohio, May 23, 1912.

To the Fourth Constitutional Convention of Ohio:

GENTLEMEN: When I was requested to bid on the reporting of this Convention I made particular inquiry as to night sessions. I was told by Prof. Knight, the chairman of the committee, that the rules provided only for night sessions on Monday. My bid was based on Monday night sessions and no night sessions other than that. I gave the Convention a bid \$20 per day lower than any other bid. I did this because having reported two constitutional conventions, and there never having been a man who reported more than that, I was anxious to hold the record by having reported three.

I knew when the days grew longer the sessions would correspondingly increase, but I did not contemplate a steady run of night sessions like we have been having.

All during the Convention my work has been up every Saturday morning until the rush of three weeks ago. So great was the mass of work piled on to me by the lengthened day sessions and the night sessions that although I worked night and day, including Sundays, it took the entire recess for me to catch up, and I only caught up on the

Additional Pay for Official Reporter.

21st of May after noon lunch. And I got no pay for those twelve days and was under just as heavy expense as at any other time.

In examining the journals and debates prior to the time of my election, I made the discovery that discussing the question whether there should be an official reporter has cost the Convention something like \$6,800, calculated on time consumed, while the reporter has received about \$3,600. So I hesitated to ask the introduction of any resolution, not wanting to increase the \$6,800 still further.

The union labor scale is double for night work and under that I could ask for \$60 per night, but I only request \$30 for each night session and do not ask anything for the extra sessions on Monday afternoons.

I respectfully ask that the roll be called on the resolution you have heard read.

Respectfully,
CLARENCE E. WALKER."

Mr. LAMPSON: There have been six of these sessions and I call for a vote on the resolution.

Mr. WATSON: Before we vote on that let us have the contract under which the employment was had. The

contract is on file with the clerk of the committee on Claims. Let us have that and let us have all the light possible on the matter.

Mr. KNIGHT: I have no knowledge of the matter beyond the facts as stated here. I did make a statement in answer to the inquiry of the stenographer and I told him that the rules called for but one night session each week and that was on Monday. I have no knowledge as to what was put in the contract because the contract was drawn up and signed by others.

Mr. WINN: It seems to me that there have been many short sessions and it occurs to me that they would even matters up. I think we have had several short weeks in which the gentleman was paid his full weekly stipend for weeks that were short.

Mr. DUNN: I move that the matter be referred to the committee on Claims against the Convention and that that committee make a full report on it.

The motion was carried.

Mr. DOTY: I move that Resolution No. 127 be referred to the committee on Employes.

The motion was carried.

Leave of absence for the afternoon session was granted to Mr. Knight.

On motion of Mr. Watson the Convention adjourned until tomorrow morning at 9:30 o'clock.

SEVENTY-SEVENTH DAY

MORNING SESSION.

TUESDAY, May 28, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Mr. McClelland, delegate from Knox county.

The journal of yesterday was read and approved.

Mr. Pettit rose to a question of privilege, and asked that his vote be recorded on Proposal No. 93, by Mr. Earnhart. His name being called, Mr. Pettit voted "aye."

Mr. Kilpatrick rose to a question of privilege, and asked that his vote be recorded on Proposal No. 34, by Mr. Thomas. His name being called, Mr. Kilpatrick voted "aye."

Mr. Kilpatrick rose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Kilpatrick voted "aye."

Mr. Kilpatrick rose to a question of privilege, and asked that his vote be recorded on Proposal No. 134, by Mr. Halenkamp. His name being called, Mr. Kilpatrick voted "aye."

Mr. DOTY: I desire unanimous consent to make a statement: As near as can be ciphered out by those who are trying to close up business this week, the following appears to be possible: The Convention will consider and dispose of all of the proposals upon the calendar for third reading and the ones on the calendar for second reading tomorrow night. This gives us today and tomorrow for work, and then we can adjourn over until Friday so that the work of preparing the necessary resolutions and other documents that we have to prepare after this work is over can be done on Friday. The member from Ashtabula [Mr. LAMPSON], in whom we all have confidence, has canceled his engagement to speak on Memorial day so that he may be here Thursday and will be here on this work. Then we can meet on Friday and pass the necessary resolutions, one of which resolutions is the grand resolution, that is, the final exhibit of our work, including the directions to the secretary of state as to the manner of conducting the elections, and all of that sort of thing, and which has to be considered with care. That will be considered on Friday and will be amended. After it is passed, it is necessary to have one night intervene to have that resolution enrolled in printed form. Then it will be here ready for signature on Saturday morning and we can close our labors on Saturday. This, in the judgment of those with whom I have conferred, appears to be a program that can be carried out. There might something happen between now and tomorrow night that will change all of this, but as near as we can see it now this program is possible, and it is simply up to the members of the Convention as to whether they care to get through this week by doing it in the comparatively easy fashion I have outlined.

THIRD READING OF PROPOSALS.

The PRESIDENT: Proposal No. 91—Mr. Kilpatrick, is the first business in order and the secretary will read the proposal.

The proposal was read the third time.

Mr. WOODS: I do not want to talk against the proposal, but before we vote on its final passage, we should determine how this is to be submitted.

Mr. PECK: I rise to a point of order. That question cannot be decided now with the proposal before us.

Mr. WOODS: I move that the proposal be put at the foot of the calendar so that the form of ballot may be determined before we pass the proposal.

Mr. KILPATRICK: I move to lay that motion on the table.

The motion to table was carried.

Mr. RILEY: I desire to inquire how it happens that the proposal as passed on the second reading is materially changed as it is presented now. The form of submission was agreed to as I well remember, as fairly as anything has been agreed to in the Convention, and I wonder whether the committee on Phraseology thought it had the right or whether it took the responsibility to leave out more than half of the matter agreed to by the Convention and presented the matter in this form.

Mr. DOTY: The Convention did it.

Mr. RILEY: When?

Mr. DOTY: The other day.

Mr. COLTON: The committee on Phraseology passed on that particular proposal which will be a portion of the constitution, if it is adopted, and not upon the preliminary or final matter concerning the submission. You will remember that this proposal was passed before the general rule was adopted that all proposals should be submitted separately. There was another reason for our action, and that was we thought the adoption of that proposal rendered the introduction and concluding matter referring to the method of submission of no account.

Mr. PRICE: Why did you act differently upon this proposal and the liquor proposal?

Mr. COLTON: That was an inadvertance.

Mr. MILLER, of Crawford: In voting upon this proposal, it was with the distinct understanding that this was to be submitted separately. If that is not made clear it might influence some of our votes.

Mr. KING: It does not seem to me that the committee on Phraseology had any authority to drop out four sections entirely from this proposal as it passed on second reading. They were appointed for the purpose of arranging the phraseology, and instead of that they deliberately dropped out four of the five sections of the proposal and reported the proposal back without those four sections.

Mr. KNIGHT: I think it is due to the members of the Convention to understand exactly the situation, and how it came to be so. The question was raised and distinctly raised in the committee on Arrangement and

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Phraseology whether or not we had any business to strike out those lines which the report says we did order stricken out, "strike out lines 4 to 9 inclusive" and "strike out lines 16 to 29 inclusive." It will be noticed that the name of one member of the committee is not printed here. He subsequently signed the report in order that there might be a unanimous report from the committee on Phraseology. Personally I have never felt that the committee on Arrangement and Phraseology had any right to strike out those lines, but I think it is due to the members of the Convention to know, and they shall know, that the question was considered there, and there was a division of opinion as to the right of the committee to do that. In the judgment of at least one member of the committee it is a distinct change in substance with which the committee on Arrangement and Phraseology had nothing to do. I state these facts without any desire or design to formulate an argument based upon them, but simply as telling the Convention the facts.

Mr. JOHNSON, of Williams: I had thought I would not say anything on this question at this time. I had so much faith that I did not even examine the report of the committee on Phraseology. I feel that all of the questions will be fairly submitted, but after I had heard from the gentleman from Franklin [Mr. KNIGHT] that there has been some point of unfairness even in the committee on Arrangement and Phraseology—

Mr. DOTY: Will the gentleman yield for a moment?

Mr. JOHNSON, of Williams: Not now—but I am willing to take my chances even with that, so that we can get through our work and get away from here. My opposition to the proposal, at any rate, is mainly because I do not believe that the women of the state of Ohio want it. I belong to a class that believes that woman's influence in the home is of immensely more benefit to the people of Ohio than when their influence is divided between the political arena and the home. I believe they can do more good. I believe I occupy the position I now hold because of the good influences of the women of Williams county. I know that because I have letters in my desk to prove it. Very few of those women are in favor of woman's suffrage. Less than one hundred of the women of Williams county have signed a petition asking for this. Williams county is dry, and, as you know, I do not take any stock in the "dry" people who vote "wet" in this Convention. I know that Williams county would never have gone dry by sixteen hundred majority if it were not for the women of Williams county. I am now and always have been in favor of women's rights. I think, speaking from memory, twenty-five years ago, when there was a bill in the general assembly to give the married women the same rights as men, I voted for the proposition. I voted for the proposition to give women the right to serve as notaries public, because they ought to have it, but I do not believe you ought to impose an additional burden on them by giving them the right of suffrage. If they are first-class women, such as we have in Ohio, they will feel it is their duty to vote, and I do not want to make them vote. I do not want to impose that duty on a million and a half without their consent, and when gentlemen stand up here and say they have more respect for their wives and mothers than to oppose woman suffrage I am not

scandalized. I believe that sentiment is an excellent thing in the world if it has not gone to seed. I do not like to hear the president of this Convention traduced as being a wet man. The question is, is he honest and straightforward and a first-class citizen? I don't care whether he votes wet or dry, or whether he is a minister or not. Did you ever stop to think that it is our duty, whether ministers or not, to be first-class citizens, and that if we get the beams out of our own eyes, we won't have much time to pick the mote out of our brothers' eyes? I did not intend to speak a single word on this proposition, but when there is an arrangement to submit differently from that agreed upon I think I have a right to say I think it is wrong. I thank you for your attention. I would like to make a three hours' speech in twenty minutes, but I find I cannot do it. When I hear gentlemen in a convention talk for three or four hours to express what can be said in about three or four minutes, I think of the person who, when he was invited, instead of saying "I cannot come," replied, "I very much regret to inform you that the multiplicity of my engagements will make it impossible for me to accept your very polite invitation."

Mr. HALFHILL: I desire to supplement the statement of the member from Franklin that there was a difference of opinion among the committee on Phraseology as to the propriety of making this change. But I voted for it on the first reading, I voted for it on the second reading, I will vote for it on the third reading and I expect to support it at the polls. It passed the Convention in the nature of a compromise because it was well understood that some of those who seriously opposed it gave way in their opposition because of the peculiar wording of the proposal, which led everybody to believe that the separate submission, which was included in that proposal, meant a separate submission by way of a separate ballot cast in a separate ballot-box. That being so, we have not any right in my judgment to bring it back in this Convention so it can be put upon a straight ballot or upon any other form of ballot than that which was in the body of the proposal itself. I looked at it as a purely legislative matter, which we determined upon here in the nature of a compromise. I am satisfied if the president had not spoken as he did in favor of separate submission, and the understanding of the Convention being at that time that that meant a separate submission on a separate ballot in a separate ballot-box, there would have been a very great amount of difficulty in getting it through the Convention, although that would not have deterred me from voting for it. Now, gentlemen, this question of franchise is not, as has been sometimes debated and urged, an inalienable right; it is a conferred right, and it must be conferred under our theory of government and under our organization of society by the votes of those who can confer it, and those who can confer it are the electors of the state of Ohio. The present electors of the state of Ohio must have arguments addressed to them, and it is a question of such supreme importance that it deserves to be placed in a separate ballot-box. That was the reason why I believe it was altogether out of place to strike out those important sections in that proposal.

Mr. FACKLER: If suffrage is a conferred right and not a natural right, who conferred that right on us?

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Mr. HALFHILL: You will have to go back to the original organization of society to trace that up.

Mr. FACKLER: Do you believe in the social compact for society?

Mr. HALFHILL: Yes, but not all the vagaries of Jean Jacques Rousseau.

Mr. FACKLER: Then are not women part of society?

Mr. HALFHILL: Let me ask you a question?

Mr. FACKLER: I am asking you a question. Are not women entitled to be a party to the social compact?

Mr. HALFHILL: Women are a party to the social compact unquestionably, but do you deny the fact that suffrage is a conferred right under our system of society, both national citizenship and state citizenship?

Mr. FACKLER: I make this answer to that, that one of the fights all through the ages has been the one side contending that suffrage was a special privilege and the other side that it is a natural right. I believe it is a natural right.

Mr. HALFHILL: I am dealing with established laws and with facts and not with theories, and I submit to you whether or not, under our theory of government, the law and the constitution, suffrage is not absolutely and unqualifiedly a conferred right, conferred by existing electors.

Mr. FACKLER: You may have treated it that way, obviously, in the law, but that is no reason why we should continue to treat it in violation of natural law.

Mr. HALFHILL: I did not know that we were dealing with natural law in making a constitution, but thought existing laws and customs were to be discussed in making changes and in reaching conclusions.

Mr. HARRIS, of Hamilton: State to the Convention whether or not you know or ever heard of any law of nature which gives a right to vote, or any other right, save the right to live, if you are stronger than your opponent. Do you know of any other law of nature? The law of nature is the destruction of the weaker by the stronger.

Mr. HALFHILL: Of course, that is enlarging the scope of this discussion quite a good deal. The law of nature may be argued just like the law of divine inspiration, so that you could make of it almost anything. You could prove almost anything by the law of nature, or by the divine law written in the Holy Scriptures.

Mr. LAMPSON: Is not the law of nature protection as much as destruction? We protect infants according to the law of nature.

Mr. HALFHILL: Are you getting into that economic question of protection and free trade?

Mr. LAMPSON: Are not infant industries a legitimate subject of protection?

Mr. HALFHILL: I submit this is not the time for a candidate for congressman-at-large to announce his platform.

Mr. DOTY: Do you not think it was the member from Coshocton who lugged the law of nature into this discussion?

Mr. HALFHILL: I know that the member from Coshocton [Mr. MARSHALL] solves everything by the divine laws as written in the Scriptures, commencing with the garden of Eden and coming on down, and that is a good law to prove things by.

Mr. WINN: Do you also understand some members are lugging in some organic law?

Mr. HALFHILL: We may have to have a committee of specialists to determine when we get through whether what we bring forth is organic law or the coming results of a session of the legislature.

Mr. NYE: As a member of the committee on Phraseology I want to agree in what was said by the delegates from Franklin [Mr. KNIGHT] and Allen [Mr. HALFHILL] as to the disagreement and the manner of return of the proposal to the Convention. I was one of those who was in favor of returning it to the Convention as given to us, and I think it should have been so returned. I do not care to discuss the proposition, but it seems to me it ought to have been returned to the Convention as it was given over to our committee. It was given over to us for a separate submission, and it is up to the Convention to say whether it shall be separately submitted or submitted with the other propositions of the Convention.

Mr. FESS: Gentlemen of the Convention: I believe that this matter was entirely threshed out on the second reading, and I do not believe really that we are now of a temper to reopen all of this subject and discuss all of the pros and cons on the question of submission. That is perfectly clear to every member of the Convention. It was clear when we came into the Convention that the subject of discussion of matters of submission was whether we would submit a new constitution as a whole, including all modifications, or whether we would submit a new constitution with one or two proposals on a separate ballot; in other words, whether we would submit all as a whole or whether we would submit one or two questions separately. As I recall, Judge Winn, of Defiance, introduced a measure rather early; it was introduced first by Judge Okey and then after that, I think, it was introduced by Judge Winn—that the policy of this Convention should not be to submit the work in its entirety, but that the policy should be to submit every amendment separately; and that was agreed and fixed as the policy of the Convention. Now this contention of deciding to submit one or two amendments separately as being different from the policy already fixed upon, is, in my judgment, begging the question. We have decided to submit all of these questions separately. That does not mean that every one of the forty-two shall be submitted on a separate ballot, but so that you can vote for each one without any other. That is the policy already, and for us now to raise this question of whether you are to have a separate ballot is begging the question altogether. It is in the hope of defeating this proposal, and I do not think it is fair. We ought not to discriminate against one or against the other, and this question ought not now to be raised. In reply to my friend from Williams [Mr. JOHNSON] [who was seeking recognition], I just want to remind him that there is so much bad in the best of us and so much good in the worst of us that it does not pay either of us to find fault with the other. That is the answer to you, Mr. Johnson.

Mr. JOHNSON, of Williams: But I haven't put any question.

Mr. DOTY: Oh, he answered your question before you got to it. He knew what was coming.

Mr. FESS: I notice that the Convention is seeming

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to confuse the issue, and reopen the whole thing; I do not believe it is wise at this time, and I therefore move the previous question.

The motion was lost.

Mr. DOTY: It does seem strange what short memories we all have. We have heard from two or three members on the committee on Arrangement and Phraseology stating some things that occurred in our committee room. One very important point brought out which appealed to some of the members who voted to report this proposal as it was reported, seems to have been forgotten. The member from Greene brought it out partly when he said he wanted to follow the resolution calling for a distinct programme for a separate submission of the work. That resolution by Mr. Winn was passed after the Convention had adopted the woman suffrage proposal, and not before. I claim, and the majority of the committee claims, the committee on Arrangement and Phraseology ought to take that fact into consideration, and they did take that fact into consideration, and reported a proposal in compliance with the provisions of that resolution. Now, just remember that this also happened. After Judge Winn's resolution was adopted this Convention passed one proposal that had a provision for separate submission, and that proposal, notwithstanding it was passed after notice of this Convention, was reported by the Arrangement and Phraseology committee without provision for a separate submission. That proposal was submitted to the Convention and passed yesterday without the utterance of a single syllable against that end of it. It was the capital punishment proposal. Just see where you are landing. You are complaining—don't think nobody but the member from Washington has raised a complaint—you find the complaint coming largely from the members of the committee, and yet the very members who are complaining signed a report on the capital punishment proposal which was passed after Judge Winn's resolution, and was the only one passed after Judge Winn's resolution, and adopting a submission clause with it. Yet we assume the responsibility of submitting a report to the Convention which struck out that which was passed after Judge Winn's resolution was passed, and this Convention accepted that report and passed the proposal, and not a single soul on the floor ever raised that point on that proposal.

Mr. JOHNSON, of Williams: This proposal passed on the 7th of March specifying that there should be a separate ballot box. How was that changed and why?

Mr. DOTY: Because a majority of the Convention changed it.

Mr. JOHNSON, of Williams: A majority did not.

Mr. DOTY: Yes, a majority did. They passed the Winn resolution after this, and then the capital punishment was passed afterward.

Mr. LAMPSON: There was read before our committee the resolution which had been adopted by this Convention, which I took, and I think you did yourself, in the nature of instructions, and it was read by the chairman of the committee. I have not heard it read here, and I would like to know if the chairman has that resolution.

Mr. DOTY: Yes, the resolution by Judge Winn.

Mr. LAMPSON: I would like to have that read?

Mr. DOTY: I have no objection.

Mr. JOHNSON, of Williams: I didn't know anything about that change and I know nothing about this. I thought we were doing things fairly and that is what I want to do. That is my position, and I want to know if you agree to it. Why not pass this without discussing about the understanding? Then we can decide it in the future without giving this thing any prestige.

Mr. DOTY: This Convention can change or alter the manner of submission at any time.

Mr. JOHNSON, of Williams: We don't want to give it prestige as the report of a committee.

Mr. DOTY: The report of a committee cannot give anything any prestige. The committee has no power to amend anything. The committee on Arrangement and Phraseology went to very great length to prepare its report so that members of the Convention could not raise the question of fairness. We had our reports in so that members of the Convention would have ample opportunity to know what we recommended, and we did not ask the Convention to agree to a single report upon the question of the submission of the report.

Mr. TANNEHILL: Was not the previous question ordered?

The PRESIDENT: No, sir.

Mr. TANNEHILL: What was the vote awhile ago on that?

The PRESIDENT: Fifty to forty, and it requires a two-thirds vote to carry the previous question.

Mr. MARSHALL: I believe you stated that this Convention had power to fix the question of submission at any time. Has the Convention that power right now? If so, let the Convention do it.

Mr. DOTY: Now, if you want to get anything in like that, get it in on your own time. Use your own time to make your statement. You don't know a question from a two-base hit.

Mr. HALFHILL: Are you able to give any light as to how this thing occurred in the transmission of the report when Proposal No. 151 is in here in the form in which it passed the Convention?

Mr. DOTY: I can explain that.

Mr. HALFHILL: I don't understand it.

Mr. DOTY: I think it was largely because it was the liquor question, and we had so many candidates on the committee we were all afraid to tackle it. I do not know of any other reason. It ought not to be there.

Mr. HALFHILL: Did we not vote to strike out that modified submission in Proposal No. 151?

Mr. DOTY: I don't remember it.

Mr. HALFHILL: My understanding was that the majority of the committee voted to strike all of that out. And how does it come through with none of that stricken out?

Mr. DOTY: I do not remember that. If you say it, I will take your word against my memory. My memory is faulty. I will confess I don't remember having taken any vote upon the submission of Proposal No. 151 at all. I should have voted for it if it had been made.

Mr. HALFHILL: I am thoroughly at a loss to know how it happened and I thought we were getting some co-operation from Professor Colton.

Mr. DOTY: I am satisfied it is a mistake, but I don't know how it happened.

Woman's Suffrage.

INTOXICATING LIQUORS.

Mr. ANDERSON: Is it not true that on a careful examination of the liquor proposition there was nothing in the liquor proposition to say that it should be separately submitted in a separate ballot-box or on a separate ballot?

Mr. DOTY: I do not remember.

Mr. ANDERSON: While the liquor proposition was under discussion the Worthington amendment changed it from a separate ballot-box to the form in which it is now and there was no change made by the committee.

Mr. DOTY: I am willing to take what Mr. Anderson says as a fact, though I do not remember it.

Mr. HOSKINS: Is it not a fact that the form of submission is provided in the same language exactly in the woman suffrage proposal as in the liquor proposal?

Mr. DOTY: I do not know. I never compared them. I am stating what the Convention ought to do and what they did do on capital punishment. You did not raise the question then, and whoever is raising it now is raising it for the benefit of creating discussion.

Mr. HOSKINS: Is it not a fact that the question of the manner of submission of that proposition procured a lot of affirmative votes on the second reading and that the committee on Phraseology has taken away that method of submission?

Mr. DOTY: I don't know. I have heard members give different excuses. Some say their wives want them to support it and others say their wives do not. They have this, that and the other excuse, and whether those excuses will explain it I don't know.

Mr. KING: If this proposal is adopted in the form reported by the committee ought not that whole question be determined when we reach the question of form of submission?

Mr. DOTY: Yes.

Mr. KING: If that is so I do not see the reason of having all of this discussion.

Mr. ANDERSON: We were asked a while ago by Mr. Hoskins whether Proposal No. 91 and Proposal No. 151 did not provide the same form of submission. If you will turn to your books you will find this language in the woman's suffrage proposal:

SECTION 2. At such election a separate ballot shall be in the following form:

ELECTIVE FRANCHISE.

	For Woman's Suffrage.
	Against Woman's Suffrage.

SECTION 3. Separate ballot boxes shall be provided for the reception of such ballots.

Now, in Proposal No. 151 it reads:

SECTION 2. At said election a ballot shall be in the following form:

	For License.
	Against License.

Mr. DOTY: I am obliged to the gentleman.

Mr. HOSKINS: And you strike out the separate submission. You strike out "in the ballot box."

Mr. KNIGHT: Do I understand the gentleman to say that the question had been raised on this point solely for the purpose of defeating the woman's suffrage amendment?

Mr. DOTY: That is my guess.

Mr. KNIGHT: I want to say that that is not my guess.

Mr. DOTY: I didn't know you had raised the question.

Mr. KNIGHT: I raise the question because I do not think the committee had any such idea.

Mr. DOTY: The member from Franklin forgot to state why some of us voted to report this as it is. Here is the reason: Here is a resolution of the Convention passed and turned over to our committee as notice of how we ought to do our work. I think you call that taking judicial notice.

Mr. FESS: As a matter of parliamentary procedure, what difference does it make how we vote on this now?

Mr. DOTY: Not the slightest.

Mr. FESS: Is it not true that, whatever we may do, the report of the committee on Submission and Address to the People will have absolute control when adopted by the Convention?

Mr. DOTY: Yes.

Mr. FESS: Is not this whole procedure out of order?

Mr. DOTY: Somewhat, but the other members of the committee on Phraseology had had their inning and I wanted one myself.

Mr. LEETE: I move the previous question.

The main question was ordered.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas, 74, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	Farnsworth,	Lambert,
Antrim,	Farrell,	Lampson,
Baum,	Fess,	Leete,
Beatty, Morrow,	FitzSimons,	Longstreth,
Beatty, Wood,	Fluke,	Malin,
Brown, Highland,	Hahn,	Marriott,
Campbell,	Halenkamp,	Miller, Fairfield,
Cassidy,	Halfhill,	Miller, Ottawa,
Cody,	Harbarger,	Moore,
Colton,	Harris, Ashtabula,	Nye,
Crites,	Harter, Stark,	Okey,
Crosser,	Henderson,	Peck,
Cunningham,	Holtz,	Peters,
Davio,	Hursh,	Pettit,
Doty,	Jones,	Pierce,
Dunn,	Kehoe,	Read,
Elson,	Kilpatrick,	Redington,
Fackler,	Kramer,	Rockel,

Woman's Suffrage—Abolishing Board of Public Works.

Rorick,	Stewart,	Wagner,
Shaffer,	Stilwell,	Walker,
Shaw,	Stokes,	Watson,
Smith, Geauga,	Taggart,	Winn,
Smith, Hamilton,	Tannehill,	Wise,
Solether,	Tetlow,	Mr. President.
Stevens,	Thomas,	

Those who voted in the negative are:

Beyer,	Hoskins,	Mauck,
Bowdle,	Johnson, Madison,	McClelland,
Brattain,	Johnson, Williams,	Miller, Crawford,
Brown, Pike,	Keller,	Norris,
Collett,	Kerr,	Partington,
Cordes,	King,	Price,
Donahey,	Knight,	Riley,
Dunlap,	Kunkel,	Roehm,
Dwyer,	Leslie,	Stalter,
Evans,	Ludey,	Stamm,
Fox,	Marshall,	Ulmer,
Harris, Hamilton,	Matthews,	Woods.
Hoffman,		

Mr. DWYER [during roll call]: Because of the action of the committee on Arrangement and Phraseology I vote no.

Mr. ULMER: For the same reason I vote no.

So the proposal passed as follows:

Proposal No. 91.—Mr. Kilpatrick. To submit an amendment to article V, section 1, of the constitution.—Woman's suffrage.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE V.

SEC. 1. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he or she resides such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

Mr. PECK: I move to reconsider the vote by which that proposal passed, and I move to lay the motion on the table.

The motion was carried.

The PRESIDENT: Proposal No. 331—Mr. Walker. The proposal was read the third time.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

Strike out line 8 after the word "further" and insert in lieu thereof the following:

"That in the event the above proposal be passed by the Convention, and adopted by the electors of the state it shall take effect and become a part of the constitution on February 1st, 1915, and said section 13 of article VIII shall be repealed as of that date."

Mr. WINN: Gentlemen of the Convention: This amendment is offered for a single purpose. There are, as you know, three members of the board of public works. The term of office of one of them expires February 1, 1915. It is a four-year term of office. Now it has been

the policy of this Convention thus far, wherever I have heard the opinion expressed on the subject, and it has all been one way, that this Convention would not attempt to legislate anybody out of office. We are building a constitution for the future and not particularly with respect to the present.

That is one strong reason why we should not pass this amendment to the constitution and legislate out of office those who otherwise would hold office until February 1, 1913. Two of them hold until that time and one holds until February 1, 1915.

There is still another reason. Next month, in just a few days, both of the dominant political parties will come together in state convention. There will be two candidates for members of the board of public works to be nominated. Now you can see how embarrassing it will be for the convention and for the candidates. If nominations are made they must be made and accepted with the understanding that if the result of our deliberations and our work is approved by the people, those who are nominated and have engaged in making a campaign will step down and out. If the parties fail to make nominations and this work is not ratified it will be too late to make nominations and have them on the ticket for November. So I propose that the amendment itself shall take effect when the one hold-over member shall go out of office, February 1, 1915. The parties may then know that instead of making nominations with the certainty that it is a four-year term they will simply make nominations and their candidates will go upon the ticket with the understanding that if our work is ratified those who are successful will be elected for a term of two years or until February 1, 1915. At that time all three will go out of office.

Mr. KING: Did he take office the first of February?

Mr. WINN: I may be mistaken about that, but I asked a member of the board so as to know when the term of office expired, and he said February 1, 1915.

Another strong reason why I am against this in its present form is that the only man to be legislated out of office is a democrat, and it is so seldom that one of us democrats gets any thing that it is too bad to have it taken away from us. I think there are good reasons why this should be adopted. I have consulted the author of the proposal and he has no objection to it and I hope the amendment will be agreed to.

Mr. FACKLER: I move that the amendment be laid on the table.

The motion to table was lost.

Mr. ANDERSON: At one of the first sessions we had of the Judiciary committee Judge Peck laid this down as a rule, that that committee must not do anything that would take any man out of office or lessen his term by one hour. We were controlled in the actions of that committee by that splendid suggestion and I think it is entirely right and good. I suggest to this Convention that controlling influence in our committee. If we are anxious to have this change it will not take long to have everything going in an orderly way. I think the amendment ought to prevail, that men ought to go out of office at a certain time, and that the governor should appoint at that time.

Mr. HARBARGER: Are there any members of the board of public works that we will interfere with?

Abolishing Board of Public Works.

Mr. ANDERSON: No, so I understand; but I have not investigated, and I understand if this prevails without the amendment it shortens one term two years. In other words, it cuts one term right in half.

Mr. TETLOW: The men now in office will serve how long?

Mr. WINN: Two until February 1, 1913, and one until February 1, 1915.

Mr. ANDERSON: The only suggestion I wanted to make is—I have not investigated the subject, but I have heard what Judge Winn says—I do not want to be a party to any action that will take two years or any time from any man.

Mr. TETLOW: I am opposed to the amendment for the simple reason that if the amendment is adopted and becomes a part of this proposal, whoever may be elected in the coming campaign to fill this position would only serve two years and consequently his term is shortened two years. If this proposal passes without amendment it means that of those who are now in office one will sacrifice only a little more than two years and one only part of one year, and consequently I think it is far better to pass the proposal without the amendment than with it.

Mr. ANDERSON: Is not this true, that the men who now seek nominations as democrats or republicans do so with their eyes open, knowing the actions of the Constitutional Convention, but the man who sought that office two years ago and was nominated and elected—and I understand he is a democrat, although the fact that he is a democrat is good evidence that he didn't have his eyes open—sought it when it was a four-year office. Now why should we take from him two years when he had no means of determining that any such action should be taken?

Mr. TETLOW: Yes, but when you have the same condition confronting you in the coming state convention the man who accepts the nomination for this position will be accepting it for a four-year term, just the same as the other man had in view.

Mr. ANDERSON: They know of this action of the Convention.

Mr. TETLOW: But they do not know that the people will adopt it.

Mr. WINN: Do you appreciate the fact that in the adoption of the Peck judiciary proposal we were particular to make provision that all circuit judges now holding office should continue to hold office as appellate judges and that the term of office would not be shortened, but would remain precisely the same, and that the same provision should be made with respect to the supreme judges and the judges of the courts of common pleas, whereas we were changing practically all of the judges of the common pleas?

Mr. TETLOW: That is true, but there is a distinction between the two things. Every one admits that the courts are a necessity. We have not abolished those positions. We are abolishing the office of the board of public works because we do not believe in it, and if we do not believe in it I do not believe in retaining officials in positions that we believe should be abolished. This amendment reminds me of the story of the man who wanted to cut off his dog's ears, and he thought he would be humane about it and he cut them off about one-eighth of an inch, allowed them to heal and then

cut off another eighth, allowed that to heal, and so on until finally the dog's ears were clipped off.

Mr. WINN: Are you sure that it was the ears? I have heard the story, but it was not the ears.

Mr. DOTY: You are thinking about that dun-colored mule you rode to Defiance. Now we are to have a yea and nay vote on this and I want to call your attention to one phenomenon—

Mr. HOSKINS: Will you allow me—

Mr. DOTY: Just a minute. I want to finish. Just watch the vote. The members from so-called canal counties and the men who are after office and want the support of the canal counties will vote for this and a large number of the rest of us, and I hope all of the rest of us, will vote against it. There is no trouble in telling about the vote of the members of the canal counties, because you know what they are going to do every time.

Mr. HOSKINS: Do you think it is becoming in you to stand up here and reflect upon the vote of any member of the Convention?

Mr. DOTY: I think it just as becoming as some of the language that you used on this floor.

Mr. BEATTY, of Wood: You say the members of the canal counties are going to vote for it. I am from a canal county and I will vote against it.

Mr. DOTY: And why? Because you have been in the legislature for eight or ten years and know what ought to be done, and the member from Mahoning is not from a canal county.

Mr. ANDERSON: No attention should be paid to a vote from a political standpoint.

Mr. DOTY: But attention is given notwithstanding you say it ought not to be.

Mr. ANDERSON: You should not accuse people of voting for political reasons because in the Judiciary committee we decided that no man's term of office should be shortened.

Mr. DOTY: I am not accusing anybody. The members of the canal counties are as honest as I am and if I have aimed to cast any reflection on anybody's vote I withdraw it. I have no intention of doing so. I was calling attention to a political phenomenon.

Mr. HOSKINS: Do you think there should be a political motive assigned to any member of a committee who would emasculate the woman's proposal and turn in the liquor proposal just as it was?

Mr. DOTY: If you are referring to me I don't care. What I did I did publicly, and, more than that, I helped have that report printed and laid on your desk so that you could not help but be well informed as to it.

Mr. HOSKINS: And that might reflect politically—

Mr. DOTY: It might in your eyes, but not in mine. This is simply a scheme to keep them on a little bit longer and we have been trying to get rid of them for thirty or forty years. This is the first chance we have had to do away with the board of public works, and I want to say that there is a member of the board of public works who, every time he has seen me, has importuned me—not quite that, but he has told me time and again to do away with the board of public works. He is a member elected and comes from Ashtabula county, but I do not like to mention his name.

Mr. SMITH, of Hamilton: I move the previous question on the amendment and everything.

Abolishing Board of Public Works—Use of Voting Machines.

The main question was ordered.

The PRESIDENT: The question is, Shall the amendment pass? A roll call has been demanded and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas, 32, nays 75, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Miller, Crawford,
Baum,	Harter, Stark,	Norris,
Brattain,	Henderson,	Riley,
Brown, Pike,	Holtz,	Shaw,
Cody,	Hoskins,	Smith, Geauga,
Collett,	Keller,	Stalter,
Colton,	Kerr,	Stokes,
Dwyer,	Kramer,	Taggart,
Fluke,	Kunkel,	Walker,
Halfhill,	Lampson,	Winn.
Harris, Ashtabula,	Matthews,	

Those who voted in the negative are:

Antrim,	Harbarger,	Partington,
Beatty, Morrow,	Harter, Huron,	Peck,
Beatty, Wood,	Hoffman,	Peters,
Beyer,	Hursh,	Pettit,
Campbell,	Johnson, Madison,	Pierce,
Cassidy,	Johnson, Williams,	Price,
Cordes,	Jones,	Read,
Crites,	Kehoe,	Redington,
Crosser,	Kilpatrick,	Rockel,
Cunningham,	King,	Roehm,
Davio,	Knight,	Rorick,
Donahey,	Lambert,	Shaffer,
Doty,	Leete,	Smith, Hamilton,
Dunlap,	Leslie,	Solether,
Dunn,	Longstreth,	Stamm,
Elson,	Ludey,	Stevens,
Evans,	Malin,	Stewart,
Fackler,	Marriott,	Stilwell,
Farnsworth,	Marshall,	Tannehill,
Farrell,	Mauck,	Tetlow,
Fess,	Miller, Fairfield,	Thomas,
FitzSimons,	Miller, Ottawa,	Ulmer,
Fox,	Moore,	Wagner,
Hahn,	Nye,	Watson,
Halenkamp,	Okey,	Wise.

So the amendment of the member from Defiance was not agreed to.

Mr. KNIGHT: There is an amendment that should be offered, the same as the one that was offered as to the state commissioner of common schools, providing for the duties of a new office until the legislature acts.

Mr. FESS: A point of order. The previous question was called on everything pending.

The PRESIDENT: The way the motion was stated it will be impossible to amend now.

Mr. READ: I move that we reconsider the vote by which that main question was ordered.

The PRESIDENT: That is not in order. The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 106, nays 3, as follows:

Those who voted in the affirmative are:

Anderson,	Cassidy,	Doty,
Antrim,	Cody,	Dunlap,
Baum,	Collett,	Dunn,
Beatty, Morrow,	Colton,	Dwyer,
Beatty, Wood,	Cordes,	Elson,
Beyer,	Crites,	Fackler,
Brattain,	Crosser,	Farnsworth,
Brown, Highland,	Cunningham,	Farrell,
Brown, Pike,	Davio,	Fess,
Campbell,	Donahey,	FitzSimons,

Fluke,	Lampson,	Rockel,
Fox,	Leete,	Roehm,
Hahn,	Leslie,	Rorick,
Halenkamp,	Longstreth,	Shaffer,
Halfhill,	Ludey,	Shaw,
Harbarger,	Malin,	Smith, Geauga,
Harris, Ashtabula,	Marriott,	Smith, Hamilton,
Harris, Hamilton,	Marshall,	Solether,
Harter, Huron,	Matthews,	Stalter,
Henderson,	Mauck,	Stamm,
Hoffman,	Miller, Crawford,	Stevens,
Holtz,	Miller, Fairfield,	Stewart,
Hoskins,	Miller, Ottawa,	Stilwell,
Hursh,	Moore,	Stokes,
Johnson, Madison,	Norris,	Taggart,
Johnson, Williams,	Nye,	Tannehill,
Jones,	Okey,	Tetlow,
Kehoe,	Partington,	Thomas,
Keller,	Peck,	Ulmer,
Kerr,	Peters,	Wagner,
Kilpatrick,	Pettit,	Walker,
King,	Pierce,	Watson,
Knight,	Price,	Wise,
Kramer,	Redington,	Woods,
Kunkel,	Riley,	Mr. President.
Lambert,		

Those who voted in the negative are: Harter, of Stark, Read, Winn.

So the proposal passed as follows:

Proposal No. 331—Mr. Walker. To submit an amendment to article VIII, section 12, and to repeal section 13, of the constitution.—Abolishing board of public works.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VIII.

SEC. 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, and his duties and powers shall be defined by law.

Resolved further, That section 13 of article VIII is hereby repealed.

Mr. KNIGHT: I would like to make a motion. The proposal does not prescribe any duties for the newly created officer, and I would like to offer a resolution of instructions that the Phraseology committee be instructed to report this back with an amendment in the grand resolution and that the amendment should be as follows:

In line 7 strike out all after the word "year" and insert "with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law."

The language is identical with that which the Convention inserted Friday last in the proposal pertaining to the superintendent of public instruction.

The motion was carried.

The PRESIDENT: Proposal No. 242—Mr. Roehm.

The proposal was read the third time.

Mr. ROEHM: I offer an amendment.

The amendment was read as follows:

Use of Voting Machines—Municipal Home Rule.

In line 6 strike out the word "ballot" and substitute in place thereof the word "vote".

Mr. ROEHM: It was thought by some of the members of the Convention that the word "ballot" in line 6 might refer merely to the word ballot previously used in line 5 and that the secrecy of voting would be preserved only when the ballot was used and not the voting device, and for that reason this amendment is offered.

The amendment was agreed to.

Mr. OKEY: I offer an amendment.

The amendment was read as follows:

Strike out the words "preserve the secrecy of the ballot" in line 6 and insert the following: "providing, however, the secrecy in voting shall be preserved."

Mr. DOTY: There are no such words now in the proposal as are indicated by that amendment.

The SECRETARY: That should read "secrecy of the vote."

Mr. DOTY: No, sir; it should read just as the member sent it up, and I make the point of order on the way the member sent it up.

Mr. OKEY: The word "ballot" should be changed to "vote." The secrecy of the ballot is not what we want to preserve, but the secrecy of the voting. The ballot is that upon which the names are recorded and the voting is another thing. It is the secrecy of the voting that we want to preserve. That is what I had in view, and I offer the amendment to clarify it.

The amendment was read as follows:

Strike out the words "secrecy of vote" in line 6 and insert in lieu thereof the following, "provided, however, the secrecy in voting shall be preserved."

Mr. OKEY: After further examination I think Mr. Roehm's amendment covers that and I withdraw my amendment.

The question being, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 97, nays 8, as follows:

Those who voted in the affirmative are:

Antrim,	Fox,	Leete,
Baum,	Hahn,	Longstreth,
Beatty, Morrow,	Halenkamp,	Ludey,
Beyer,	Halfhill,	Malin,
Bowdle,	Harris, Hamilton,	Marriott,
Brown, Highland,	Harter, Huron,	Marshall,
Campbell,	Harter, Stark,	Matthews,
Cassidy,	Henderson,	Mauck,
Colton,	Hoffman,	McClelland,
Cordes,	Holtz,	Miller, Crawford,
Crites,	Hoskins,	Miller, Fairfield,
Crosser,	Hursh,	Miller, Ottawa,
Cunningham,	Johnson, Madison,	Moore,
Davio,	Johnson, Williams,	Nye,
Donahey,	Jones,	Okey,
Doty,	Kehoe,	Partington,
Dunlap,	Keller,	Peck,
Dunn,	Kerr,	Peters,
Dwyer,	Kilpatrick,	Pierce,
Earnhart,	King,	Price,
Farnsworth,	Knight,	Read,
Farrell,	Kramer,	Redington,
Fess,	Kunkel,	Riley,
FitzSimons,	Lambert,	Rockel,
Fluke,	Lampson,	

Roehm,
Rorick,
Shaffer,
Smith, Geauga,
Solether,
Stalter,
Stamm,
Stevens,

Stewart,
Stilwell,
Stokes,
Taggart,
Tannehill,
Tetlow,
Thomas,
Ulmer,

Wagner,
Walker,
Watson,
Winn,
Wise,
Woods,
Mr. President.

Those who voted in the negative are:

Beatty, Wood,
Brattain,
Brown, Pike,

Cody,
Collett,
Harbarger,

Leslie,
Norris.

So the proposal passed as follows:

Proposal No. 242—Mr. Roehm. To submit an amendment to article V, section 2, of the constitution.—Use of voting machines.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE V.

SEC. 2. All elections shall be either by ballot or by mechanical device, or by both, preserving the secrecy of the vote. Laws may be enacted to regulate the preparation of the ballot and to determine the application of such mechanical device.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 272—Mr. FitzSimons, is the next business in order.

The proposal was read the third time.

Mr. FITZSIMONS: I offer an amendment.

The amendment was read as follows:

In line 17 insert a comma after the word "self-government" and in line 18 strike out the comma.

Mr. HOSKINS: The striking out of that comma and the inserting of another one does not enlarge or curtail any powers?

Mr. FITZSIMONS: Not a particle.

Mr. HOSKINS: What is the purpose?

Mr. FITZSIMONS: The idea was to make it more self-evident than in the original proposition that the powers were entirely within the municipality.

Mr. WINN: I hope that every body will give attention while we discuss this amendment. It is of most vital importance. I was not able to hear the answer made by the author [Mr. FITZSIMONS] to the inquiry directed to him by the member from Auglaize, but I do know that if this innocent amendment is made it practically changes the whole substance of section three. As it now reads, the municipality shall have the authority to exercise all powers of local self-government and adopt and enforce within their limits local police, sanitary and other regulations such as are not in conflict with general laws. It is proposed to insert a comma after self-government so that the municipality shall have authority to exercise all powers of local self-government without any restraint by the general laws of the state. Do you get that?

Mr. DOTY: That is what they ought to have.

Mr. WINN: Now you can see the colored gentleman in the woodpile.

Municipal Home Rule.

Mr. DOTY: I am not colored.

Mr. WINN: If I understood the answer of Mr. FitzSimons, the author of the proposal, he said that this comma would not change the sense of the section, but you see now that the purpose is to give the municipalities absolute power of local self-government without respect to any general laws of the state, and that the limitations not in conflict with the general law of the state shall apply only to local police, sanitary and similar regulations. A few days ago, when this question was under discussion, I offered an amendment to section 7 broader in its scope and more liberal to the municipalities than anything that has been asked for by the author of the proposal or by its friends. That amendment was offered and agreed to and written into the proposal because in section 3 there was no comma after the word self-government. You see the importance of all this, so if we now insert a comma after the word "self-government" and thereby limit the right of municipalities by general laws to only such things as relate to local police, sanitary and other regulations, then we have in section 7 the same unrestricted right on the part of the municipalities to adopt a charter that was not intended. Such was not understood to be the sense of this Convention when the amendment to section 7 was offered and adopted. It ought not to be allowed now. I think that the members in favor of this proposal should have known before this section was presented that those who are opposed to it yielded, as we did a few days ago, simply because we believed there was left in it local self-government for municipalities limited only by the provisions of the general assembly or the lawmaking power. I move, therefore, that this amendment be laid on the table.

Mr. DOTY: I demand the yeas and nays on that. That is scarcely a fair way of handling a matter. It is an important matter and it should not be closed up like this.

Mr. ANDERSON: A point of order. There is only one thing before the Convention.

The PRESIDENT: The yeas and nays have been demanded on the motion to lay on the table.

Mr. HARRIS, of Hamilton: It occurs to me that the chairman of the committee should be allowed to make a statement.

Mr. ANDERSON: A point of order. A motion to table is not debatable.

The yeas and nays were taken, and resulted—yeas 67, nays 42, as follows:

Those who voted in the affirmative are:

Anderson,	Evans,	Lampson,
Antrim,	Farnsworth,	Leete,
Baum,	Fess,	Longstreth,
Beatty, Morrow,	Fluke,	Ludey,
Beyer,	Harbarger,	Marriott,
Beatty, Wood,	Harris, Ashtabula,	Mauck,
Brattain,	Holtz,	McClelland,
Brown, Highland,	Hoskins,	Miller, Crawford,
Campbell,	Johnson, Madison,	Miller, Fairfield,
Cassidy,	Johnson, Williams,	Miller, Ottawa,
Colton,	Jones,	Nye,
Crites,	Kehoe,	Okey,
Cunningham,	Kerr,	Partington,
Dunn,	Kilpatrick,	Peck,
Dwyer,	Knight,	Peters,
Earnhart,	Kramer,	Pettit,
Elson,	Lambert,	Read,

Rockel,	Stamm,	Wagner,
Roehm,	Stevens,	Walker,
Rorick,	Stewart,	Watson,
Shaw,	Tannehill,	Winn,
Smith, Geauga,	Tetlow,	Wise.
Solether,		

Those who voted in the negative are:

Bowdle,	Halenkamp,	Moore,
Brown, Pike,	Halfhill,	Pierce,
Cody,	Harris, Hamilton,	Price,
Cordes,	Harter, Huron,	Redington,
Crosser,	Harter, Stark,	Riley,
Davio,	Hoffman,	Shaffer,
Donahay,	Hursh,	Smith, Hamilton,
Doty,	Keller,	Stalter,
Dunlap,	King,	Stilwell,
Fackler,	Kunkel,	Stokes,
Farrell,	Leslie,	Taggart,
FitzSimons,	Malin,	Thomas,
Fox,	Marshall,	Ulmer,
Hahn,	Matthews,	Mr. President.

So the motion to table prevailed.

Mr. Cunningham: I offer an amendment.

The amendment was read as follows:

Strike out all after "Sec. 2" in line 10 and insert the following:

"The general assembly shall authorize the adoption of the commission plan of municipal government by the cities of this state."

Mr. CUNNINGHAM: Proposal No. 272 has received less real general consideration in open convention than any other important proposal before this body, and I believe should have received the most careful attention. It is true that we were assured by members of the committee on Municipal Government that they had sweat blood over its consideration; that not a syllable of any word or even a preposition had been overlooked; that it was the best thing of the kind that had ever been framed by mortal man up to this time; that it embraced on this subject the garnered wisdom of a thousand years. Some of us think that it falls far short of what is claimed for it. In the first place, the amended title is misleading. The title has been changed by the committee on Phraseology to "Municipal Home Rule." We think that title does not describe it at all and that it will have the effect to mislead and deceive the people. The title to describe in short the object of this proposal should be changed to something like this: "To provide an easy way for universal municipal bankruptcy." If the people are not deceived as to the real scope of this measure it will never be adopted.

Let us examine it for a few moments. It provides for a deluge of these corporations. Under it more than two thousand different and distinct municipal corporations can be organized in the state. This looks to me to be home rule run mad. So far as I am personally concerned I am in favor of granting the right to any city to establish a commission form of government. A proposal of twenty-five lines is all that is needed to provide this constitutional right.

The proposal is a mongrel, a mixture of a little organic law and a great deal of pure legislation, and that legislation of the very worst and most vicious kind.

It embodies features in total disregard of the rights of the owners of private property. For example, if an

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owner is seized of the title to town lots adjacent to each other and one of them is taken on condemnation for some fancied public improvement the price of the lot so taken can be assessed against the owner's remaining lot.

I fully recognize the right of municipalities to condemn private property for purely public uses, but do not recognize the right to compel the owner to pay for his own land so taken. This wonderful proposal provides further that if a municipality, however small, thinks that it needs an eighth of an acre for public use in some near-by farm it has the right to condemn and take it, not only the part that is needed, but the owner's whole farm of five hundred acres of which the one-eighth of an acre is part. What for? may be inquired. Why, to subdivide and sell out in lots for mere speculative purposes.

This proposal gives every little village and city in the state the right to buy in, or to condemn if it can not buy, any and all public utilities inside its limits and issue bonds to pay for the same. For example, they can buy or build street-car lines, electric-light plants, gas plants and any other public utility that can be thought of, and extend them out into the country beyond the corporate limits and operate them. We are to have "no pent-up Uticas" in this great state of Ohio, and if there shall be in ten years a single village or city in the state that will not be absolutely bankrupt it will be because it will not be able to sell the bonds.

If the committee who framed up this measure had set themselves deliberately to work to propose the worst and most vicious form of municipal government in the world they couldn't have succeeded better; and hence I insist that if this measure is to be submitted in its present form that the title at least should be changed so as not to deceive the people, but at least give them a gentle hint as to its true character.

When all the money in the state is invested in the bonds issued to buy all these public utilities we will then have single tax without mistake. The bonds will be exempt and the utilities themselves will no longer pay any taxes. The millions now paid by them into the public treasury will be no longer available; consequently there will be but little left except real estate to pay taxes on. We are launching our municipal bark on an unknown sea without the rudder of common sense to guide it, and for one I protest.

Mr. DOTY: It is the old story. The member from Harrison county can tell us how to run cities better than we know ourselves. Here is a sample of it and a more absurd proposition has not been put up before us, and I move that it be tabled.

The motion to table was carried.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

In line 43 strike out the words "city or village" and insert in lieu thereof the word "municipality".

Mr. KNIGHT: That makes it conform with the rest of the section.

The amendment was agreed to.

Mr. LAMPSON: I offer an amendment.

The amendment was read as follows:

In line 19 strike out the word "acquire".

In line 22 strike out all after the period and strike out all of lines 23, 24, 25 and 26.

In line 22 after the period add:

"Any municipality in which the major part of the property of any public utility is situated, may acquire the use of, and full title to, the franchises and property of such public utility by condemnation or otherwise; provided that any municipality determining to construct any public utility shall provide against the waste of competition, by first acquiring by condemnation or otherwise, the property of any existing public utility used and useful for the convenience of the public in furnishing a like service in such municipality and operating under a license, permit or franchise for a period of five years prior to such determination, paying therefor just compensation only."

Mr. LAMPSON: I think if municipalities are to go into the business generally of incorporating public utilities, it is only right that they should be fair to their own citizens who have heretofore been granted franchises and under those grants have built up public utilities through which they have been serving the people.

The home rule proposal gives municipalities complete authority to engage in any business "the service or product of which is supplied to the municipality or its inhabitants." They may do this either by operating a new plant or by the acquirement of any existing property and franchises of any private citizen or company, either by condemnation or otherwise. This grant of power is fundamental and can never be abrogated, restricted or regulated by legislative act.

Under this grant of power the municipality may establish for itself an absolute and complete monopoly in such lines of business as it chooses to engage in which are within the meaning of this proposal.

It is generally agreed that competition in what are generally known as public utilities is a wasteful duplication of investment and must result in economic loss. If such competition exists between two private companies this loss falls on individuals, but if the municipality is one of the parties to the competition the loss suffered must fall on the general public. Therefore, given the power to create a monopoly for itself, the municipality should be restrained from engaging in any competition which would result in loss to the entire community without permanently benefiting any part of the people.

Public utilities under private ownership pay general taxes on their property. They also pay an excise tax, which is an important item in the revenues of the state government. Public utilities under municipal ownership are exempt from taxation. Competition under such conditions is morally wrong and most unfair. It is morally wrong because it confers a special privilege on the users of the municipal service at the expense of the users of the private service and of nonusers.

Whenever private property is required for public purposes the government may condemn such private property and take it for its own use; but the government must pay to the owner just compensation for the property taken, together with such damages as are sustained through such condemnation. In all such cases the jus-

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tice of the compensation is determined by the value of the property before it has been damaged or depreciated. For example, a municipality condemning private property for a garbage plant would be required to pay the value of the property before the plant was built. It would not be permitted to depreciate the value of the property by locating the nuisance upon it and then buy it at its depreciated value.

The people of Ohio are not ready understandingly to depart from this established rule, which merely recognizes the right of the individual to be protected in the enjoyment of his private property. No member of the Convention would tolerate a law which would permit a railroad to run its tracks through his property and assess the damage on the value of the property after the damage has been done; nor would they tolerate a law which would permit officials of the government to depreciate the value of their homes or their business in order to buy them at the depreciated value; yet that is exactly what is done if the officials temporarily in charge of the government are permitted to engage in unrestricted competition with a private business which they may at any time condemn and take over.

Given the right to condemn at any time any private business, at a valuation fixed by a body of its own citizens, and with the further right to authorize private competition whenever competition appears to be desirable, it is impossible to conceive a situation wherein a municipality should be permitted to engage in competition.

Mr. MOORE: When the Standard Oil Company competed the general oil dealers throughout the country out of business and when the Steel Trust competed all other people in the steel and iron business out of business—

Mr. LAMPSON: They did a gross injustice for which the public has condemned them, and it is just as much a matter for condemnation for a municipality to follow in their tracks perpetrating a like injustice.

Mr. ANDERSON: If your amendment were to carry would it in any way curtail or diminish the right of the municipalities to have home rule in the fullest sense, except they would have to condemn and take over at the time when any competition is had.

Mr. LAMPSON: That is right. It does not contract their power; it enlarges it. But it allows them to do justice to those individuals and corporations to which, under existing conditions, they have granted franchises.

Mr. FACKLER: Is it not a fact that if it were to prevail in as large a city as Cleveland that the city could not engage in the lighting business by reason of the fact that it would be unable to issue bonds, on account of the limitation of the general law, in sufficient amount to acquire the existing property?

Mr. LAMPSON: That does not affect the principle involved. The fact that there is such a condition in some particular municipality does not affect the principle, and we should not make fundamental laws for all the municipalities dependent simply upon local conditions.

Mr. FACKLER: Would you support an amendment that bonds be issued for the purpose of constructing or acquiring or keeping a public utility should not be

considered in the computation of the general bonded debt?

Mr. LAMPSON: That is something that I have not thought of. I would want to study it a little before answering.

Mr. DOTY: The argument of the member prepared and so well delivered is composed of two or three sections. The first section was a general onslaught on municipal ownership.

Mr. LAMPSON: I deny that. There was no such purpose.

Mr. DOTY: That is the impression I got. But be that as it may, as they say in the story books, we come to another section which undertakes to criticize this proposal because it may produce a fear of, a certain situation in the city. Now there is some force in that, but the amendment the member offers is not the proper solution. What the member proposes to do is not to compel the city to appropriate the funds to go into the business itself, but he proposes that the city shall be compelled, if it desires to go into the business to furnish certain service, to purchase the plant, if there be such a plant, in that city before it can go into the business at all.

Mr. LAMPSON: Would it not be much better for the city to do that than to ruin one property, competent to do business, to build up another by taxing the people? Would it not be better to take the property, competent to do the business, than to duplicate it by taxing the whole people?

Mr. DOTY: It would be, provided you were sure you were getting a modern equipment instead of junk.

Mr. LAMPSON: Can you not trust the people to attend to the matter properly?

Mr. DOTY: It is not a matter of trusting. It is a matter of starting a new business with an old junk pile. Let me tell you another thing. If two people go into competition they go in on a competitive basis and one has the same show as any other one. The city of Columbus tomorrow can allow competition in the electric light business in this city.

Mr. LAMPSON: Do you think it is just to tax me, who own a franchise issued by the city of Columbus and have built up a property to serve the city of Columbus, to build a competing property?

Mr. DOTY: I do not know whether it would be fair or not. It is according to how you behave yourself.

Mr. DWYER: Gentlemen, remember there are a hundred and nineteen members who have intelligence—

Mr. DOTY: I don't get more than started when some one pops in with a question. Now I want to be let alone for a minute or so at least. This amendment will preclude the municipality from standing upon the same footing as a private party in competition. The city of Cleveland allows a competitive company to come in and compete with any other company already there for public service. And now what happens? One company eats the other up. Nobody commiserates about the one eaten up, whether it was fair or not. You allow private people to do it now, and you want to cut off that right so far as a municipality is concerned.

Mr. HOSKINS: Speaking of one company eating another company up, is it not a fact that when a rival company is authorized to do business it has no right

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of condemnation, but if the city goes into the business it has that right?

Mr. DOTY: If this amendment goes through, that is the only way it can get into business.

Mr. HOSKINS: Is it not a fact that when you come to the question of condemnation the price fixed on the junk won't amount to anything?

Mr. DOTY: What good is that junk in furnishing a high-class service?

Mr. HOSKINS: You do not contend that public utilities are not worth anything and that the price would be fixed by the jury depending upon the condition of the property?

Mr. DOTY: The property in smaller cities is a property depreciated because of the lack of care, and then you want to compel the municipality to come in and buy that whether or not; whereas it could go out and by the expenditure of the same money get higher efficiency.

Mr. HOSKINS: Would not the price be fixed according to the present condition of the property?

Mr. DOTY: Yes, but you buy a lot of junk that you don't need.

Mr. BROWN, of Highland: According to the utility commission, the railroads of the city of Cleveland pay \$309,000 excise taxes and the electric light companies of Cleveland and Cincinnati pay as excise taxes \$149,000, making \$460,000 yearly. Suppose the municipalities under this law take over those utilities and they naturally avoid the payment of all those taxes in the shape of excises to the state. Now where are those excise taxes to be made up? Would they not have to go on the general property?

Mr. DOTY: Yes, if the state doesn't find other sources to tax, and they have been very successful in the last year in doing that. This question suggests one plan of securing municipal ownership in this state, and you are trying to get the farmer vote against it on the idea that they will have to pay fifteen cents more taxes. You are simply trying to scare the farmers.

Mr. BROWN, of Highland: Is that a scare or is it a fact?

Mr. DOTY: It is not so bad as you try to make it. You stand up and try to make it look bad, but it is not. It wouldn't make a difference of fifteen cents on Mr. Cunningham's tax bill.

Mr. LAMPSON: In connection with the question that you asked me some time ago, does section 3990 of the General Code make it mandatory to take over gas and electric plants before the city can go into the business of serving gas and electric lights to the public?

Mr. DOTY: I leave that to you.

Mr. LAMPSON: Well, does it?

Mr. DOTY: I am not denying it. Get up and ask whether something is in the Code and then read it and then you want me to tell you from memory what is in the Code! Why, I never read the Code but once in my life. I am not concerned about it, only I do not want the city of Cleveland or any other city to have less power or right to compete than you give a private person, and your amendment is framed to do that thing.

Now, coming back to the proposition whether it is fair or not to allow the cities to first say they want to condemn. Here is an electric-light plant worth \$5,000,-

000 to the city. The city simply goes into competition, and when they have the thing halfway beaten down they condemn it and get it for \$2,500,000. Now that is not fair. If any one can frame an amendment that will correct that I shall be glad to have it. I have not been able to do it, but there may be others who can do it. This particular amendment is not designed to do that; that is not what it is for. This amendment is designed to prevent the cities of this state from having the same right that you or I have to go into competition. That it may do the other too, is also true, and I think that the other should not be done.

Mr. WATSON: I move that the member's time be extended another fifteen or twenty minutes.

Mr. HARRIS, of Hamilton: Gentlemen of the Convention: I am familiar with the amendment proposed by the gentleman from Ashtabula [Mr. LAMPSON], because it was submitted to me by a representative of the public service corporations of the state, the president of the Cleveland Illuminating Company. I wish to state that the proposed amendment takes out the lifeblood of your home-rule proposal. You cannot escape from that, whether you wish to change your position or not. On April 30 we discussed these same principles and by almost a unanimous vote laid upon the table amendment after amendment after a discussion of each of them. Then the proposal was adopted by the Convention, one hundred and four in favor and six against. Gentlemen, there is not a single condition that has been changed since April 30 except that the fine Italian hand of the public service corporation has made its appearance. You all know that the fundamental theory of our home-rule proposal is the privilege given to the municipalities to acquire by purchase, construction or lease public utilities in cities and villages. That is the lifeblood of the proposal. Whatever you do, directly or indirectly, to interfere with the flow of that lifeblood, you do deliberately now and with the knowledge that it will seriously cripple the home-rule proposal. I ask you in all honesty and in all sincerity, in the month since this proposal has been passed and since it was discussed by every newspaper in the state of Ohio, how many of you have seen in any newspaper of any size or any standing in the state aught but words of highest praise for practically every section in that proposal?

Mr. LAMPSON: Will the gentleman yield for a question?

Mr. HARRIS, of Hamilton: Not at present, but later on I will. Now you are asked to stultify yourselves, because it is or would be stultification and betrayal of the interests that sent you here and commended you so highly for the adoption of the home-rule proposal in the form it passed on April 30 last—and now you are asked to betray that confidence. Stop and consider a minute. I am in a position to give you a concrete illustration. In the city of Cincinnati a couple of years ago we had a magnificent plant for manufacturing artificial gas. Stock was issued against that plant and its connections. The electrical plant had its conduits through the streets and it was capitalized in the neighborhood of \$30,000,000 and five per cent has been regularly paid; in fact, if my memory is not at fault, the five per cent has been paid the stockholders of the Cincinnati Gas Light Company without interruption for fifty years.

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Here was an artificial gas plant capitalized at \$30,000,000, paying interest to the stockholders at five per cent per annum in a city of four hundred thousand people. The demand for natural gas became so great that the officials of the Cincinnati Gas Company were compelled by force of public opinion to make arrangements to deliver natural gas to the people of Cincinnati, and natural gas has been delivered to the people of Cincinnati for three years. The artificial plant has been thrown aside and the same amount of dividends is yet being paid by the Cincinnati Gas Light Company to its stockholders. This amendment makes it impossible for Cincinnati or even any small city in the state to acquire a plant unless it purchases the existing plant. Imagine the conditions where the city desired to acquire such a plant. At an expense, say of \$10,000,000, the city of Cincinnati would have made the same contract with the owners of the gas wells in West Virginia that the Cincinnati Gas Light Company did at an expense of \$10,000,000. It might have erected a plant and would have delivered natural gas to the people of Cincinnati at a cost based on a fair percentage of capital invested.

Mr. DWYER: Do you know that Toledo and Urbana had some experience with the natural gas question?

Mr. HARRIS, of Hamilton: Yes. In several cities, among them those you have named, by bad management practical bankruptcy has faced that part of the investment, but this Convention is not the guardian or the financial agent of the municipalities. We say to the people of Ohio, we give you power and if you abuse it you will be the sufferers, but you are not infants in swaddling clothes.

Mr. LAMPSON: Do you think it is exactly fair to tax all of the people of Cincinnati to go into the business which will drive out a rival business, and take the tax which that rival business has been paying not only from Cincinnati but from the whole state?

Mr. HARRIS, of Hamilton: Your question is misleading. The object of this home-rule proposal is not to do that which you say. By your question you reflect on the honesty and integrity of your fellow citizens. What would be the natural proceeding if Columbus, Coshocton, Youngstown, Delaware or Cincinnati wanted to acquire property of a private utility? It would be to condemn that property and pay the owners for it at a price fixed by twelve of their fellow citizens. It does not contemplate, and only a diseased mind can so believe, that the people of the villages or of the cities of the state will deliberately be so mean and so wicked and so immoral as to build a plant in competition, if there be one already of such a character and of such modern construction as will satisfy the needs of the community. You start out with the assumption that all of the people living in the villages and in the state of Ohio are immoral.

Mr. LAMPSON: I do not say any such thing at all. On the contrary, I propose that they shall be moral and fair.

Mr. HARRIS, of Hamilton: You are going to be the sole judge of morality of men in the state of Ohio?

Mr. LAMPSON: They will be the judges themselves. They will have the power to judge.

Mr. HARRIS, of Hamilton: I say to you what I have said before on the floor of this Convention in an-

swer to the member from Allen [Mr. HALFHILL], and that is that historians have noticed and commented on the remarkable fact that the average sense of any community is far more moral than the sense of the individuals, and you may safely entrust the moral sense of the community of people with whom you have associated and of people with whom you have been reared as neighbors—you may safely trust to that high sense of moral conduct the question of determining how they will proceed to acquire their public utilities.

Mr. LAMPSON: Do the federal constitution and the state constitution proceed upon that basis when they protect the rights of the individual to obtain property?

Mr. HOSKINS: A point of order. Are we not debating this proposition under the five-minute rule?

The PRESIDENT: Yes, and the gentleman's time is up.

Mr. WATSON: I move to recess until two o'clock p. m.

The motion was carried.

AFTERNOON SESSION.

The Convention was called to order by the president.

The PRESIDENT: Mr. Harris, of Hamilton, has the floor.

Mr. WATSON: A point of order. The gentleman had already spoken fifteen minutes before we adjourned.

The PRESIDENT: The member from Hamilton [Mr. HARRIS] has the floor.

Mr. HARRIS, of Hamilton: It is but proper and just to say that the committee on Municipal Government considered this very question now before the Convention, and the committee, consisting of Judge Worthington, Mr. Knight, Mr. Rockel and myself, had that very question before us and gave it our most serious and earnest consideration, and yet we were unable to draw up a section that would do justice to the municipality. We were unable to draw up a section that did not seem to destroy the life of the municipal home-rule proposal. If such a section can be drawn up, I would gladly support it, but the amendment proposed by the member from Ashtabula [Mr. LAMPSON] is most vicious. It will destroy the entire principle of home rule. His amendment is based on the theory that there is no public morality in a municipality. Now I wish to say that I personally own \$75,000 worth of stock of the Cincinnati Gas Company and the Construction Company. My partner in the two estates of his father and uncle, which he represents, owns a little over \$300,000 of stocks of those same public utilities, and I wish to say for myself I have so much confidence in the public morals and moralities and the integrity and good faith of the people as a whole that I am willing to risk that \$400,000 and vote against the Lampson amendment.

Mr. DWYER: Every city in this state is advertising from time to time for new factories and offering every inducement for new corporations to come in and build factories and establish utilities of different kinds. This, I think, is the experience of all of our cities. We read in flaming letters these advertisements asking people to invest their capital in the cities for the purpose of building up those cities and giving employment to its people.

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Now, when these corporations come in there they are entitled to fair play. After the inducement and encouragement offered by the citizens for those people to come in and invest their money, they are certainly entitled to fair play. Suppose under these circumstances a private utility, an electric light plant, is established by some private corporation. They put their money in there. Then in a short time the city says, "We will have our own electric light plant; we will establish one." Now then, instead of trying to buy that plant out, instead of trying to purchase it by condemnation, the city seeks to establish a rival plant. What does a rival plant mean to a private utility corporation in a city? That electric light plant is built by the city; pays no taxes, pays no excise taxes. Everything is in its favor. The private corporation is wiped out. What is that but confiscation? Is it any better than confiscation? Talk about morality! Is that morality to induce people to come in and invest their money and then wipe them out? That would be the effect of this proposition if it goes through. I say it is not fair. It does not put the private utility on a par with the public utility. Excise taxes today are very high and the public utility does not have to pay any excise taxes. How can the private plant do business in competition with such a plant, which is free from all of these conditions? I say it is not fair. It is not moral. They are talking about morality; tell us whether that is moral.

In addition to that, you establish a city plant, and my experience with city plants is that when they are established they cannot do business in a business way. I will go into a civic building, probably at nine o'clock in the morning, and there will be a man getting a salary from the people with his heels on the desk reading the paper. That is the way city plants are conducted. They are not conducted as you or I would conduct our plant. The men will not work for a city as the men will work for us. They owe no obligation to anybody but to play politics. I am not in favor of these public utility corporations conducted by the city. They cannot conduct them. I have seen in our cities the laying of a big water main through the streets. It will cost the city a lot of money. After it is finished they never go to the men on that street and solicit them to take water. If the men come to the office they will give them the water, but if I had that water main, or if you or any private company had it, and had put a great big investment in the street, we would go out to every man on the street and try to get him to take water; and we would solicit. But the men working for the city will sit in their offices, waiting for men to come and get the water. I am not in favor of this. It will be a dangerous exercise of power to give this right, and the day will come if this proposal is passed that we will regret what has been done today. As I said this forenoon the city of Toledo, in the natural gas excitement, invested \$1,000,000 to get natural gas to Toledo. I appeal to any Toledo gentleman here to tell how much the city has made out of natural gas.

Mr. ULMER: The city today would have a natural gas plant if it had not been for the Standard Oil Company, which made obstructions. That was the trouble. It was the Standard Oil Company, and the city lost its \$2,000,000.

Mr. DWYER: If the city of Toledo had the same ability as the Standard Oil Company, it would have taken care of its plant and protected it. That is the very fact I show, that the city is not competent to have a plant or it would not let the Standard Oil Company lease all around it and take it away. That is the best illustration that the city has not the ability or interest in the public welfare to watch out for its business and guard against the Standard Oil Company. The same thing happened at Urbana. There they lost \$300,000. Greenville started in the same way, and what became of that? The Standard Oil Company didn't do away with the Urbana plant, but they didn't secure a field of sufficient importance to furnish the gas. I say it is a mistake for any municipal corporation to go into these ventures. I am opposed to it because I believe it will end in evil to the people. They cannot and will not run a business as you and I or as any man or any private corporation would do it. They have not the interest in it. If our money is invested in it we are interested. We work day and night, and we study at night how the corporation shall succeed. What do they care? When their day's work is done they go home and pay no attention to it until the next day. My experience is that it is a dangerous thing to allow these propositions to go through, to authorize these corporations to go wildly into all sorts of schemes of this kind.

Mr. HARRIS, of Hamilton: Are you people aware that in section 4, line 23, there is a provision made that privately owned public utilities may be purchased by condemnation or otherwise between the buyer and seller—if they can agree upon the terms—without going through condemnation?

Mr. DWYER: I believe that should be in there. If this proposition goes through that should be in. Now, my friend Mr. Doty talks about old junk and says that the city should not be required to buy the property of private utilities corporations. He referred to that as scrap, and I don't think that is fair. If there is a private utility, it is there by virtue of a franchise from the city, and the city should give it reasonable protection by buying it out.

Mr. HARRIS, of Hamilton: That provision is in here, and I do not believe that in one case in ten thousand will a privately owned utility be treated unfairly. It certainly will not be if it has the kind of people we have in this Convention, as they have shown themselves in the last five months.

Mr. DWYER: I hope not. I believe in fair play no matter what the corporation is. Take a corporation that is so much ridiculed, and what is the corporation? It is simply a collection of men who have put their money into an investment. They are generally public business men. We may have a few odious corporations like the Standard Oil, but take the Cincinnati and Dayton corporations, and they are generally made up of public spirited men.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: I think my good friend Judge Dwyer is a little unfortunate in his comparison. He tells us if the city utility had exercised the same business ability as the Standard Oil Company has exercised in its career, that there would not have been any failure in its gas plant. I understood it that way. Am I right?

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Mr. DWYER: Yes.

Mr. FITZSIMONS: I am satisfied that my good old friend would be the last one to suggest the blowing up of competitors, as the Standard Oil Company did an oil company in Buffalo, N. Y., to get it out of the way. I am satisfied he is the last man who would suggest the bribing of a United States senator to get legislation through to give them advantage over their competitors. No, my friends, the people of this country want nothing in their collective capacity but absolute justice, and because they have always been supposed to be just they have always been easy marks for the schemer to plunder. You never saw the people of the state come into this senate chamber to buy legislators by the dozen for the fifty-year franchise. You have never seen people looking about for a judge to stand back of their interests as we have seen the corporations. It has gotten down to the point that when the people get a public official that deals fairly and honestly it is so unusual that they cannot crowd things on him too fast. The people do not run business to get all they can and give nothing in return. They want the right to serve themselves in their own way and in their own time and, my friends, at their own cost. No man with an ounce of fairness in his make-up should object to a proposition of that kind. There are lines of activity, my friends, that are in their very nature monopolistic. The serving of a great municipality is one of them. Now today I am paying for the services of a certain utility company in Cleveland certain figures for services rendered. I am paying ten cents a kilowatt hour for electricity to a certain amount and after that five cents for the remainder, while I know that corporation has a contract in the city of Cleveland for less than three-quarters of one cent per hour for the same service. Now, my friends, you are American citizens, you go to your post office that you have kept under your own control and you ask for a two-cent stamp and it is handed out to you with as much courtesy as if you were the largest corporation in the country and were getting a million.

Now, why should we stand for that? We have started in with the hope that there would be an introduction of a new electric light plant and that we shall be able to get electricity for three cents a kilowatt in Cleveland. We are right in the home of the machinery that makes electricity; we are the fountainhead on this continent of electric machinery and we hope to get a rate of three cents a kilowatt. Down in Montevideo, where they talk Spanish, they use Cleveland machinery and they get a rate of two cents a kilowatt hour. Why is that? They were wise enough to engage in their own business.

Mr. BROWN, of Highland: Will the gentleman permit a question?

Mr. FITZSIMONS: After a while. Now, my friends, when the last words have been said do not go to the people of Ohio and say to them that you allowed the public service corporations of this state to write your constitution. The public service corporations of Ohio have done too much active work in this hall for you to countenance them. Remember the world moves and if you are stationary you are an impediment in the way of the people. If you do not want to get the shackles off of you they will get them off of themselves without asking us. Don't go out and have it said that

it is cheaper for the corporations to buy your officials in defiance of your right than to have them deal fairly with you. That is not a story; that is history, and it has been made right in this hall, and just as long as you listen to their siren song just so long you will have the people of this great commonwealth in shackles. It is up to you. It is either the people or the corporations. Decide the proposition.

Mr. DWYER: I want to ask you a question. If you can buy electricity at three-quarters of one cent per kilowatt why take it at two cents?

Mr. FITZSIMONS: They made a contract with one person for three-quarters of one cent and they charged me ten cents up to a certain amount and then five cents for the remainder.

Mr. DWYER: Who was it that gets it for three-quarters of one cent?

Mr. FITZSIMONS: I do not feel at liberty to disclose that.

Mr. DWYER: I say that no company can make it at three-quarters of one cent.

Mr. FITZSIMONS: I don't know what it cost them to make it, but they sold it for that.

Mr. PIERCE: I move to lay the Lampson amendment on the table.

The motion was carried.

Mr. KNIGHT: The subject which is before the Convention is one—I am not going to say of the most important, but one of the most perplexing questions with which the Convention has had to deal. It is one which from the time the present speaker became a member of the committee on Municipal Government has given him more trouble in committee and privately than any other single question that has come before the body. In the first place, I believe thoroughly in municipal ownership of public utilities and I would be unwilling to cripple in any way the opportunity of the municipalities of Ohio to own and operate for the municipalities and in their behalf the public utilities. On the other hand, it is not a simple question whether from now on municipalities shall be authorized to engage and operate public utilities in our municipalities, but it involves broader and deeper questions of whether in conferring that right in such complete, unlimited way upon municipalities we can afford to do so at the expense of the individuals, some of whom at least are not open to the charge of unfair dealings. In other words, every one of these one hundred and nineteen men here desires to be fair to everybody, as the gentleman from Cuyahoga [Mr. FITZSIMONS] said a minute ago.

Now, between the proposition that we just voted down and laid upon the table, and I think wisely, and the one which is embodied in the present proposal, there is a wide difference, not only a difference but a distance between the two. The proposal as it now stands—frankly, it does and we cannot blink the fact—it does subject the property of existing private corporations operating public utilities under a franchise granted by a municipality to what in the last analysis may amount to a confiscation of their property by the destruction of its value through the operation of the municipally operated plant. Now, a number of the members of the committee, as stated by our worthy chairman a moment since, felt that all through, from beginning to end, and we believed that

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the proposal as it now stands is unfair; and because we could not see any way to be fair, the proposal is here. I do not myself despair of the wisdom of leaving full and complete power in the hands of the municipalities without at the same time clothing them with power to destroy private property. I am not satisfied that the brains and intelligence of this Convention have been exhausted in the effort to accomplish what we all want to accomplish, complete fairness to everybody, without tying the hands of a single municipality and without on the other hand subjecting a fairly well operated private property to improper treatment. It seems that we ought to be able to find a method by which the competition, amounting to destruction or confiscation, can be avoided, for that is what it comes to in the last analysis, and that can be avoided without in any wise tying the hands of Cleveland or any other city of the state. It seems to me that possibly a road to it may be suggested, and I hope that the Convention will not be bound to apply the whip of the previous question necessarily this afternoon. I believe we can get a proposition here which will satisfy everybody in the state, a proposition that nobody can say has been dictated by any private public utility corporation. It seems to me there is a possible plan by which we can work our way out to put an alternative to the municipality of electing either to compete with the private corporation or to condemn the private corporation; but, having elected to compete, it may not subject and condemn the property of the private corporation after it has deteriorated that property by competition. If a municipality decides to compete, it should stand by that decision until after the expiration of the existing franchise. It seems to me there is a possibility along that road of being fair to everybody.

Mr. MOORE: May I ask a question?

Mr. KNIGHT: Yes.

Mr. MOORE: In the matter of confiscation—if you compete and drive them out of business that is confiscation?

Mr. KNIGHT: To a certain extent. It lessens the value of their franchise.

Mr. MOORE: If you take their property and pay them in bonds and take all of the property in the state, those bonds will be deteriorated in value and you have partially confiscated their value?

Mr. KNIGHT: I cannot see that.

Mr. MOORE: If you pay them in money which they cannot invest in public service corporations haven't you confiscated their property?

Mr. KNIGHT: If that is the only thing that they can invest in, but it is not.

Mr. BROWN, of Highland: Suppose the municipalities are given the right to take over utilities that are paying excise taxes for school purposes a certain amount of money; would it not be just to require the municipality to run their own schools to the extent that they have reduced taxes by removing the excises?

Mr. KNIGHT: It has been suggested by several during the noon recess, that where a municipality engages in the operation of a public utility and in competition with the preexisting private corporation having a franchise in any city and paying franchise and property taxes within the municipality, it might be equitable that the municipality, not being subject to taxation on its

plant, should pay thereafter a fraction of one-half of the municipality taxes upon the physical plant of that corporation.

Mr. BROWN, of Highland: If that is done it would remove much of the objection to the proposal.

Mr. KNIGHT: As far as I am concerned, if that line is worked out it should satisfy everybody here. Competition between a municipal utility and a private corporation operating such utility is not the same as two private corporations operating utilities, for both private corporations are subject to taxation and contributing to all the expenses of the municipality, and neither one is being taxed to put the other in better position, whereas when the competition is between a municipally operated plant and a privately operated plant the latter is being taxed and the proceeds go into the treasury to help its competitor put it out of business.

Mr. MOORE: Would it not be more equitable to exempt the property of municipal corporations from municipal taxes—

Mr. KNIGHT: Of the private corporation?

Mr. MOORE: Of the municipal corporations, the municipal light or water plants, to exempt from municipal taxes and let them pay state, county or other taxes?

Mr. KNIGHT: What do you mean? Do you mean to exempt private corporations from municipal taxes?

Mr. MOORE: No; exempt the public municipal corporations, whether light or street railway company, exempt them from municipal taxes.

Mr. KNIGHT: The city doesn't tax its own property.

Mr. MOORE: Should not they pay state and county taxes?

Mr. KNIGHT: They do not. They are not required to. They pay no public taxes whatever, and the point is that the private utility has to pay the taxes and it has to pay taxes to help its rival. The private utility pays taxes to enable the public utility to operate in competition with it.

Mr. SMITH, of Hamilton: You understand that there is no harm in this proposal in the matter of which you speak as far as future public utilities are concerned?

Mr. KNIGHT: I understand that.

Mr. SMITH, of Hamilton: If I understand it, a public utility may enter into an agreement with the cities for a number of years.

Mr. KNIGHT: There seems to be some doubt on that, but it is not important.

Mr. SMITH, of Hamilton: The only difference is with the present public utilities.

Mr. KNIGHT: Yes.

Mr. SMITH, of Hamilton: Is it not a fact that all over the country the publicly and privately owned public utilities are in competition?

Mr. KNIGHT: Not necessarily. The state of Wisconsin, regarded as one of the most progressive states on that subject, provides distinctly against that very thing, and that the municipality shall acquire the public utility operated by a private corporation before it goes into the business.

Mr. FESS: I think it is pretty generally conceded that something ought to go in the proposal that is not there, and yet at the same time nobody seems to have a well-defined notion of what ought to go in. I under-

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stood Mr. Harris, of Hamilton, to say that this thing was battled over in the committee, and I take it that Mr. Knight is speaking along the same lines, but there is nothing specific before the Convention to clear this matter up and it is killing time. If it is the will of the Convention that something should go in, it seems to me that this matter should be put in the hands of a committee to be reported back or acted upon now. We are killing time. One or the other of these courses should be adopted, and in order to bring it to a test I call for the previous question.

The main question was ordered.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 99, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Okey,
Antrim,	Harter, Huron,	Partington,
Baum,	Harter, Stark,	Peck,
Beatty, Morrow,	Henderson,	Peters,
Beatty, Wood,	Hoffman,	Pettit,
Beyer,	Holtz,	Pierce,
Bowdle,	Hoskins,	Price,
Cassidy,	Hursh,	Read,
Cody,	Johnson, Madison,	Redington,
Colton,	Johnson, Williams,	Riley,
Cordes,	Jones,	Rockel,
Crites,	Kehoe,	Roehm,
Crosser,	Keller,	Rorick,
Davio,	Kerr,	Shaffer,
Donahay,	Kilpatrick,	Shaw,
Doty,	Knight,	Smith, Geauga,
Dunlap,	Kramer,	Smith, Hamilton,
Dunn,	Kunkel,	Stamm,
Earnhart,	Lambert,	Stevens,
Elson,	Lampson,	Stilwell,
Evans,	Leete,	Stokes,
Fackler,	Leslie,	Tannehill,
Farnsworth,	Longstreth,	Tetlow,
Farrell,	Ludey,	Thomas,
Fess,	Malin,	Ulmer,
FitzSimons,	Marriott,	Wagner,
Fluke,	Marshall,	Walker,
Fox,	Mauck,	Watson,
Hahn,	Miller, Crawford,	Weybrecht,
Halenkamp,	Miller, Fairfield,	Winn,
Halfhill,	Miller, Ottawa,	Wise,
Harbarger,	Moore,	Woods,
Harris, Ashtabula,	Nye,	Mr. President.

Those who voted in the negative are:

Brattain,	Cunningham,	Solether,
Brown, Highland,	Dwyer,	Stalter,
Brown, Pike,	King,	Stewart,
Campbell,	Matthews,	Taggart,
Collett,	Norris,	

So the proposal passed as follows:

Proposal No. 272—Mr. FitzSimons, to submit an amendment to the constitution by adding article XVIII.—Municipal home rule.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVIII.

Municipal Corporations.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or

over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. The general assembly shall, by general laws, provide for the incorporation and government of cities and villages; and it may also pass additional laws for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of it, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a

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commission be chosen to frame a charter". The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held there. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

SEC. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limi-

tation of the bonded indebtedness of such municipality prescribed by law.

SEC. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SEC. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SEC. 13. The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities; or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

Mr. CASSIDY: In the proposal just adopted there are places where it reads "the general assembly may pass laws—" Following the precedence of this morning I move that the committee on Arrangement and Phraseology be directed to correct Proposal No. 272 as follows:

In line 10 strike out the words "The general assembly shall, by general laws," and in lieu thereof insert: "General laws shall be passed to".

In lines 11 and 12 strike out the words "and it may also pass additional laws" and in lieu thereof insert: "and additional laws may also be passed".

In line 106 strike out the words "The general assembly shall have authority" and in lieu thereof insert "Laws may be passed".

The motion was carried.

Mr. DOTY: I move that the vote by which Proposal No. 272 was adopted be reconsidered and I move that that motion be laid on the table.

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The motion was carried.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 334 — Mr. Jones.

The proposal was read the third time.

Mr. JONES: This proposal was pretty thoroughly discussed on second reading. If any objection has developed since that time I have not heard of it. The proposal has been slightly changed in its arrangement by the committee on Phraseology, much to its improvement I think, and I do not believe that it is necessary or desirable that anything further should be said with reference to the proposal, unless some objection should develop to it upon this reading or some amendment should be offered that would materially change it.

Mr. ELSON: I have heard that this process is expensive; how is that?

Mr. JONES: The experience in those jurisdictions where it has been adopted is that about \$25 covers the cost of registering the title. After the title is registered, the cost of the transfers are merely nominal, averaging from two dollars to three dollars — not as much as the ordinary deed.

Mr. NYE: I am opposed to this proposal and I do not desire that this Convention shall vote on it not knowing something about it. We had a law passed in this state in 1896, found in volume 92 of our laws, and that law was declared unconstitutional. The fact that it was declared unconstitutional would cut no figure in this discussion. But I want to say to you in my judgment it is a very expensive process. We have today much easier methods of transferring property. It is a way provided by our statutes and is known to almost every business man. If you want to sell your property there is a way of making your deed. The law which was passed and which was the usual form of law for the Torrens system contains in this volume forty-two pages. I have upon my desk also the law passed in the state of Massachusetts, which contains forty-one pages. It is a very complicated system. In order to have your titles registered you have to first file a petition. It has been said upon this floor that you do not have to have an attorney to carry it through court. It has to go through court and be passed upon by the court, and has to be registered by the court and a certificate issued before it can be recorded. The gentleman has said in favor of the proposal that it will only cost about \$25 to first register the title. If an attorney would take a case like this through court for less than a twenty-five-dollar fee it would be very cheap in my judgment. I had occasion to go down to the Ohio State Journal and I asked what it cost to publish the notice that is required to be published by this act and the very similar act of Massachusetts, and they said it would cost between ten dollars and twelve dollars. That is the second step in this process, and that price is without any description of the land.

Mr. JONES: Will the gentleman yield to a question?

Mr. NYE: I would rather not at the present time. I will later. You have to pay into the treasury of your county one-tenth of one per cent of the value of the property. The minimum fee as fixed here by this act is a little over nine dollars. Now I am giving you a simple case. If you have your title registered you must

have an abstract. That you can get at any time in the state of Ohio, and it is perfectly good to convey your title. Then if there is any complication about it the court refers it to a referee, and that referee is entitled to fees. If you have more than one piece of land you have to go through the process of having that title examined, and each particular piece has to be examined. In my judgment, gentlemen, it will be a process that will cost the people of this state millions of dollars to have their titles registered, if it is done.

But it is said that it is optional. True, it may be, but if it is optional, if it is adopted in any county, every man who has a piece of land that he wants to sell will be required by the purchaser to have it registered at whatever the cost may be. It is said that this works well in Illinois. I have a letter from the secretary of state of Illinois which says that Cook county is the only county in the state that has ever adopted it, and I assume that the reason why they have adopted it there was because they had a fire there some years ago that destroyed their property and burned up their records and they had to have their titles settled that way. It is a good thing there. But what do we want with it when we have something that is perfectly good and all we have to do to convey our titles is to get an abstract? Much of the land in Ohio has been in the hands of one family for a hundred years, and you don't need to have those titles registered and pay these expensive fees.

I do not wish to extend the argument, but in my judgment it is an expensive, complicated way of registering your titles and conveying your land, I do not want you to vote for it without having your eyes open.

Mr. KRAMER: Just a word — first, with reference to what Mr. Nye says. I believe if this system is adopted it will be almost compulsory for every man to have every piece of property he owns placed under this system because the purchasers will not buy without it.

Mr. JONES: Why?

Mr. KRAMER: Because it is a good thing.

Mr. DOTY: Agreed.

Mr. KRAMER: Now let me show you about the good thing. I have an idea that there are nine hundred and ninety-nine titles in Ohio good to every one that is bad. But all of those nine hundred and ninety-nine good titles will be compelled to pay from \$35 to \$50 to get this certificate, just as well as a man who has a poor title. The purchaser will demand it. Let me tell you about the condition of Richland county. There is not one man in a hundred in Richland county that requires an abstract. He does not demand it. He comes in and says, "I would like to know about the title of that piece of ground and how much will it cost me?" "Two dollars if I have to go back twenty-one years, and if you want an abstract \$10 to \$25, depending upon the number of transfers." There is not one man in a hundred that demands an abstract. We haven't had any trouble in Richland county. There is not one suit in a hundred that is brought to quiet titles.

What is the use of passing this? Is there any great demand for it? Is there any great discord in our titles in the state of Ohio that every man, whether he owns a lot worth \$100 or whether he owns property worth \$10,000, must be forced to go into court and get a certificate at say from \$25 to \$50 under that system? There

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is no demand. The people are not asking for it. Does any attorney claim, as some people in this Convention are asserting, that it will cost you just as much to get an attorney to trace it back to the time the certificate was obtained as it will to get a title traced back twenty-one years to ascertain whether the title is good that far?

Mr. JONES: Does the gentleman mean to say that merely tracing the title back twenty-one years establishes it as good?

Mr. KRAMER: No, sir, and neither does the fact that you get a certificate say that the title is good. It just means that in the opinion of the court it is a good title.

Mr. JONES: But after the court finds it is good that judgment is conclusive and, therefore, you never have to examine back of that again. All that you have to do is just to go back to where the title was registered.

Mr. KRAMER: Sure.

Mr. JONES: Is not that preferable to running back twenty-four years, if that will determine the title is good; and do you not know as a lawyer that you do not have to run back only twenty-one years but for the whole history of the title?

Mr. KRAMER: I do not know that. I know if there is any cloud on the title twenty-one years will make it good. There is very little difference. In the one case the law says it is good and in the other the court says it is good. The only question is whether the people want to pay \$25 or \$50 or whether it is necessary to do it. I believe the property owner would rather pay \$2 to have his title examined.

Mr. JONES: A further question: Is it not true that this item of expense for advertising and other expenses of registering the title only arise in those exceptional cases where there is a controversy about the title, where somebody with an adverse claim has to be notified?

Mr. KRAMER: They all have to be advertised.

Mr. JONES: Not necessarily, unless the referee upon examination finds some apparent defects where there might be adverse claimants; then those claimants, if not residents, are notified by publication. If residents, they are notified by summons.

Mr. KRAMER: You have to have constructive service, and if you are going to go to all of that trouble it means you have to have an abstract of title before you can get it quieted by the court, and the abstract will cost you as much in the one case as in the other and every owner of property will be paying from \$25 to \$50.

Mr. JONES: Why do you have to have an abstract if the court is satisfied by a simple examination?

Mr. KRAMER: How do you know that there are no defects if you do not have an abstract?

Mr. JONES: But if this matter is referred to a referee, would it necessarily follow that the referee should have an abstract?

Mr. KRAMER: Sure.

Mr. JONES: Will the expense of the referee for the examination be more if ordered by the court than if by an individual?

Mr. KRAMER: It makes no difference how this title is examined, somebody must examine it.

Mr. JONES: And the court may examine it and will fix the fee for the examination.

Mr. KRAMER: How do you ascertain that there are no defects if there is not an examination?

Mr. JONES: Certainly it will have to be examined either by abstract or, if it is thought desirable, the referee might make an examination.

Mr. LEETE: This may be a good thing in the large cities and in those counties where land is worth \$100 an acre, but in a large number of the counties down along the Ohio river, where land is worth only \$4 or \$5 an acre, and there are a great many small farms of five or ten acres, this system would be very burdensome and I think it would be a mistake to impose this system on that part of the state. I am therefore against it.

Mr. RORICK: Do you understand that everybody will have to resort to this system if it is adopted?

Mr. LEETE: It will work out that way.

Mr. RORICK: They don't have to do so unless they want to do so.

Mr. STEVENS: I want to sound a warning. Line number 6 will put the state in the insurance business. Then another warning from the gentleman from Defiance, which is, if this is passed, there never will be another title insurance company organized in the state of Ohio as long as that stands.

Mr. PETTIT: The more I hear this proposal discussed the less I think of it, and I am like the gentleman from Richland [Mr. KRAMER]. They may say you do not have to do it, but whenever you get up a dual system and one is recognized as better than the other that will be adopted. I think that is the logic of this thing, so that it resolves itself down to this proposition: If it becomes necessary to have the title established by this proposal, it will have to become general. Whenever you talk about referees, lawyers know what the cost of referees is. A referee may be engaged a day or two days, and if he says to the court I was engaged so many days and I am entitled to so much, the court allows it. It may be \$20 a day, and the assertion that it will only cost \$25 is bosh. You gentlemen living in the poorer counties, think about this proposition. As Mr. Kramer said, who is it that demands this? I have not heard anybody demanding it. I do not know who is behind it. There is no call for it and it is an outrage on the farmers to adopt any such system.

Mr. BROWN, of Highland: This Torrens system of registering land titles seems to be well understood by most of the people, and the objections to it are well understood. I do not believe we can gain anything by discussing it. It is a matter which should be carried out. Those people who are afraid of it need not apply it; it is only for those who want it. I move the previous question.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 59, nays 48, as follows:

Those who voted in the affirmative are:

Anderson,	Cordes,	Farnsworth,
Baum,	Crites,	Farrell,
Beyer,	Crosser,	FitzSimons,
Bowdle,	Cunningham,	Halenkamp,
Brown, Highland,	Davio,	Halfhill,
Brown, Lucas,	Donahay,	Harris, Hamilton,
Cassidy,	Doty,	Henderson,
Colton,	Dwyer,	Hoffman,

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Hursh,	Miller, Ottawa,	Stevens,
Johnson, Williams,	Moore,	Stilwell,
Jones,	Peck,	Stokes,
Kerr,	Pierce,	Taggart,
Kilpatrick,	Read,	Tetlow,
King,	Riley,	Thomas,
Lampson,	Rockel,	Ulmer,
Leslie,	Roehm,	Weybrecht,
Longstreth,	Rorick,	Winn,
Marshall,	Shaffer,	Wise,
Matthews,	Smith, Geauga,	Woods.
Mauck,	Smith, Hamilton,	

Those who voted in the negative are:

Antrim,	Harris, Ashtabula,	Nye,
Beatty, Morrow,	Harter, Stark,	Okey,
Beatty, Wood,	Holtz,	Partington,
Brattain,	Johnson, Madison,	Peters,
Brown, Pike,	Kehoe,	Pettit,
Campbell,	Keller,	Price,
Cody,	Kramer,	Redington,
Collett,	Kunkel,	Shaw,
Dunlap,	Lambert,	Solther,
Dunn,	Leete,	Stalter,
Earnhart,	Ludey,	Stamm,
Elson,	Malin,	Stewart,
Fluke,	Marriott,	Wagner,
Fox,	Miller, Crawford,	Walker,
Hahn,	Miller, Fairfield,	Watson,
Harbarger,	Norris,	Mr. President.

So the proposal not having received the requisite number of votes failed to pass.

Mr. BEATTY, of Wood: I ask the indulgence of the Convention for a moment or two. I have waited here for the Convention to reach two questions. I have to leave tonight for the West on important business. I should have left ten days ago. I would like to hear these two important questions discussed and I would like to vote on them. They are Proposal No. 2 and Proposal No. 170. I move you that these two proposals be taken up out of their regular order and debated now. I do not think it will interfere with any of the other proposals. We shall reach all of them by tomorrow evening. I know of one or two others who want to leave this evening and who are likewise interested in those two proposals. I have not bothered the Convention much and I would appreciate it as a favor. I know it is considerable to ask of the Convention to take those proposals up out of their regular order, but as it does not interfere with the entire business before us I ask that it be done.

Mr. CROSSER: I am perfectly willing that this proposal should come up almost immediately, but I have an amendment which I have prepared and it is not yet completed, and it will take fifteen or twenty minutes to get it ready. I therefore move that the Worthington proposal be taken up first to give me a little time.

The PRESIDENT: If there is no objection, the Worthington Proposal—No. 170—will be considered at this time.

There was no objection and the proposal was read the third time.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out lines 37 to 41 inclusive.

Mr. KNIGHT: The reason for this amendment is twofold. In the first place, it is not a section which deals with the subject of taxation at all. It is a section which deals with the subject of bonded debts. In the

next place, assuming that it is germane to the main proposal, which it is not, which it does not seem to be, it requires that any municipality or any public subdivision of the state in issuing bonds must not only provide a sinking fund for the payment of them at the expiration of twenty years, if they are twenty-year bonds, but that they must actually pay off two per cent of those bonds each year. This means that any municipality, school district, township or county or village undertaking to make a loan and issue bonds for that loan must provide for the issue of those bonds in serial forms, so that one part of them will expire in one year, another in two, another in three, etc. Anyone at all familiar with the procedure in the issuance of public bonds knows that a municipality or subdivision of a county cannot begin to borrow money at as low a rate of interest on one-year bonds as it can on ten-year bonds. Under the sinking fund provision, the money goes into the sinking fund and is there to pay off the bonds, and they are receiving interest equivalent to what the bonds are paying; whereas, by this proposal we have to pay a higher rate on the short term than on the long term. I have letters in my desk from nearly every large municipality and a few of the smaller ones protesting against this part of the proposal as imposing a burden upon every municipality or borrowing community in the state. It seems to me it is not in the proper place here, and it will cost the people of the state of Ohio more to borrow the money and issue bonds than there is any necessity for doing, and it does not provide any additional benefit over the present system. It seems to me that the argument against this insertion here is twofold—first, it does not belong here because it is not connected with taxation, and second, it is bad anyhow.

Mr. STEWART: I would like to say a few words in defense of this proposition. I still believe that no bonded indebtedness should be created unless provision is made for the extinction of part of it each year. I have before me the proceedings of the American Bankers Association that convened in the year 1909. One of the presidents of one of the important banks of this country made an address before that convention and discussed the difference between the idea of partial payment and the sinking fund idea in disposing of public indebtedness. He took the ground that the partial payment idea was by far the better proposition, stating that scientifically you could treat of the reduction of public indebtedness only under the partial payment rule. He presents in this book here a discussion of examples illustrating the working out of the partial payment idea and the sinking fund idea, and he uses an illustration with a \$5,000,000 bonded indebtedness to run fifty years, analyzes that and shows that there is a saving of between \$11,000 and \$12,000 a year by the partial payment idea in liquidating this debt. Now, of course, in all propositions there is room for argument on both sides, but I believe myself that the partial payment idea is better than the sinking fund idea. If the sinking fund idea were always handled right, and if there were no room for any diverting of the funds in a wrongful manner, there would be no argument for the partial payment proposition, but all of us know that often money that is placed in a sinking fund is diverted to a different purpose from that for which it was intended. That is one of the evils of the sinking fund. I could cite specific instances to show

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the way funds were handled to the detriment of many municipalities of the state of Ohio. I have in mind an instance where a municipality wanted to refund, and the amount was only \$23,000 at four per cent. They did refund at 3.95, and the village saved \$11.50 annual interest and paid the bond buyers and their attorneys a commission of \$750 for making the transfer. There was nothing crooked in this; but it's a bad practice to refund. I know communities that have gone into bonded indebtedness and have never levied a sufficient rate to pay off their bonds. The consequence is they have exhausted all of the powers of taxation in those communities. They can hardly pay the interest on the indebtedness and leave anything to pay on the principal. I know, gentlemen, it is the law now to provide for principal and interest. If you will refer to the Ohio laws, volume 102, page 266, you will find that they make actual provision that there must be levies made to cover the principal and interest, and let that accrue and finally pay off the bonds. The reason I introduced that proposition providing for partial payment is because the people will not follow the law. They have not done it in the past and will probably refuse to do so in the future.

Mr. KNIGHT: Do you think immediately upon the heels of our passing Proposal No. 172 to grant municipalities a free hand in managing their own affairs, it is exactly consistent to tie them up and to say that they cannot borrow to purchase and operate public utilities unless they provide for the payment of those bonds in a certain specific way, which may happen to be good in some small village or township but not in a large one?

Mr. STEWART: I believe that whenever a municipality goes into debt to buy a public utility it should make provision to pay some part of that debt each year, because if you let the matter run on, you will have a worn-out plant, obsolete, and at the time you have your bonded indebtedness to pay, your plant is worn out.

Mr. KNIGHT: Do private corporations operating public utilities issue bonds on the idea that two per cent will be paid off annually?

Mr. STEWART: I recognize the fact that the partial payment idea is a new one, but I have never yet seen where there has been any discrimination as between bonded indebtedness on the partial payment idea and the assessment upon property owners. Both are paid in serial order. They never provide for it in any other way. I have seen these two classes of bonds sold at the same time, and there never was any discrimination between the issues as to premium or rate of interest.

Mr. HARRIS, of Hamilton: I wish to say a few words in support of the amendment by Professor Knight. Gentlemen, it is absolutely necessary that Professor Knight's amendment be adopted or that section 10 be materially changed. As a matter of fact, section 10 does not provide any sinking fund at all. It simply provides that two per cent of the debt shall be payable annually and it means the bonds must be issued serially, because if they are not issued serially, then the municipality would be compelled to go into the open market and buy from the holders of the bonds two per cent of those bonds. Now, under that condition, the holders of the bonds, knowing that the municipality is compelled to do that, you can imagine what a fine thing it would be for the holders of the bonds, you can imagine what a

premium the cities would have to pay for that two per cent annually. Section 10 is absolutely unnecessary. The law today in the state of Ohio is that every municipality must provide a sinking fund and levy a tax annually to provide sufficient in the sinking fund to take care of the bonds at maturity and to pay the annual interest on those bonds. That is the law, and that is the practice today in every municipality in the state which is obeying the law. There is a separate body of men named by statute called the trustees of the sinking fund in every municipality, whether large or small, and to this independent body is turned over the amount of money received by taxes annually. Now, gentlemen, as Professor Knight has said this morning, you passed a provision for home rule. You would destroy that and make it impossible to float bonds in large quantities for the purchase of public utilities, because those bonds could not be sold running serially from one to ten years without a great additional tax burden upon the people in the form of an additional rate of interest for the very simple reason that bonds are bought for investment and the average investor does not want to have one-tenth of his investment maturing every year and have to reinvest. Outside of the question of public utilities, the general bonds being issued by every village in the state of Ohio run from ten to forty years. All bonds are issued on the basis or theory that the bonds shall be paid during the life of the improvement for which they are issued, and it is inconceivable to any of us who are familiar with the financing of the city's credit that a city like Cincinnati, which may issue \$2,000,000 of bonds next week, should have to issue them one-twentieth maturing each year. The proposition is absurd.

Mr. JOHNSON, of Williams: Do you not think city bonds made payable in one, two, three, four, five, and up to forty years would sell just as well as if they were all issued for the full forty years?

Mr. HARRIS, of Hamilton: I not only do not think so, but I know they will not. There is nothing in the world in the present proposal, with section 10 eliminated entirely, preventing villages from issuing serial bonds as you have done. I offer an amendment.

The amendment was read as follows:

Strike out in line 10 the words "at present outstanding".

In line 13 strike out "so at present outstanding".

Mr. HARRIS, of Hamilton: This amendment of mine aims to make the bonds of every state and political subdivision exempt from taxation. I call your attention to the fact that when I offered this amendment on second reading the vote was 55 to 44 and one of the members told me afterwards that he had made a mistake, which would make it 54 to 45. So there were 45 in favor of that amendment at that time. Since then four or five members have voluntarily come to me and stated that in the ten days' vacation they came in contact with their public officials and they recognize that my position from the beginning was absolutely right, that a great injustice was done and that the injustice they were doing was to the municipalities themselves.

Now I again call your attention to the fact that I am not interested in the individual bondholder but in the saving of hundreds of millions of dollars, because, gen-

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tleman, I say to you, that in one generation in the state of Ohio, in my judgment, the difference in making the bonds exempt and subject to taxation will be a couple of hundred millions of dollars. I have pointed out to you, on the \$50,000,000 bond issue for good roads, which in my judgment the state of Ohio can issue today and will be able to issue in the course of the next few days, if they are exempt from taxation, at three and a half per cent, that the difference in the interest to the state of Ohio, which is ourselves, the taxpayers, will be \$20,000,000 if the rate is four per cent instead of three and a half per cent, and I do not believe for a moment, if the bonds are made subject to taxation, that they can be floated at less than four per cent. The same proposition also holds good in the bond issues of every little city and every little village and every little township. You are only penalizing yourselves. Stop and consider for a moment. If a city like Youngstown wishes to issue \$1,000,000 of bonds at least \$900,000 of those bonds will be sold and absorbed by the people living outside of Youngstown, so that if \$100,000 or ten per cent of the bonds of Youngstown were actually bought by the people living in Youngstown and if every one of the bonds was reported for taxation by the people of Youngstown, the gain for the city of Youngstown would be ten per cent only of the amount that the city of Youngstown had actually penalized itself in not exempting the bonds from taxation. The Convention has voted to submit a proposal on taxation which first continues the present uniform system of taxation. Second, it proposes to restore municipal and public bonds to the tax duplicate and do some other things in relation to income and inheritance taxes which we practically all agree to. It then undertakes to take care of a so-called sinking fund provision which has been discussed by the two members preceding me. Of course, you will remember at the time when this proposal was adopted or just before that this Convention voted by 57 to 53 to submit in connection with this an alternative proposition, so that the voters of the state of Ohio might either continue the present constitution just as it is or might adopt the proposal as it has been adopted or might adopt a new scheme of taxation, the classification of property. I shall introduce an amendment at this time that is prepared with the idea of submitting the proposal in the alternative way.

Section 1 provides for a system of taxation. Section 2 gives the exemptions. If this proposal should be adopted, the general assembly, if it chose, might restore bonds to the tax duplicate under a classification of their own. In other words, the amendment that I am about to submit would make it possible to tax bonds or not to tax bonds as the policy of the state from time to time might dictate, so that it does not exempt bonds from taxation and it does not tax them.

Section 3 reads as follows, and this takes the place of section 10 which the member from Meigs supported:

SEC. 3. No bonded indebtedness of the state or any political subdivision thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the levy of an annual tax sufficient to pay the interest on and the principal thereof at maturity.

In other words, this section will fit in the matter of time any kind of bond the municipalities may desire to issue. If they issue five-year bonds all right, or if they issue forty or fifty-year bonds. That is not true of section 10 of the proposal as it now stands. The member from Franklin seeks to strike that out entirely.

Section 4 is the same as in the proposal itself:

Sec. 4. Except as otherwise provided in this constitution, the state shall never contract any debt for purposes of internal improvement.

Section 5 provides for the inheritance tax.

Section 6 provides for the income tax.

Section 7 is the same as section 1 of the old proposal in relation to poll tax.

I have added section 8, which is a section that the committee on Taxation unanimously recommended, and Brother Colton announced that he wished it inserted in this proposal. I do not remember just why it was not included. There was some misunderstanding about it at any rate. That section reads:

SEC. 8. Revenues for the payment of the expenses of the state may be provided by assessment upon the counties, but every such assessment shall be apportioned among all the counties ratably in proportion to the aggregate amount expended during the preceding year in each county by the county and all political sub-divisions thereof.

This particular section has the indorsement of the president of the state tax commission. It was unanimously agreed to, I think. If it was not unanimous it was so near that it might be said to be unanimous. Then follows the provision as to the ballot:

Resolved further, When these competing amendments to the constitution are submitted to the electors, the ballot shall be printed as follows:

	For uniform rule in taxation.
	For classification in taxation.
	Against both amendments.

so that each elector may express separately by making one cross-mark (X) his preference for either of the two amendments or against both amendments. If the majority of the votes are cast "Against both amendments" as compared with the total of those cast for either amendment there shall be no amendment to the constitution; if not, the amendment which has the larger number of votes shall be adopted as article XII of the constitution.

Those are, in brief, the provisions of the alternative proposition. The part of the proposal referring to the manner of voting, as introduced before, provides that each elector may by one mark exhibit his will; that is

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to say, if he is against both amendments and wants the constitution to stand exactly as it is, he can vote against both on the last line; if he desires to vote for the proposal as now passed, the so-called uniform rule, he marks for that; if he wants to vote for this part of the proposal or classification, he votes in this other place. In other words, one mark by the voter shows what he intends to do.

Mr. KRAMER: I was just wondering, if the Convention agrees to that alternative plan, whether you can get the alternative proposition on the same ballot.

Mr. DOTY: It is for the Convention to decide to submit this alternative with the other and it need not be in the same column with any of them. It would have to be in another place. It could be on another part of the same ballot or in another ballot if the Convention decides it. There is nothing in this to preclude either way.

Mr. TANNEHILL: You are probably aware that your scheme would divide the vote of the uniform people and cast the vote of the other people in a lump?

Mr. DOTY: I am not aware of that. I am not trying to bring that about.

Mr. TANNEHILL: That is the result.

Mr. DOTY: The member is simply saying that. I shall be glad to yield time for him to show it.

Mr. TANNEHILL: We have the uniform system now?

Mr. DOTY: Yes.

Mr. TANNEHILL: Would not every man who voted to retain the present system be a uniform man?

Mr. DOTY: Yes, of course, if you want to change the designation. I am not thinking of that, but there is this difference: A man who votes on this proposal for the uniform rule of taxation as it stands here would then be voting in favor of taxing municipal and state bonds. If he voted against both, he would be voting to retain the present section of the constitution which exempts bonds.

Mr. TANNEHILL: A shrewd scheme to divide the opposition, and any kind of an examination will make that apparent to any fair-minded man. I am not accusing you of not being fair, but I think you have thoughtlessly made the statement.

Mr. DOTY: I am not at all tenacious about the wording there. If you will make what you think is a proper wording, and it accomplishes the same purpose, I am perfectly willing to accept it. Those who contend for the so-called uniform rule must bear in mind that the people of the state of Ohio in sixty years have never yet had a chance to vote upon that subject. There is not a man in this room who dares to say that the people of Ohio are in favor of the so-called uniform rule any more than I have a right to say that the people of Ohio are in favor of classification of property for taxation purposes. The best I can say is that four times they have had a chance to vote and those who did vote voted overwhelmingly for it. That is not conclusive, but it is far more conclusive than anything a uniform rule man can bring into this discussion.

Now, I desire to offer this amendment at this time and all I ask is a yea and nay vote upon the amendment at any time when you are ready to vote on it, not seeking to cut off any debate at any time.

The amendment was read as follows:

After line 41 add:

"That, at the same time and upon the same ballot, which ballot shall be separate from all other ballots upon which amendments may be submitted, the following alternative proposed amendment is submitted to the electors of the state:

ARTICLE XII.

SEC. 1. As provided by law there may be established and maintained an equitable system for raising state and local revenues. The subjects of taxation may be classified so far as their differences justify in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only, and shall be just to each subject.

SEC. 2. The power of taxation shall never be surrendered, suspended or contracted away. Burying grounds, public school houses, houses used exclusively for public worship, institutions purely for charity, public property used exclusively for any public purpose, and personal property to the amount not exceeding in value two hundred dollars for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 3. No bonded indebtedness of the state or any political subdivision thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the levy of an annual tax sufficient to pay the interest on and the principal thereof at maturity.

SEC. 4. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SEC. 5. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or graduated. Such tax may also be levied upon collateral inheritances, at such rate as may be provided by law, and a portion of each estate may be exempt from taxation.

SEC. 6. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated; and, as may be provided by law, a minimum exemption may be made.

SEC. 7. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

SEC. 8. Revenues for the payment of the expenses of the state may be provided by assessment upon the counties, but every such assessment shall be apportioned among all the counties ratably in proportion to the aggregate amount expended during the preceding year in each county by the county and all political sub-divisions thereof.

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Resolved further, When these competing amendments to the constitution are submitted to the electors, the ballot shall be printed as follows:

	For uniform rule in taxation.
	For classification in taxation.
	Against both amendments.

so that each elector may express separately by making one cross-mark (X) his preference for either of the two amendments or against both amendments. If the majority of the votes are cast "Against both amendments" as compared with the total of those cast for either amendment there shall be no amendment to the constitution; if not, the amendment which has the larger number of votes shall be adopted as article XII of the constitution.

Mr. DOTY: Now a word in reference to the method of submission. If there is a member in this Convention who can produce a fairer method of submitting the alternative proposition, I shall be glad to accept it. The question had never been raised before until the member from Morgan raised it. I only want to express my desire to meet any criticism in the fairest manner possible, because there is no purpose to fool anybody. It is a distinct purpose to put these two propositions up so that they may be intelligently and fairly discussed and voted upon. That is all.

Mr. ANDERSON: I want to take a few moments, not upon the merits of the uniform rule or classification, but upon the question of consistency.

I am in favor of the referendum. The referendum, if it means anything, means the right of the people to pass upon questions of grave importance to them. I have been asked about the circle, but I will come to that later on. At the present time the rule of taxation is the uniform rule. The question now is, Shall another proposition, classification, be submitted to the people? Are you who have voted and talked in favor of the referendum in favor of the referendum only when you believe that people will vote as you want them to vote? Is that your definition of a referendum? Would you censure a member of the legislature who would refuse to submit a question of importance to be voted upon by the people? The records show that hundreds of thousands of our citizens have before this voted in favor of classification. Now would you censure the lawmakers who would refuse to permit the people to vote upon it because the lawmaker was afraid it would carry? Is that the kind of consistent referendum advocate you are?

Take my friend Watson. Why, he was rampant upon the question of referendum, and yet in private conversation, I am informed, referred to people in all sorts of language when they wanted to submit this matter to them.

Mr. WATSON: Would you be in favor of submitting polygamy to the people?

Mr. ANDERSON: I apprehend there is some difference, although mentally you may not detect it, between polygamy and the classification of property.

Mr. WATSON: Is not one just as fraudulent as the other?

Mr. ANDERSON: It may be in your mind, but I do not believe, if polygamy had been submitted four times to the people of Ohio and that hundreds of thousands of voters as intelligent as you are had voted in favor of it, that the submission of it would be improper.

Mr. PARTINGTON: I want to ask you this question: Would you be willing to submit to the people the Smith one per cent law and uniform rule or the alternative proposition of classification of property?

Mr. ANDERSON: If you will submit as an alternative proposition the Smith one per cent law I am in favor of it, because I believe in a referendum, and I will vote against the one per cent law if it comes up; but I am perfectly willing to let the other man have a chance to vote on it too, because I do not believe that this Convention can take upon itself to decide that the whole citizenship of Ohio should not have a right to vote on these questions. If we do that we are not reformers, but we merely pretend to be reformers.

Mr. WATSON: Another question: Do you want to submit this question to the people for their ratification or rejection with the words "institutions for public charity" and "institutions purely for charity inserted"?

Mr. ANDERSON: I have not examined the wording of it. That is not your objection. Let me examine you a little. If you thought classification of property would fail at the polls would you have any hesitancy in voting for this proposition?

Mr. WATSON: Yes, I would.

Mr. ANDERSON: I do not believe it. The reason you do not want to vote in favor of this is because you are afraid it will carry, because you are afraid that the great mass of the voters in the state of Ohio do not take your view of it. That is the reason you are not in favor of the referendum on this question. I hope when the winter time comes and these debates are printed and we are sitting by the side of the fire with some hickory nuts cracked and eating the hickory nuts and reading the debates that we will be consistent. I hope we will not be ashamed to look that record in the face. I want to say, although I am not in favor of classification, I would be ashamed to pretend to be for a referendum and then fail to vote to submit this proposition.

Mr. WOODS: I had supposed that we had settled this taxation matter and I think it ought to be settled. This is the last time we are going to have to vote on this question of taxation. This is one of the great big questions that have come before the Convention, and I want to ask you gentlemen whether, after we are supposed to have settled this thing, you are going to vote to submit separately to the people of this state an amendment that I think no one of us except the author has read. Is that the way you are going to do business in the last stages of this Convention? This is the last time they can be submitted and I do not know whether Brother Doty's amendment is a fair, square submission of a classification proposition or not. I cannot tell. I could not satisfy

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myself by going to the desk and reading it, and before I would want to vote for any proposition covering a matter of that kind I would want to have time to ponder over it and know what it means, because I know and you all know by this time that certain interests in this state have been trying to get certain things done in the matter of taxation in this Convention. Now, gentlemen, within the last two weeks—it has been only two weeks since we settled this taxation matter—after thorough discussion we came to the conclusion that the best thing was to adhere to the uniform rule of taxation. Now they want it all done over again. This is too serious a matter. I have not been in favor of making these amendments on third reading. I don't think we ought to do it. Third reading is simply to pass on the word of the committee on Arrangement and Phraseology. If that committee has done its work all right that is all there is to it. It ought to be passed just that way, but here is a proposal to do something that is entirely different, just as when it first came up. I say to you, gentlemen, that the people in this state who are calling for classification are the monied people. Are they asking for it because they want to pay more taxes than they are paying now? Is that the reason they want classification? I say to you it is not the reason. Then the reason must be that they want classification because they expect to have their taxes lowered, and if their taxes are lowered somebody else has to make up the difference. Let us not make any mistake now. We have settled this thing and we cannot afford to go back and do it all over again. I think we have done fairly well. I think that the majority of the people of the state are satisfied. This Convention has voted several times on the question of exempting bonds. We voted not to exempt them. Now, you uniform rule men, are you going to have uniform rule and then exempt from that the man who can live on the interest on his bonds? You make a mistake there, and put yourself in a position that is absolutely indefensible. Let us not make that mistake. One other thing. You may get up here and talk about being in favor of the referendum; that does not mean that you are in favor of submitting to the people of this state every sort of a proposition. This Convention is against that by a vote of two to one, and we have shown it on all questions where we have voted. I say we cannot afford it. I move that the last amendment be laid upon the table, and on that I demand the yeas and nays.

The delegate from Summit [Mr. READ] here took the chair as president pro tem.

Mr. DOTY: I demand a call of the Convention.

The PRESIDENT PRO TEM: A call of the Convention is demanded. The sergeant-at-arms will close the door and the secretary will call the roll.

The roll was called when the following members failed to answer to their names:

Brown, of Highland, Eby, Stalter, Tallman, Worthington.

The president announced that one hundred and fourteen members had answered to their names.

Mr. DOTY: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. DOTY: Before this amendment is voted upon I wish to say that I find in my haste two words have not

been put in correctly. I desire the words after "purely public charity" to be the same in mine as in the other proposal. My attention has been called to it by the member from Guernsey, and may I ask unanimous consent to change them?

Mr. WOODS: I object.

Mr. DOTY: My desire was to have it just exactly the same, and I will move to amend it later. You can vote on it now with the understanding that I am going to amend it to make it exactly like the present proposal.

Mr. EARNHART: You said in your argument that this proposition and this classification, if the people ratified it, would restore bonds to taxation?

Mr. DOTY: It does not exempt them from taxation is what I said.

Mr. EARNHART: Under the present condition they are exempt.

Mr. DOTY: The present condition in that particular would be wiped out and this would be put in its place.

Mr. EARNHART: Does it say so?

Mr. DOTY: Yes, specifically; in so many words.

The PRESIDENT PRO TEM: The question is on laying the amendment on the table.

Mr. LAMPSON: The question is simply to lay on the table the amendment of the delegate from Cuyahoga [Mr. Doty], which motion was made by Mr. Woods.

The yeas and nays were taken, and resulted—yeas 58, nays 56, as follows:

Those who voted in the affirmative are:

Baum,	Harris, Ashtabula,	Moore,
Beatty, Morrow,	Henderson,	Norris,
Beatty, Wood,	Holtz,	Okey,
Beyer,	Hursh,	Partington,
Brattain,	Johnson, Madison,	Peters,
Brown, Highland,	Johnson, Williams,	Pettit,
Brown, Pike,	Jones,	Pierce,
Cody,	Kehoe,	Price,
Collett,	Keller,	Shaw,
Colton,	Kunkel,	Soletcher,
Crites,	Lambert,	Stewart,
Cunningham,	Lampson,	Tannehill,
DeFrees,	Longstreth,	Tetlow,
Donahey,	Ludey,	Wagner,
Dunn,	Marshall,	Walker,
Farnsworth,	McClelland,	Watson,
Fess,	Miller, Crawford,	Winn,
Fluke,	Miller, Fairfield,	Wise,
Fox,	Miller, Ottawa,	Woods.
Harbarger,		

Those who voted in the negative are:

Anderson,	Halenkamp,	Peck,
Antrim,	Halfhill,	Read,
Bowdle,	Harris, Hamilton,	Redington,
Brown, Lucas,	Harter, Huron,	Riley,
Campbell,	Harter, Stark,	Rockel,
Cassidy,	Hoffman,	Roehm,
Cordes,	Hoskins,	Rorick,
Crosser,	Kerr,	Shaffer,
Davio,	Kilpatrick,	Smith, Geauga,
Doty,	King,	Smith, Hamilton,
Dunlap,	Knight,	Stamm,
Dwyer,	Kramer,	Stevens,
Earnhart,	Leete,	Stilwell,
Elson,	Leslie,	Taggart,
Evans,	Malin,	Thomas,
Fackler,	Marriott,	Ulmer,
Farrell,	Matthews,	Weybrecht,
FitzSimons,	Mauck,	Mr. President.
Hahn,	Nye,	

So the amendment was tabled.

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Mr. ELSON: I offer an amendment to Proposal No. 170.

The amendment was read as follows:

In line 16 strike out the word "two" and insert in lieu thereof "five".

Mr. ELSON: This is so easily understood that I do not think it is necessary to discuss it. It is a simple step in the direction of taxing wealth rather than poverty. I think it would be a boon to the poor, who have never but a few hundred dollars' worth of personal property, and I am sure the state can easily make up the rest of its revenue without taxing anything under \$500. In New York \$1,000 is exempt and New York has no trouble in raising revenue.

Mr. PECK: Just a word. I am in favor of this amendment and I hope the Convention will do something for the poor before it adjourns.

The amendment was agreed to.

Mr. WOODS: Now I move to lay the amendment offered by Mr. Harris, exempting bonds, on the table and on that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 63, nays 50, as follows:

Those who voted in the affirmative are:

Anderson,	Henderson,	Okey,
Baum,	Holtz,	Partington,
Beatty, Morrow,	Hoskins,	Peters,
Beatty, Wood,	Hursh,	Pettit,
Beyer,	Johnson, Madison,	Pierce,
Brown, Highland,	Jones,	Rockel,
Cody,	Kehoe,	Rorick,
Collett,	Keller,	Shaw,
Colton,	Kramer,	Smith, Geauga,
Crites,	Kunkel,	Solether,
Cunningham,	Lambert,	Stevens,
DeFrees,	Lampson,	Stewart,
Dunlap,	Longstreth,	Tannehill,
Dunn,	Ludey,	Tetlow,
Dwyer,	Malin,	Thomas,
Earnhart,	Marshall,	Wagner,
Farnsworth,	Mauck,	Walker,
Fess,	Miller, Crawford,	Watson,
Fluke,	Miller, Fairfield,	Winn,
Harbarger,	Miller, Ottawa,	Wise,
Harris, Ashtabula,	Moore,	Woods.

Those who voted in the negative are:

Antrim,	Halenkamp,	Nye,
Bowdle,	Halfhill,	Peck,
Brattain,	Harris, Hamilton,	Price,
Brown Pike,	Harter, Huron,	Read,
Campbell,	Harter, Stark,	Redington,
Cassidy,	Hoffman,	Riley,
Cordes,	Johnson, Williams,	Roehm,
Crosser,	Kerr,	Shaffer,
Davio,	Kilpatrick,	Smith, Hamilton,
Doty,	King,	Stalter,
Elson,	Knight,	Stamm,
Evans,	Leete,	Stilwell,
Fackler,	Leslie,	Taggart,
Farrell,	Marriott,	Ulmer,
FitzSimons,	Matthews,	Weybrecht,
Fox,	McClelland,	Mr. President.
Hahn,	Norris,	

So the motion to table was carried.

Mr. RILEY: I move to amend Proposal No. 170 as follows:

Strike out of line 10 the words "the state of Ohio or of,".

Mr. RILEY: This amendment eliminates state bonds from taxation. I can hardly conceive how any member could feel that we should issue state bonds for good roads or for any other purpose and then turn around and tax them. State bonds are something that every taxpayer is interested in according to the amount of property he owns. It is as absurd to tax state bonds as it would be to pass a proposal to put this state house on the tax duplicate for taxation.

Mr. ANDERSON: Is not the difference between taxing state property and taxing state bonds this, that the \$50,000,000 of bonds issued for good roads, if they are not taxed, offer a channel or medium by which the people who do not want to pay their taxes can take advantage to the extent of \$50,000,000?

Mr. RILEY: My answer to that is that the chances are ten to one that we will get a better rate on those bonds, and it is absurd to tax our own obligations.

Mr. HARRIS, of Hamilton: Does not the argument that has been so carefully put forward by the Convention that, in the event you issue \$50,000,000 of exempt state bonds, the bankers will use them to trade with people to allow them to escape from taxation, have no effect when we know that there are hundreds of millions of United States bonds which the same bankers will use and which the people of Ohio can use in the same manner as it is intimated here they will use the state bonds?

Mr. RILEY: I think there is nothing in their argument. We exempt under our law all government bonds. We are compelled to do that and I cannot see why we should tax our own state bonds.

Mr. WOODS: We are up against the same proposition. We cannot have the uniform rule and exempt a lot of things. Let us stand for the uniform rule and stand right there. Who is it that has been asking you to exempt bonds from taxation? Just let some one stand up and tell us. Now, gentlemen, let us stand by the uniform rule and not get tolled off into something else; I move that this amendment be laid on the table.

The motion to table was carried.

Mr. STEWART: I move that the amendment to section 10 be laid upon the table and upon that I call for the yeas and nays.

The PRESIDENT PRO TEM: The question is on the Knight amendment, as to whether it shall be laid upon the table, and upon that the yeas and nays have been regularly demanded.

The yeas and nays were taken, and resulted — yeas 62, nays 48, as follows:

Those who voted in the affirmative are:

Antrim,	Elson,	Marriott,
Baum,	Farnsworth,	Marshall,
Beatty, Wood,	Fess,	Mauck,
Beyer,	Fluke,	McClelland,
Brattain,	Harbarger,	Miller, Crawford,
Brown, Highland,	Henderson,	Miller, Fairfield,
Brown, Pike,	Holtz,	Miller, Ottawa,
Campbell,	Hursh,	Norris,
Cody,	Jones,	Partington,
Collett,	Kehoe,	Peters,
Colton,	Keller,	Pettit,
Crites,	King,	Pierce,
Cunningham,	Kunkel,	Redington,
Donahay,	Lambert,	Rockel,
Dunlap,	Lampson,	Shaw,
Dunn,	Longstreth,	Solether,
Earnhart,	Ludey,	Stalter,

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Stevens,
Stewart,
Taggart,
Tannehill,

Tetlow,
Thomas,
Wagner,
Walker,

Watson,
Winn,
Woods.

Those who voted in the negative are:

Beatty, Morrow,	Harter, Huron,	Okey,
Bowdle,	Harter, Stark,	Peck,
Cassidy,	Hoffman,	Price,
Cordes,	Hoskins,	Read,
Crosser,	Johnson, Madison,	Riley,
Davio,	Johnson, Williams,	Roehm,
Doty,	Kerr,	Rorick,
Evans,	Kilpatrick,	Shaffer,
Fackler,	Knight,	Smith, Geauga,
Farrell,	Kramer,	Smith, Hamilton,
FitzSimons,	Leete,	Stamm,
Hahn,	Leslie,	Stilwell,
Halenkamp,	Malin,	Ulmer,
Halfhill,	Matthews,	Weybrecht,
Harris, Ashtabula,	Moore,	Wise,
Harris, Hamilton,	Nye,	Mr. President.

So the motion to table prevailed.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

In line 15 strike out the words "of purely public charity", and insert in lieu thereof the words, "used exclusively for charitable purposes."

Mr. WINN: If I may have your attention for just a minute I will explain the importance of this amendment. It will not exempt from taxation any property now taxed, but it will make constitutional some laws enacted by the general assembly exempting certain property from taxation, which laws are now unconstitutional. I will call your attention to three institutions in the city of Springfield, used exclusively for charitable purposes. For thirteen years I was intimately connected with one of them, which was the Pythian Home, at which there are now being kept, housed, clothed and educated at the hands of the members of the order of the state two hundred little boys and girls. Since that institution was established, probably fifteen or sixteen years ago, there had been admitted to that institution probably five or six hundred orphan children. Just out to the right of this institution is the Masonic Home, where old men and old women who are not able to support themselves, and who but for that institution would be public charges, are given a home and all the comforts of life during their old age. Just off to the left of the Pythian Home is the Odd Fellows institution where orphan children, old men and old women are kept. There are other institutions of that sort. I know one in the city of Cleveland, a splendid institution, maintained by the Jews. There are institutions of a similar kind maintained by capitalists and maintained by other civic institutions besides those which I have mentioned.

Mr. MAUCK: Was it not decided by the supreme court under our present constitution that the Little Sisters of the Poor in Cincinnati was an institution purely for public charity and was, therefore, exempt?

Mr. WINN: I hope so; I did not know it.

Mr. MAUCK: I know so.

Mr. WINN: A few years ago the members of these different fraternities and different societies and organizations came before the general assembly and asked the

general assembly to pass a law exempting them from taxation, and that law was passed almost unanimously. But I have always had very grave doubts respecting the constitutionality of that law. A committee of these institutions has visited some of the members of this Convention since we have been here and has asked that this be inserted, removing all doubt on the subject. It will not exempt any property from taxation that is now taxed, but it will make constitutional the exemption of all institutions used purely for charitable purposes. I hope the amendment will be agreed to and I hope the agreement will be unanimous.

The amendment was agreed to.

Mr. HARRIS, of Hamilton: I offer the following amendment, and I call your attention to the fact again that section 10 as drawn is very defective. It would be a disgrace to this Convention if it went out in this form, so I offer an amendment using identically the same words as the provisions in the sinking fund in the good-roads measure which you have adopted.

The amendment was read as follows:

Strike out of line 39 the words, "for the payment each", and all of lines 40 and 41 and substitute "for the levying and collection annually by taxation of an amount sufficient to pay the interest on said bonds, and provide a sinking fund for their final redemption at maturity."

Mr. HARRIS, of Hamilton: I now offer another amendment which I know will be adopted unanimously because it provides that of all income and inheritance taxes collected by the state not less than fifty per cent shall be returned to the place from which they originated. In other words, if we have to pay income and inheritance taxes, let the state return to our taxing district not less than fifty per cent of these taxes to reduce our burden of taxes. I will state that in Wisconsin the legislature has provided that seventy per cent shall be returned and I have left the legislature a limit of returning not less than fifty per cent to the cities, villages and townships in which the tax originated.

The PRESIDENT: The secretary will read the amendment.

The amendment was read as follows:

Insert as section 9 the following:

"Not less than fifty (50) per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate."

Change present section 9 to section 10 and present section 10 to section 11.

Mr. BROWN, of Highland: I move the previous question.

Mr. WATSON: I wish you would not do that. I have been trying to offer a small amendment for some time.

The PRESIDENT: The previous question is regularly demanded.

The main question was ordered.

The PRESIDENT: The question is, "Shall the amendment of the member from Hamilton [Mr. HAR-

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ris] be agreed to? The last amendment offered by Mr. Harris is the amendment in question.

The yeas and nays were taken, and resulted—yeas 74, nays 34, as follows:

Those who voted in the affirmative are:

Antrim,	Hahn,	Nye,
Baum,	Halenkamp,	Okey,
Beatty, Wood,	Halfhill,	Partington,
Beyer,	Harris, Hamilton,	Peck,
Bowdle,	Harter, Stark,	Read,
Brattain,	Hoffman,	Riley,
Brown, Pike,	Hoskins,	Rockel,
Cassidy,	Hursh,	Roehm,
Cody,	Johnson, Madison,	Rorick,
Collett,	Johnson, Williams,	Shaw,
Colton,	Keller,	Smith, Geauga,
Cordes,	Kerr,	Smith, Hamilton,
Crites,	Kilpatrick,	Solether,
Crosser,	King,	Stamm,
Cunningham,	Knight,	Stilwell,
Davio,	Kramer,	Tannehill,
Donahey,	Kunkel,	Thomas,
Dunlap,	Lambert,	Ulmer,
Dwyer,	Leete,	Wagner,
Evans,	Marriott,	Walker,
Fackler,	Marshall,	Weybrecht,
Farnsworth,	McClelland,	Winn,
Farrell,	Miller, Crawford,	Wise,
Fess,	Norris,	Mr. President.
Fox,		

Those who voted in the negative are:

Beatty, Morrow,	Holtz,	Pettit,
Brown, Highland,	Jones,	Pierce,
Doty,	Kehoe,	Price,
Dunn,	Lampson,	Redington,
Earnhart,	Longstreth,	Stalter,
Elson,	Malin,	Stevens,
FitzSimons,	Mauck,	Stewart,
Fluke,	Miller, Fairfield,	Taggart,
Harbarger,	Miller, Ottawa,	Tetlow,
Harris, Ashtabula,	Moore,	Watson,
Harter, Huron,	Peters,	Woods.
Henderson,		

So the amendment was agreed to.

The PRESIDENT: The question is now on the adoption of the first amendment of Mr. Harris, of Hamilton.

Mr. HARRIS, of Hamilton: Would you object to my calling attention to the fact that Mr. Colton indorses that?

The amendment was agreed to.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 79, nays 32, as follows:

Those who voted in the affirmative are:

Anderson,	Dwyer,	Johnson, Madison,
Baum,	Earnhart,	Jones,
Beatty, Morrow,	Fackler,	Kehoe,
Beatty, Wood,	Farnsworth,	Keller,
Beyer,	Farrell,	Kerr,
Brown, Highland,	Fess,	Kilpatrick,
Brown, Pike,	FitzSimons,	King,
Cody,	Fluke,	Kramer,
Collett,	Fox,	Kunkel,
Colton,	Harbarger,	Lambert,
Crites,	Harris, Ashtabula,	Lampson,
Crosser,	Harter, Huron,	Leslie,
Cunningham,	Henderson,	Longstreth,
Donahey,	Holtz,	Ludey,
Dunlap,	Hoskins,	Marriott,
Dunn,	Hursh,	Marshall,

Mauck,	Pettit,	Stilwell,
McClelland,	Pierce,	Taggart,
Miller, Crawford,	Rockel,	Tannehill,
Miller, Fairfield,	Roehm,	Tetlow,
Miller, Ottawa,	Shaw,	Thomas,
Moore,	Smith, Geauga,	Wagner,
Norris,	Solether,	Walker,
Okey,	Stalter,	Watson,
Partington,	Stevens,	Winn,
Peters,	Stewart,	Wise,
		Woods.

Those who voted in the negative are:

Antrim,	Halfhill,	Read,
Bowdle,	Harris, Hamilton,	Redington,
Brattain,	Harter, Stark,	Riley,
Cassidy,	Hoffman,	Rorick,
Cordes,	Johnson, Williams,	Shaffer,
Davio,	Knight,	Smith, Hamilton,
Doty,	Leete,	Stamm,
Elson,	Malin,	Ulmer,
Evans,	Nye,	Weybrecht,
Hahn,	Peck,	Mr. President.
Halenkamp,	Price,	

So the proposal passed as follows:

Proposal No. 170—Mr. Worthington, to submit an amendment to article XII, sections 1, 2 and 6, of the constitution, and to add thereto sections to be known as sections 7, 8, 9 and 10.—Taxation of state and municipal bonds, inheritances, incomes, franchises and production of minerals.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XII.

SEC. 1. No poll tax shall ever be levied in this state, or service required, which may be computed in money or other thing of value.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SEC. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to,

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estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

SEC. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

SEC. 9. Not less than fifty (50) per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

SEC. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

SEC. 11. No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed, provision is made for the levying and collection annually by taxation of an amount sufficient to pay the interest on said bonds, and provide a sinking fund for their final redemption at maturity.

Mr. FACKLER: I move that the Convention recess until seven o'clock p. m.

The motion was lost.

Mr. WOODS: I move that the vote whereby Proposal No. 170 was passed be now reconsidered and I move to lay that motion on the table.

The motion was carried.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. ANDERSON: I move to recess until nine o'clock tomorrow morning.

Mr. DOTY: What is the use of recessing?

Mr. ANDERSON: Then I move to adjourn until tomorrow morning at nine o'clock.

Mr. PECK: I move to recess until 7:30 p. m.

Mr. FESS: I understand the motion is to adjourn until nine o'clock and that is debatable.

The PRESIDENT: Yes.

Mr. FESS: Gentlemen of the Convention: Let us not get excited; let us have at least an evening session and get rid of the initiative and referendum.

Mr. DOTY: I withdraw my motion.

The PRESIDENT: The question is on recessing until 7:30 o'clock p. m.

The motion was carried and the Convention recessed until 7:30 o'clock p. m.

EVENING SESSION.

Mr. LAMPSON: I move that three hundred copies of Proposal No. 170 as passed be printed.

The motion was carried.

Mr. Brown, of Lucas, arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Brown, of Lucas, voted "aye."

The PRESIDENT: The next order of business is Proposal No. 2, which the secretary will read.

The proposal was read the third time.

Mr. CASSIDY: I offer an amendment.

The amendment was read as follows:

In line 6 strike out the word "but" and in lieu thereof insert a comma after the word "representatives" followed by the following:

"the members of which shall be elected by a separate ballot without party designation thereon. The names of all candidates for the senate and house of representatives shall be separate with proper designations for each and shall be alphabetically arranged upon the ballot."

In the same line in the word "the" change the "t" to "T".

In the same line after the word "people" insert ", however,".

Mr. CASSIDY: The legislature in providing for this Constitutional Convention provided for a nonpartisan election. And this provides for nonpartisan elections for members of the general assembly.

A vote being taken the amendment was agreed to on a division by 59 to 33.

Mr. CROSSER: I offer an amendment.

The amendment was read as follows:

After the word "initiative" in line 17 insert the following: "and the signatures of eight per centum of the electors shall be required upon a petition to propose a law".

In line 25 strike out all after the period and strike out all of lines 26 and 27 and substitute the following:

"The initiative petitions, above described, in the case of proposed laws shall have printed across the top thereof, 'Law proposed by initiative petition to be submitted directly to the electors'; or in case of proposed amendments to the constitution 'Amendment to the constitution proposed by initiative petition to be submitted directly to the electors.'"

Mr. DWYER: Do you mean by your amendment to reduce it from twelve to eight per cent?

Mr. CROSSER: No; this is a new proposition entirely.

Mr. President and Gentlemen of the Convention: When this proposal was before the Convention on its second reading it was my purpose to say a few words on the general principles of the initiative and referendum, but by some parliamentary legerdemain my raucous voice was prevented from annoying you on the subject at all. I feel, however, that I would be derelict in my duty if I did not do everything in my power to secure to the people the right to legislate directly when the occasion

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and necessity may arise, and therefore I have offered the pending amendment. I shall not, however, undertake to discuss the general principles, but shall confine myself to the principle involved in this amendment and thereby avoid the charge of now harassing you with what one of my newspaper friends referred to as "a perfectly good speech which was placed in cold storage".

I know that there is a disposition at this stage of the Convention's proceedings to rush things and pay little attention to any amendments offered, and I do not blame the members a great deal, but in view of the fact that I did not have an opportunity before to present my case I feel sure that the members will be broad enough and just enough to adopt this form of the initiative if I can present fair and sound reasons for it.

During the former discussion of this measure I was very much amazed and somewhat irritated to hear members of the Convention speaking of their willingness to allow the people to exercise this or that degree of control in the conduct of their government, as if it were the prerogative of any member of this body to say what rights his masters should have in their government, and yet that is exactly the position that delegates have taken. But let us for a moment examine this substitute; this indirect initiative; this will-o'-the-wisp proposition, which seems to put us within the reach of freedom and yet, when we approach it, fades away and leaves us in darkness and despair.

In the first place, instead of doing what all believers in the principle of self-government admit and agree should be done, namely, making government as readily responsive to the wishes of the people as possible, this makes it possible to delay action upon a proposed measure to the extent of three years. Stop and think of it for a moment. Suppose that at any time after ten days before the commencement of the next session of the general assembly the required number of electors should have occasion to propose a law by initiative petition. At the next regular election you cannot submit the proposition to the people, because it was not presented to the legislature prior to ten days before the commencement of the session of the general assembly in that year and it therefore goes over until the next year; but the next year has no session of the general assembly and the measure must go into the third year and wait until the legislature convenes, at which time it must be presented to them for their action, and then if the general assembly disapproves, it goes to an election, thus making practically three years before we can have any action by the people upon a measure proposed by a large number of the voters of the state. That is one reason why the indirect initiative, so called, is objectionable.

A great many arguments advanced for the principle of the initiative and referendum, or what is sometimes called direct legislation, are based upon the psychological effect that the operation of the principle exerts on the mass of voters. It creates greater respect for the law, for the discussion preparatory to the direct action of the voters on a proposition submitted to them is bound to have a beneficial effect.

Any man has more pride in a thing which he has created than in that which someone else has created for him, and therefore, he is more inclined to comply with

the terms of that law in the enactment of which his will has been of equal weight with that of every other man.

Another reason why men have more respect for law which has been sanctioned by popular vote is that they know that the will of a real majority of the people is behind that law which gives it its force, and if for no other reason than the mere selfish one that they feel they are outnumbered they are inclined to respect it, which is not usually the case when the law is the result of some legislative action, always more or less the result of machination and tricks.

Another reason why a law which has been passed upon by the people themselves has more weight and therefore is more respected, in other words, is really law, is that the discussion which has gone on before the people, the argument pro and con, is bound to make the citizen understand the law better than he would if it were passed here by the general assembly. He knows the reason for it, and knowing the reason he sees the justice or what is claimed to be justice by the great majority who have approved it.

It will improve public opinion for practically the same reason. After all, law, the only vital law, is simply public opinion. You may write statutes and render great decisions, but if public opinion is not behind them they are just so much dead timber. It is practically a repetition of the same argument to say that where we have direct legislation, where we have responsibility on the part of the people, where we have the people's will expressed in the form of law as the direct initiative would permit it to be, we have the surest bulwark against anarchy and appeal to passion. How many men do you suppose are going to take chances in the violation of law if they know that the great majority of their fellow men have personally expressed their approval of that law instead of giving someone carte blanche to pass such a law without their knowing anything about it?

I do not urge that all laws should be submitted to the people. A great many laws are of minor importance and it makes no difference whether our citizens know the contents of them or not, but where there is a great principle involved, where the law involves some proposition as to which there is a clash of interests, such laws had ten times better be submitted to the people for their direct action and approval or rejection, because in so doing we have had a final settlement of the proposition that is satisfactory, and as long as you try to settle great questions like those relating to taxation and the liquor traffic and many others of similar importance by having agents do it for the people you will find a lurking suspicion in the minds of the majority of the electors of the state that such law is not the will of a majority.

The time of the delegate here expired.

Mr. HURSH: I move that the gentleman's time be extended ten minutes.

The motion was carried.

Mr. CROSSER: Now, just so far as the indirect initiative prevents that result, prevents the focusing of the public mind on vital questions, just so far the beneficial results of the initiative and referendum are lost. In fact, half of the argument heretofore made in support of the initiative and referendum has been based upon the fact that it would be of great educational value to

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the people, but the chief argument for the indirect initiative is that it prevents practically all measures proposed by petition from going to the people. That is the very object of the indirect initiative. You notice that the men who are absolutely opposed to the principle of the initiative and referendum would accept the indirect initiative. Why? Because they believe it would prevent a great many questions from going to the people for consideration and discussion.

Mr. SMITH, of Hamilton: How can it possibly prevent any law petitioned for by the people from being put up to a vote?

Mr. CROSSER: The gentleman surely knows that the advantage claimed for the indirect initiative is that it would give the legislature a chance to act upon the proposed measure and thus prevent it from going to the people. A moment's reflection will satisfy you that that would be the result.

The opponents of the direct initiative claim that it would cause a flood of legislation and that every crank would be submitting his proposition to the people and having it enacted into law. Of course, that assumes that the great majority of the people are fools and when measures are submitted at an election they will vote for anything that is proposed by petition. That is an assumption which I cannot concede. I claim that the indirect initiative will cause a greater amount of vicious legislation than the direct initiative, for the reason that when there are presented to the legislature petitions containing from sixty to eighty thousand signatures demanding the passage of laws there is a tendency on the part of the legislature or even of the constitutional convention to pass the measure petitioned for under the frequently mistaken notion that the people as a whole demand it. The consequence is that the measure probably would not be submitted to the people; and it would not be submitted unless there should be filed another petition demanding its submission to the electors. I repeat, therefore, that a deluge of bad legislation would result more surely from the indirect initiative than ever from the direct initiative. I have seen much less than twenty thousand signatures come into the legislature in support of propositions which had very little merit in them, but simply because these petitions began to come to the legislature many men voted for the measures, thinking that there was a public demand for them, and they decided to give the public what it wanted. The legislature says, "Oh, yes, it is better to pass this law; we don't dare let it go to the people; it would be a reprimand to us if the people adopt it for we would be considered as having neglected our duties." So I claim that there will be more vicious legislation passed by this indirect initiative than by the direct initiative, because when a proposition must go to the people through the direct initiative the people have no ax to grind; they have no political fortunes at stake. They have nothing but their own best interests to consider, and they will go to the polls untrammelled to register their will as free born American citizens.

"But, oh," say the worshipers of the all-wise legislature, "the indirect initiative makes it possible for us to whip a measure into proper shape before this omniscient body and correct the form," and all that sort of thing. Did it ever occur to those gentlemen that the services

of this all-wise body called the legislature would always be at the people's command? If members of the legislature really desire to serve the public unselfishly they have the opportunity to do so as well in an issue before the people as before the legislature. Who will spend \$4,000 or \$5,000 to procure the necessary petition, running the risk of having it declared invalid for some inaccuracy, when he could go to that omniscient body and humbly inquire whether or not it is correct? "The legislature will whip the measure into proper form!" How gentlemen do like to roll that phrase, that sweet morsel under their tongues. You concede by your argument for the indirect initiative that the legislature should not touch any part of the substance of a proposed law; that the substance should not be changed in the slightest particular, but only the form. I will leave it to any man who has ever been in the general assembly or who has sat through five months of this Constitutional Convention to say whether any amendment of any consequence offered is not usually one which relates to substance rather than form? Be candid, gentlemen; is not that true? Take the taxation proposal. Every amendment offered to it was offered not for the purpose of changing the form but rather to get from the opposition, concessions as to substance. So with the liquor proposal. I cannot remember any proposition coming before the general assembly which did not have amendments offered to it which aimed not at a change of form but at a change in substance. The plan of going to the legislature first is a scheme to change the substance rather than the form and that should not be allowed. Opponents of the direct initiative will admit in argument that the substance should not be changed and claim that they only want to whip the measure into proper form, but a great many more vicious amendments are offered to a bill when it goes before the legislature than there are beneficial ones, and they seldom relate to form only. So as far as that argument is concerned, it amounts to nothing in my opinion and is more of an excuse than an argument.

When they say, "Your plan would require us to vote for every proposition in the form in which it is presented by the petition or not at all." Nothing of the kind. If these worshipers of the legislature are still disposed to procure an opportunity to vote for a somewhat different measure upon the same subject the means are obvious. They can circulate a petition and submit it to the people in competition with the original measure, present their arguments and say, "This is the reason why this proposition should be accepted rather than that." So that your argument that the people have only one proposition to accept or reject is one that vanishes as soon as it is examined.

But in my opinion the great advantage of the operation of the principle of direct legislation is not so much that you can compel the placing of certain laws upon the statute books, but rather the educational advantage to the people that is derived from it. I am not one of those who claim that the people do not make mistakes. They may make mistakes like the legislature. I heard my friend Bigelow make a very clever speech in Cleveland last fall in which he used this argument: "Did you ever see anybody learn to swim by proxy? Did you ever know of any one hiring an agent to learn the car-

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penter trade for him?" Certainly not. So it is with the question of government; unless governmental problems are brought to the people for their solution you can never expect popular government to be what it should be.

When I hear men say that the people are too ignorant to govern themselves I wonder if those men have not thought of the educational advantage in the principle of direct legislation.

Now let us consider for a moment the conference, more odiously called the caucus. I sat here and heard President Bigelow tell the beautiful story about the palace of music. I saw the parallel, which was perfect until he reached one point. I saw the sixty-five men at the Hartman Hotel playing the same tune and I saw the beautiful palace called the initiative and referendum rising high into the clouds, and then I saw that assembly of sixty-five men march down in solid phalanx to this assembly hall and then heard the honorable president playing one tune while a great many members, myself among them, were playing a different tune; and I could not see what had become of that beautiful initiative and referendum palace which we in unison had played up into the atmosphere with our pipes. I consulted other players and found that ours was the tune which had raised the palace at the Hartman. I cannot understand what those men who broke the covenant were thinking about. Personally I have such a dislike for this indirect initiative that I would have liked nothing better than to offer an amendment striking it out of the proposal altogether. It has no place in a bill framed by men who believe in government by the people, but I felt in honor bound to stick by the agreement; I felt that I could not honorably offer an amendment striking out the indirect initiative, but it seems that there were a great many members who did not hold the same view that I have held, and consequently we did not get what I thought we had procured when the compromise was reached and solemnly agreed to. The real basis of the objections to the direct initiative is the objection to all forms of the initiative, and that is that the people are too ignorant to govern.

There was not one man who stood here and opposed this proposition before the Convention who did not expressly or impliedly claim that the people didn't know enough to pass laws themselves. That, gentlemen, has been the last cry of the enemy against every effort of the people at self government; progress and justice. That has been the roar of the tyrant at his helpless subject. That was the reply of King George to the American colonies. That has been the hypocritical whine of special advantage seekers and their nauseous puppets, and that is the masterly explanation now given to the American people by their representatives in council, in legislative halls and congress assembled. Self-government; Declaration of Independence; both wrong! Can the modest, sensible men of this Convention subscribe to such an heresy? No; a thousand times no! Let us begin the rebuke of such an infamous doctrine. Let us speed that bright day when the spirit of equality shall fill every heart; when the Goddess of Justice shall reign supreme in the land; when every man shall pay her homage and when the light of brotherly love shall shine from every eye. Then shall the men assembled in the legislative halls,

as the honored counsellors of the whole people, say to the self-seekers and their lackeys who come prowling in the shadows of the capitol with specious pleas for special privilege, "Begone! we have neither power nor wish to give title to what you seek; nor will your offers of reward nor your threats of calamity and destruction avail you. Away! take your cause to our great sovereign, the people; we are but sentinels to warn our masters against invaders of their fair estate." And to the suffering, miserable, humble men who come, followed by weeping wives and clamoring children; to these men who ask only that they may be heard in the forum of mankind as to the theft of their birthright, to them shall legislators say, "Yes, you shall be heard; aye, more, we shall plead your cause before that great jury, the people". Let us continue the war upon oligarchy until the enemy has been routed from every entrenchment and self-government has been established in city, state and nation. The fight will be bitter but,

Courage, then, ye men yet strong;
Gird up your loins, go join the throng,
Battle for freedom, long sung by the muse;
Leave not a foeman, heed no flag of truce.

And when the din of battle's o'er,
And selfish greed shall reign no more,
We'll hasten forth proclaiming then,
"Peace on earth, good will toward men."

Mr. STILWELL: I offer an amendment.

The amendment was read as follows:

First Division. In line 174, after "Ohio" and quotation marks insert "which style shall be an amendment to section 18, article II".

Second Division. At the end of the proposal add the following: "If approved by the electors the foregoing amendment shall go into effect on the first day of October, A. D. 1912."

Mr. STILWELL: I now move the previous question on the pending amendment and the proposal.

Mr. READ: I do not think it is fair to move the previous question on the proposal.

Mr. PECK: Why not?

The PRESIDENT: The motion is regularly made for the previous question.

Mr. DWYER: I demand of the chair to give us our rights. We are not serfs for anybody. We only want our rights from the chair as well as anybody else. What is before you?

The PRESIDENT: The president would like to ask the gentleman from Montgomery [Mr. DWYER] what he would do in the president's place?

Mr. DWYER: Treat all with respect. I will not submit to anything that is unfair.

The PRESIDENT: What would you do if the members make a motion for the previous question?

Mr. DWYER: What is before the Convention?

The PRESIDENT: The question is, "Shall debate close on the pending amendment?"

Mr. DWYER: Who seconded that motion? We have our rights and we will insist on them.

The PRESIDENT: If the members of the Convention do not wish the debate to close, their course is to

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vote down the motion and not rebuke the president because the motion has been made.

Mr. HOSKINS: Is this motion debatable?

The PRESIDENT: No; a motion for the previous question is not debatable. The question is, "Shall the debate close on the pending amendment?"

The motion was lost.

The PRESIDENT: The question is now on the adoption of the amendment of the gentleman from Cuyahoga [Mr. STILWELL].

Mr. PETTIT: I move the amendment of the delegate from Cuyahoga [Mr. STILWELL] be laid upon the table.

Mr. TAGGART: The first clause of that amendment is absolutely necessary. By unanimous consent, I would like to make a statement.

Consent was given.

Mr. TAGGART: Section 18 of article II provides as follows: "The style of the laws of this state shall be, 'Be it enacted by the general assembly of the state of Ohio.'"

Now, instead of what is proposed by the part of the Stilwell amendment, the proposal before the Convention will read as follows: "The style of all laws submitted by initiative petitions shall be, 'Be it enacted by the people of the state of Ohio,' and the style of all laws of the state shall be, 'Be it enacted by the general assembly of the state of Ohio,' to make it consistent.

The PRESIDENT: The president does not see how the question can be further divided.

Mr. LAMPSON: Will not the gentleman withdraw the motion to table?

Mr. PETTIT: I will withdraw it if they wish me to.

The PRESIDENT: The motion to table is withdrawn.

Mr. LAMPSON: Now let us have a division; and I call for a vote on the first part of the amendment.

The PRESIDENT: The question is, "Shall the first part of the amendment be adopted?"

The first division of the amendment was agreed to.

The PRESIDENT: The question now is upon the adoption of the second part of the amendment.

Mr. PETTIT: I now move to table the remaining part of this amendment.

Mr. KING: The yeas and nays on that. That is important.

Mr. FESS: I wish Mr. Pettit would withdraw that.

The PRESIDENT: The motion is not debatable.

Mr. PETTIT: My understanding is that whatever we do here in this Convention, whatever amendments we adopt, are not to go into effect, any of them, until the first of January, and why make a difference in this particular proposal?

The PRESIDENT: This is all out of order. The question is, "Shall the motion be tabled?"

The motion to table was lost.

Mr. DOTY: I offer an amendment.

The amendment was read as follows:

Strike out all after (X) in line 167 and all the following up to and including the first "be" in line 173, and substitute therefor the following: "first, for the measure proposed by initiative petition, second, for the measure substituted by the gen-

eral assembly, and, third, against both measures. If the number of votes cast against both measures exceeds the total number of votes cast for both, neither shall prevail; if the total number of votes cast for both exceeds the number cast against both, the measure shall prevail which receives the larger number of votes."

Mr. DOTY: The proposal as framed brings about this situation: It is necessary upon an alternative proposition initiated by the people. They submit alternative propositions with that which comes from the people. They put up the two questions upon the same matter before the people, and the provision in the proposal will require each voter to put two marks to indicate his desire or wish. The amendment I have presented simply makes it necessary for one voter to make one mark to exercise his will, and it has every advantage over the other in simplicity and in making it possible for certainty of votes, so that each elector with a greater degree of certainty registers his vote upon the pending proposition.

Mr. HOSKINS: Do I understand this is your diagram?

Mr. DOTY: This is a diagram which would result from my amendment if adopted: The word, "general assembly" will be there instead of "legislature."

Mr. HOSKINS: Wherein does that differ from the one provided in the proposal?

Mr. DOTY: The one provided in the proposal requires, first, a vote for either measure and then for one or the other, and then there are four places. It is a complicated design and very much more apt to confuse the voter and interfere with his exercise of the right to vote upon the alternative measures.

Mr. KRAMER: According to your proposition fifteen per cent of the voters of the state would carry almost any measure.

Mr. DOTY: That is true with the other, too. The only trouble with the other is that when fifteen or any other per cent try to vote one way a large per cent will make a mistake on account of there being two crosses, which will confuse their judgment, whereas they ought to be compelled to vote only with one cross.

Mr. KRAMER: If six per cent vote for and thirty against either measure and they are divided each equally, fifteen per cent will adopt the law.

Mr. DOTY: There is a difference in that. That is true either way, but under my amendment you get nearer the total vote of those who are trying to vote on the measure.

Mr. KRAMER: I am not quite sure they are the same.

Mr. DOTY: They are the same in their final effect, and the same disparity between majority and minority is there, but what I am trying to do now is to simplify the method of voting so that one mark can do what two does now in the proposal.

Mr. BEYER: If the voter will not place any mark in here, in the first two spaces, that shows he is against both measures, and the last one would not be necessary.

Mr. DOTY: No; under the division of all proposals if he makes no mark he has not voted. He has to make a mark to show that he is against it.

Vice President Fess here took the chair.

Mr. BIGELOW: A word about these amendments.

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We understand that the indirect initiative which permits a legislature to submit a competing measure requires the voter to say whether or not he wants any change made, and if so, which he prefers, the measure proposed by the initiative petition or the measure preferred by the legislature. This indirect form of initiative is something entirely novel. It has never been tried anywhere. It is called the Wisconsin plan. As a matter of fact it should be called the Ohio plan, because that was the first indirect initiative that was framed in the Ohio legislature, passing both branches of the legislature in 1908. That was borrowed by Wisconsin from Ohio, and that is where Senator LaFollette got it, and it was borrowed from there by California and Massachusetts. It has never been used, and we are without any experience to guide us. I have thought a very great deal about the form of the ballot and talked it over and over again with a good many members of the Convention, and, while I may be wrong, this seems to me to be the fairest and the simplest ballot, and I believe the proposal should be amended in this particular and this form of ballot submitted as the gentleman from Cuyahoga [Mr. Dory] suggests.

Now, as to another amendment pending, the one offered by the member from Cuyahoga [Mr. STILWELL]: Do the members understand the purpose of this amendment which came so near being tabled? The president, by remarks before made, must have been thought to be in some sort of conspiracy to choke off discussion; but quite the contrary, the president was shaking in his boots lest discussion should be choked before the members realized the import of the amendment of Mr. Stilwell. What is the purpose? The purpose is this: That this provision for nonpartisan voting may become operative in time for the election this fall, so that the members of the general assembly to be elected this fall may be elected upon a nonpartisan ballot. Now the only reason for the initiative and referendum is the complaint that our legislatures, our general assemblies, have not been constituted of men of probity and ability. And it is a part of the whole struggle for true representative government not only to give the people the power to legislate for themselves, but also to improve the quality of our legislative bodies. I cannot think of anything that would do more than this amendment for a nonpartisan ballot to raise the standard in our general assembly, and to remove the necessity of the use of the initiative and referendum. Why, men are getting into the general assembly from Hamilton county, and it may be true from Cuyahoga county, who would not have a ghost of a chance of ever representing their county in those general assemblies if they had to stand on their own merits, but it is because they hide under some of the rest that they manage to get in here and getting in here, they bring discredit upon representative government. It is because of that sort of thing that we come to see the need of the initiative and referendum. Now the initiative and referendum are not a panacea for everything. It is not a cure-all. We have to improve the quality of our legislation. This is the most important proposal made in this Convention to improve the quality of our general assemblies, and I do hope that if it is a good thing the member from Adams will not insist upon his motion to table, and that nobody will try to choke it off, but that it may

be thoroughly discussed. If you believe it is a good thing for future years it is a good thing for this Convention to begin at once this principle of electing men because they are men and to cease voting for roosters and eagles and sending one bunch or the other to the legislature to represent us. Why, members have come to me suggesting that this will antagonize politicians and jeopardize the initiative and referendum; that it is fraught with danger to the initiative and referendum itself, and that we had better put it in some proposal that we are not so solicitous about as we are this initiative and referendum. It does not make much difference to me where it is put; I am not afraid that this nonpartisan proposal will defeat the initiative and referendum. It will draw some fire to it; it will bring a little blister, I admit, but the victory will be worth the struggle. Think what you will gain! We will not only gain, we will not only give the people the whip-hand over the state, but we will give the people a better legislature and give them less cause for wanting to use the whip-hand. Now I feel that this is so important that we can well afford in the interest of progressive government to sacrifice the other amendments that are proposed here. I would be willing to forego the direct initiative. I would be willing to leave the inhibitions, foolish, as I think they are, in the proposal. I would be willing to vote against any other changes than this suggested here and let the proposal stand as it is if you will have the nonpartisan provision in the proposal and make it so that it can go into effect at once. I believe we should hold out before the people of the state that this proposal with the indirect initiative as it stands, and with this change in the ballot and the nonpartisan feature, should go into effect at once, and on that we should win a victory over the combined political organizations of the state, and it will be indeed a victory for all of the people over all of the parties.

Mr. DWYER: I will accept the proposition for my part.

Mr. ANDERSON: In the first place, I wish to direct my remarks to the so-called Cassidy amendment that passed under rapid-fire action, and passed without a large number of the delegates knowing anything with reference to it. Now let us analyze it. In the first place it is a mongrel proposition. It is not nonpartisan. It is about as much nonpartisan as the election of judges. In other words, you have to invoke your party machinery to be nominated. You have to elect the convention. You have your county convention. You have your central conventions under the Cassidy amendment and then after the party selects its candidates it goes on a so-called nonpartisan ticket. Now if we are going to have nonpartisanship let us have it in its purity in the same manner in which delegates to this Convention were chosen, not through the use of party machinery in any way.

Mr. KING: Would not the legislature have full power?

Mr. ANDERSON: I am coming to that. The legislature has full power to act in that particular just the same as it did in regard to us before we came here. You are jeopardizing, and it is radicalism run riot. We are finding at the end of the Convention that which we expected at the beginning and that which the people of Ohio had a right to expect, and oh, how grateful they

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were that they were mistaken! This Constitutional Convention met here and some weeks after we met you know the sentiment in Ohio was against us. Every one of you knows that, because everywhere you went they were saying, "You can do what you please and we will not ratify it." But sentiment gradually changed and changed because it was not radicalism run riot. Now what are you doing? A great change in the policy has been precipitated in the last three minutes without any discussion for a minute. Premeditatedly, with malice aforethought, the Cassidy amendment—no, not the Cassidy amendment—is rushed through. I sat here in the early part of this Convention when certain people were proposing certain things with reference to the initiative and referendum, and if the initiative and referendum could have assumed human form and exercised its vocal cords it would have said, "Deliver me from my fool friends." And it is true now, and I am preaching now as a true friend, I believe, of the initiative and referendum. But before the Convention met, in Cincinnati, Toledo and elsewhere the cry was, "Don't put the recall in; soft pedal the recall. Let us get the initiative and referendum and after we get that we can get the other reforms." I say to you, you do not need a change in the constitution to get the proposed change for nonpartisan lawmakers, and I say to you any true initiative can put that in there. Why, this splendid proposition of the initiative and referendum the people have come to consider as settled and the people were going to vote for it. Then through that, if you cannot get it through the lawmaking body, get your reform. Oh, but you can't wait. We have asked to be given the initiative and referendum so that we can get the other so-called reforms through the initiative and referendum. Now you can talk as you please about politics and the difference between the boss that is in and the boss that is out, but just take Columbiana county. A democrat has not been elected in that county for fifty years. There are good, respectable decent men in control as leaders of the republican party in Columbiana county who are going to vote for this initiative and referendum. Take some democratic county, and you have bosses there, say good respectable men. Are they going to vote in favor of the initiative and referendum with this attached to it? Certainly not. Then what is the use of setting them over against the thing that is near to our hearts? I appeal to you, gentlemen who have not gone wild, to you friends of the initiative and referendum, to think it over. Think of the conditions in your own county and then vote accordingly. Is there a single solitary delegate that will say this will make votes for the proposal in his county?

Mr. HALENKAMP: Yes.

Mr. ANDERSON: In Hamilton county? This reformation is too sudden and of too recent growth for me to believe that.

Mr. DWYER: The men who sent out these insulting papers might do something.

Mr. ANDERSON: We have this situation with reference to the initiative and referendum: At certain places certain men have signed for an indirect initiative, signed a printed agreement that they would in no way assist in getting the direct initiative and signed it before the voters voted for them. It is now said there

that the man was guilty of false pretenses when he got into office under that and didn't vote for the direct initiative, and those dissatisfied have inspired abusive and coercive articles in that county.

Mr. MAUCK: It is a most mortifying fact, if it be a fact, that a hundred and nineteen members of this Constitutional Convention should have sat here since the ninth day of January last and have never had their attention called to the one paramount question, that is, the preservation of representative government through this nonpartisan abortion that has been hitched upon the initiative and referendum. It is to me a mortifying spectacle that a hundred and nineteen men, presumably inspired by honest motives to do the decent thing by the people of the state of Ohio, should never have had a suggestion made to them until within a few hours of the closing session that this is the one and only way to salvation. You can elect constables upon a partisan ticket, because, of course, great public questions are involved in the election of constables, but when it comes to the only local office that does involve some party principle you deny the right or co-operation. We must elect representatives and senators who in turn elect United State senators who vote according to political platforms of their respective parties, who vote to redistrict the state for congressional purposes, who in every way stand for party principles, only upon an independent ticket, while he who is to serve in the exalted office of township treasurer is to be determined by the people on a partisan ticket! I say it is no less than an outrage that men who have been loyally for the initiative and referendum should be brought in here and confronted with this miserable proposition in the closing hours of this Convention.

Mr. HOSKINS: Gentlemen of the Convention: I do not believe there is any one who has been a member of this Convention who has stood more firmly for the initiative and referendum in its pure form than I have. I came here pledged to a platform of that sort. I sat in a so-called caucus at the Hartman Hotel night after night trying to get a form of initiative and referendum upon which those in this Convention who believe in its principle could unite and carry through. That caucus was criticised far and near because of the attempt to formulate something in the caucus upon which we could all agree. Now I never had such a suggestion made to me. I never heard of any thing like the Cassidy amendment until I stood back of the rail right there and found so many men were standing up here to be counted for the nonpartisan election of members of the legislature. I want to say to you, gentlemen of the Convention, I believe in parties. I do not believe in a hide-bound party that would vote to take everything under all circumstances, but I do know and believe that history teaches us that every great reform in this country has been brought about by parties, and it is only by putting the masses of voters behind the parties that you can assert their will and accomplish any great reform in this country. I want to say to you that you cannot put your hand upon a single instance in history where reform has been accomplished except through the medium of a party. You may preach independence all you please and nonpartisanship all you please, but after all there is only one way to express your sentiment and that is through the party. Through the individual, no matter how strong

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the individual is, you cannot bring about reform. It is only when you centralize efforts and thoughts into party consideration and put them into a party platform and carry it through by party measures that you have accomplished any great reform. Just as the gentleman from Gallia [Mr. MAUCK] says, you can elect your constables on a nonpartisan ticket, but when you come to the consideration of democratic doctrine and republican doctrine or socialistic doctrine you can only express it through a party; and you socialists of all men cannot vote for this, because you cannot vote for anything that your party management has not indorsed.

Now I want to give you initiative and referendum men a warning. We have stood with you on that fight. It is the one proposition in all this Convention in which I am most deeply interested, and you have stabbed us in the back with an amendment. You have laid the foundation of initiative and referendum before the people, and unless you reverse the action of the Cassidy amendment my best judgment is that the initiative and referendum will be beaten before the people, and I want to warn you. I have as much interest in the initiative and referendum as the gentleman from Cuyahoga or the two gentlemen from Cuyahoga who are presumed to have written the amendment put in here this evening, and I want to warn you that they have not a right to put this up to you.

Mr. CROSSER: I am not included in those two, am I?

Mr. HOSKINS: No, sir; I am for your direct initiative and have stood for it from the beginning and accepted the indirect initiative as the best I could get. I do not believe it is becoming for the gentlemen from Cuyahoga to come in here the last days of the Convention and stab in the back those who have stood with them in the fight, and I want to say to you that you are going to lay the foundation of the defeat of the work of the Convention and the one proposition in which I have been most interested and to which I pledged myself to the people of my county before I came here. I ask you, friends of the initiative and referendum, you members of the caucus down at the Hartman Hotel, if you are going to put this in why didn't you put it in then? If it was such a paramount reform that it overshadowed everything else, why didn't you put it in down there an let us pass upon it there? Oh, no; it was never discussed until the Convention assembled tonight, and now it is a paramount proposition. I say it is unfair, and I move that the vote by which the Cassidy amendment was adopted be reconsidered.

Mr. ANDERSON: I second the motion.

The yeas and nays were demanded on the motion.

Mr. BEATTY, of Wood: I never heard of it. I believe in a nonpartisan elected legislature. I have been in the legislature and I have seen some of the very best measures that could be introduced defeated because we were partisan, and so I believe firmly in the nonpartisan election of the members of the general assembly. I heard the same question discussed when we introduced the proposition about the nonpartisan judges. They said the people would defeat the proposition. We saw the same thing right along and we saw it in this house when the republican party was lined up on one side and the democratic party on the other side and what-

ever the one wanted the other voted against. In Ohio everyone knows that you vote under the rooster and the eagle, but I am willing to do away with the rooster and the eagle and vote for men. I am a firm friend of the initiative and referendum, although I believe in the direct initiative in place of this mongrel indirect initiative. I believe in that firmly; I have advocated it always, but unless you can get a better class of men in the future than you have had in the last five or six years it won't do much good.

Now, I thank you for your kindness and I bid you all good-by.

Mr. WALKER: I want to say a few words about this. I believe with all my heart that the very best piece of work the Convention has done since convening, not even excepting the abolishing of the board of public works, was the work done a few minutes ago in placing this amendment in the initiative and referendum proposal. It was suggested if we would go back to our counties the friends of the initiative and referendum would vote against it because of its incorporation. For one, I shall go back to my county and my people and make a campaign all over the county, and I am confident I can get three times the number of votes for the proposal now since the incorporation of this amendment. We have heard it referred to a hundred times on the floor that it has been an advantage to the state to have a nonpartisan gathering in this Convention. The work of the legislature is identical with the work of this Convention, concerning the interests of the people, and if it is an advantage to have a constitutional convention nonpartisan, it is at least equally so to have the legislature nonpartisan. A legislature that stoops to do work for a political party is betraying the people that has elected it. If I were expecting to be a candidate on a political ticket for some office like governor I might want to have the legislature under my hand that I might whip it into line here and there as I pleased; but if I look at the matter purely from the standpoint of a patriotic citizen of Ohio, I fail to see where we are jeopardizing anybody's interest by asking that our legislature be made nonpartisan. What principle of government is invaded by this proposition? Absolutely none. It will resolve itself into this, that the question will be a question of selecting the best men and partyism will fall. There was a time when parties were needed. They represented great principles, and yet is there a man outside of these one hundred and nineteen men who, if I were to read the platform of the two great political parties respectively and omit therefrom all personal names and allusion purely to party accomplishments of the past, could tell which party platform I was reading?

DELEGATES: I can.

Mr. WALKER: I said outside of these intelligent one hundred and nineteen men. Outside of them who could do it? Today there is a wide difference between republicans and between democrats, wider than between the two parties. There are elements in each party; progressive elements in each party are nearly together. I think partyism has had its day and we are striking its death knell. In the future there may be a necessity for new parties or for party reform, and the people may rally around it and crystallize the idea and make a new government, but we are not face to face with that situa-

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tion today. This will win a multitude of votes for the initiative and referendum, and I hope that we shall not be stamped by threats that it will jeopardize the initiative and referendum.

Mr. READ: I am a thorough believer in nonpartisanship, but at the same time partyism is crowned by the American people and I recognize that we cannot wipe out party lines at one fell swoop. I have always believed that the initiative and referendum, when it got into full practice, would wipe out party lines; that then the people, instead of rallying under the rooster or under the elephant or under some other sign, would rally under the banner of some principle and stay around that until they made it effective, and then when they got that accomplished they would turn to some other thing. There would then be alignments something like those in this Convention. There has been no true principle that has not resulted in an alignment. You have simply here carried out that nonpartisan idea and have rallied around principles according to your individual opinions, and that is an ideal condition. It would be an ideal system for the state and for the nation, but I think this is an attempt at the present time to force partyism on us. It is too sudden. We do not want to make the initiative and referendum nonpartisan by adopting a nonpartisan proposition, but we want the initiative and referendum itself to make the people nonpartisan and wipe out party lines, and in time it will do it. But do you gentlemen think that we are going to make nonpartisans out of the democrats or republicans who are nominated this fall? I am afraid we are attempting to do too much too suddenly and I hope that we will consider this matter very carefully.

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: When the member from Holmes [Mr. WALKER] said in his very able speech a moment ago that this sounded the death knell of partyism in Ohio, he might have said it sounded the death knell of constitutionalism, for such would be the case. I believe political parties are the props and stays of a constitution, and without a constitution and political parties free government does not exist. You talk here about doing away with political parties and what are you trying to accomplish? You are absolutely, either openly or not knowingly, playing directly into the hands of the socialist party, for all of its doctrines aim at the complete democratization of the state. That is the foundation of it all. Here is the very latest authority on that subject, and I will read you an extract that you cannot deny from one of its well-known disciples:

Constitutions, representative government and political parties are thus intimately and indissolubly correlated with each other. They have common origin and together constitute one of the historical phases in the development of our political institutions.

Thus said Hillquit in his diatribe against political parties and constitutions and favoring state socialism by wiping out all political parties and doing away with all political platforms.

So that all you have to look to is the history of our own country. We had no political parties here until after the adoption of the federal constitution, and then

they came into immediate existence. It is through them and by their means and their declarations of principles that we have carried forward the purposes of our constitution and worked out our victories under that constitution. What do you vote for? You vote for a representative who represents certain principles crystallized into a platform. You talk about voting under "an eagle" or voting under "a rooster," and you talk about making your legislation better and your congress better by picking out an individual here and there that is not responsible to anything or anybody and stands upon his own platform of principles, something that he publishes for himself. When you vote under your party emblem you vote for a platform of principles, and without that we cannot accomplish anything. We cannot accomplish by individual effort of any man, be he ever so good, the utopian things preached to us here in these speeches—"Utopia," the "nowhere" of the Greeks, the ideal of the socialists.

So, gentlemen of the Convention, I hope you will think this over carefully on the question of reconsideration which is now before you. I know that some of you that believe in the direct form of initiative and referendum, the extreme form, will say that I am no friend of the initiative and referendum, and so far as the direct initiative and referendum is concerned, which is what a lot of you want, I am not a friend of it. I am a friend of the initiative and referendum as it has been argued here by some of these gentlemen who tell you that they are in favor of the initiative and referendum because it will help carry out and bolster up representative government. If it does that, well and good, and I think that that indirect form of the initiative is safe, but I am not in favor of anything reactionary. I am not in favor of the direct initiative, because I believe it is a backward step and a stab at representative government. I am in favor of the initiative and referendum which will help carry into effect representative government and not do away with it. So, gentlemen, I hope when the time comes to vote on this you will take that feature out of the proposal.

Mr. THOMAS: Are you aware of the fact that the Indianapolis convention of socialists did not agree with Mr. Hillquit on that subject?

Mr. HALFHILL: Do you agree with the socialists on that proposition?

Mr. THOMAS: I voted against that proposition.

Mr. HALFHILL: Very well. While the lamp holds out to burn, the vilest sinner may return.

Mr. TANNEHILL: Mr. President and Gentlemen of the Convention: I do not suppose there is a man in this Convention that has a thicker coat of political moss on his back than I have, and yet I am mighty glad to support this amendment. Some of these gentlemen who are afraid the other party is going to be killed, in my judgment along in November, when we need them in the fight, are always absent. I have noticed these fellows throughout the year who are afraid that the party is going to be crucified. When the November days come and you need them in the work they are not there. There is not a more partisan man in this Convention than I am, but I am for this amendment. It will not destroy parties. It will make parties nominate better men. Do you think a party that is in a majority in a county and

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that puts up a decent man is going to have the man defeated under this system? It is only when the majority party makes a mistake that he will be defeated under this system, and is there a man here who does not think that he should be defeated? There is nothing in this amendment to destroy parties, nothing of the kind. It is a most sensible measure in my opinion, one of the most sensible that has been offered here in the whole history of this Convention and it does not at all destroy parties.

Mr. LAMPSON: If that is not the natural tendency what is the real fact?

Mr. TANNEHILL: To force the parties to nominate good men.

Mr. LAMPSON: After having nominated a good man, why not let those men be upon a party ticket?

Mr. TANNEHILL: Because they ought not to be permitted to force their bad men through by forcing anyone to vote for the whole ticket. That is the policy now.

Mr. LAMPSON: But they are party nominations?

Mr. TANNEHILL: It is a policy now, and you know it as well as I do, that all over the state of Ohio there are men who go to the legislature for both parties who ought not to be there and who would not be there at all if they were not hidden among a lot of other names so that the voters cannot scratch their names easily.

Mr. HOSKINS: Under the present law is it not a fact that every member of the legislature nominated must be nominated by the people of his party and the people constituting his party can be relied upon to select good men?

Mr. TANNEHILL: Wherever you leave that to the people.

Mr. HOSKINS: I live in a county where the people have been doing that ever since I have been voting.

Mr. TANNEHILL: You ought to take your county out of the state. It is too good to be in this state.

Mr. HOSKINS: If you have a corrupt county and a few corrupt voters, do you think it is right to assume that all the rest of the state are just like these corrupt voters?

Mr. TANNEHILL: I have been in other counties than in Morgan county for twenty years and I have gotten to know not only what is going on in Morgan county but in some other counties too.

Mr. HOSKINS: I cannot answer for all the rest of the counties—

Mr. TANNEHILL: I doubt whether you can answer for Auglaize county on this.

Mr. HARRIS, of Hamilton: Would not the tendency on this nonpartisan ballot for the legislature be to eliminate the densely illiterate white and black and yellow mixed vote?

Mr. TANNEHILL: I think so, and I wish we could do it. And I want to say this to the gentleman from Auglaize: It will not be four years until there will be no roosters or eagles on your tickets. You had better wake up. This is the movement throughout the country. It will just take about four years to wind that up.

Mr. HURSH: I refrained from discussing this question on the second reading of this proposition, but no man who has talked to me in this Convention can question my position upon the initiative and referendum.

I presume I am one of the radicals of this Convention. I am in favor of the direct initiative, and if you will pardon me for being personal, I want to say to you that when I made the race for this position the initiative and referendum were my whole platform, and to me upon the initiative and referendum hang all the laws and the prophets. I would rather see every other measure that the Convention has adopted lost than this one, because this is for the people, and here am I standing and here I shall continue to stand.

As I said before, no one can question my loyalty to the direct initiative and you cannot go too far for me. I will indorse everything that has been said here tonight in favor of a nonpartisan ballot, but I love the initiative and referendum so well that I this minute protest and demand that we do not put the most effective club in the hands of its enemies that can be used to club it to death, and that is by denying the party the right to have their candidates voted for as belonging to a party. I do not propose to put the machinery of both political parties in such shape that it can be used as a club against the initiative and referendum.

We have been told that the legislature has power to provide for a nonpartisan ballot, and I am in favor of a nonpartisan ballot, but I am not in favor of this Cassidy amendment because it is going to tend to defeat the initiative and referendum. I happen to know a little about politics, and while a great many have freed themselves from the shackles of partisanship, I want to assure you that a great big minority—possibly a majority in many counties—yet will follow the dictates of their party organizations, and if it can be shown that they will be worsted in the fight this fall we are jeopardizing this proposition, because some men are so eager for political gain that they will even sacrifice the initiative and referendum. I want the direct initiative. I want all the things that go with it, and as the years go by the friends of the principle can get everything. Some of you do not seem to understand why certain things have been going in certain ways in the last few days and especially during the last primary. Do you not understand that it is not the popularity of certain candidates, that it is not the unpopularity of certain candidates, but that it is this great progressive movement that has gone forward so rapidly? Do you not understand that we have come to the parting of the ways in the principles of government? Do you not begin to realize that the time has come for the renewal of that continuous conflict that has gone on since the dawn of history, in which the privileged and the ruling class on one side and the working class on the other side have been the parties? Do you not understand that the working class that has paid tribute to privilege has risen and is demanding that every man shall receive the full product of his toil? Let us put ourselves in the spirit of the time. I do hope that the amendment of the gentleman from Cuyahoga [Mr. CROSSER], the direct initiative, will be included in this proposal and I want to warn you as one who loves the initiative and referendum better than every other proposition that has been brought up here and passed through this Convention, while I am for a nonpartisan ticket when the time comes, let us not, in all seriousness, at this immediate time jeopardize this proposition that is worth more to us and will be worth more to us in the

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future and more to our children and children's children than anything we have done in this Convention. Gentlemen, I appeal to you that we may get this nonpartisan proposition even through the initiative and referendum later, but let us not lay one barrier in the way of preventing the adoption of the latter now.

Mr. SMITH, of Hamilton: If I thought a nonpartisan legislature would injure in the slightest the initiative and referendum I would be against the Cassidy amendment. I feel that the men who are going to vote against the initiative and referendum because of the nonpartisan legislative provision would vote against the initiative and referendum itself. The amendment of Mr. Cassidy provides for an alphabetical arrangement of candidates for the legislature and at the proper time some one ought to offer an amendment similar to the one I hold in my hand to instruct the committee on Arrangement and Phraseology to provide in some way that the names of the candidates may be rotated as our names were when we ran for delegates to this Convention.

Now, Mr. President, the Cassidy amendment simply provides that the people of this state in the future shall vote for men instead of voting for birds, and if there is no one who cares to speak I would to move—

Mr. WOODS: I would like to ask the member from Hamilton a question. Suppose this proposition for a nonpartisan election of members of the general assembly goes into this proposal and the amendment of our friend from Cuyahoga [Mr. CROSSER] providing that this proposal take effect on the first of October is adopted. Explain to this Convention how you the going to make it workable before the general assembly meets? How are you going to get your tickets printed this fall?

Mr. SMITH, of Hamilton. Frankly, I do not see the necessity of the amendment of the gentleman from Cuyahoga specifying the date when this shall go into effect. It seems to me that if we do not make any provision in regard to the matter it will go into effect upon the date it carries at the polls. This amendment of Mr. Cassidy does not provide anything in regard to nominations or the manner in which the candidate shall be nominated, but simply provides in very simple language, which does not require any legislative provision to carry it into effect, that the ballot drawn up by the election boards in this state must provide that the names shall appear on the ballot without any party designation of any kind.

Mr. ANDERSON: Do you not think that as important a proposition as this should have come in a regular way and gone to a committee and been reported out and then discussed upon the floor of the Convention as other proposals were? Of course, you cannot believe it only came into the minds of certain members now, can you? Do you not think it is dangerous to make such an amendment of the work of the Convention on third reading?

Mr. SMITH, of Hamilton: I think the matter should be given thorough consideration, and I hope nobody will move the previous question until everybody is satisfied that he can vote intelligently, but it has been in the minds of many members for a long time that something should be done to provide for a nonpartisan election of county officials. I have been anxious for some provision of this kind to be applied to the judiciary.

Mr. HOSKINS: Was not there an independent propo-

sital put in here providing for nonpartisan election of members of the general assembly and did not this Convention vote a good many weeks ago to indefinitely postpone that proposition?

Mr. SMITH, of Hamilton: I do not know, but if the gentleman says so I have no doubt it is so. I have no recollection of any committee reporting such a proposal out to this Convention.

Mr. LAMPSON: Mr. President and Gentlemen of the Convention: I believe I have voted to submit thirty-nine out of the forty-one proposals, and I have been feeling in recent weeks that so far as most of them are concerned I can go home and recommend their adoption to my constituents. I hope that in the closing hours of this Convention we shall not do anything which will change or modify the good reputation which I believe this Convention has been gathering for itself for the past two weeks. I feel that we have been gaining the confidence of the people. And now, right on the eve of the close of the Convention if we inject into our proposals things which have not been discussed and carefully considered, or things which have been discussed and were rejected without fair discussion, and some of them by compromise, as in the case of the direct initiative, and some other things that I might mention, we will adjourn this Convention with a very different atmosphere surrounding it from that which has prevailed up until tonight, and I warn you, gentlemen, against this experimental proposition. Now, without making any charge at all, because my mathematics are always more or less complicated, I want to show you what might happen if the amendment of the gentleman from Cuyahoga is adopted hastily here without consideration in regard to the form of the ballot. You have the slips upon your table and I will ask you to put the number 40 into the first blank and "\$10,000,000 for good roads" in the first line. Put 41 into the second place and \$50,000,000 for good roads" right here, and put 80 in the third opposite "Against both measures," and see what will be the result of that kind of a vote upon the good-roads proposal to issue bonds. There is first one proposition for \$10,000,000 and then a competitive proposition for \$50,000,000. The first proposition would receive 40 votes and the competitive proposition would receive 41 votes, and "Against both measures," would receive 80. The result would be that the \$50,000,000 proposition with forty-one votes would be adopted, when there would be 120 votes against it.

Mr. DOTY: A hundred and twenty votes against?

Mr. LAMPSON: Yes.

Mr. DOTY: Eighty votes against.

Mr. LAMPSON: No, sir. Forty were willing to issue \$10,000,000 and no more, and 41 were willing to vote to issue \$50,000,000 and 80 were not willing to do it at all. You have a hundred and twenty votes voting against the \$50,000,000 proposition and yet 41 votes for the \$50,000,000 carries it.

Mr. DOTY: Well, what do you suggest?

Mr. LAMPSON: It is a complicated proposition and I have not figured it out, but I have figured far enough to see that that will not do.

Mr. DOTY: Have you figured the other?

Mr. LAMPSON: It would be the same. You vote for or against both propositions.

Mr. DOTY: You vote twice.

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Mr. LAMPSON: I am calling attention to that. I do not think that we should adopt that kind of a proposition hastily, because you cannot get away from that kind of a proposition that 120 have voted against and 41 voted for the \$50,000,000 proposition and yet you say that it carried.

Mr. PECK: I very much regret the adoption of this Cassidy amendment. We had, after careful consultation, agreed upon a measure satisfactory to a great majority of the Convention, a measure that we believed would be satisfactory to the people and there are reasons so to believe, as far as we can ascertain the temper of the people on the subject. The initiative and referendum proposal is the greatest and most important subject before the Convention. If this program were properly settled we would not fear to go before the people with something that sooner or later would be satisfactory to everybody who is in favor of that reform, as much so as could be hoped for. But now we have injected into this an entirely new element, something that is not relevant to it, and this proposal nowhere relates to the election of anybody or any man or any official. It is not a measure for that purpose. It is a measure for the purpose of regulating legislation, prescribing the mode in which legislation should be brought about. It is not a measure for the election of officers of any kind, and here we come and inject into it a measure providing a mode of electing members of the general assembly, something that is entirely foreign to the initiative and referendum proposal, something, as the gentleman from Hardin has pointed out, that puts in the hands of the enemy, in view of the peculiar situation existing, a very dangerous weapon which might be the means of destroying the initiative and referendum altogether. I regard it as a very dangerous experiment. I think that this is a situation where all friends of the initiative and referendum should say let well enough alone. Don't tamper with that good proposition, but let it go before the people. The people are satisfied with it and they expect to vote for it. Now you inject in there a new element, foreign to it, suddenly and unexpectedly, an element that interferes with their arrangement for the approaching election, that will enrage all the enemies and all the political organizations in the state and settle them against your proposal, because you have it in the proposal and the only way you can defeat that clause is to defeat the whole proposal. You are endangering everything that we are all so anxious to have adopted. I do not think it is wise or prudent. I do not think any wise political manager would ever go before the people in that way, and I hope this Convention will not, at the last minute, do a thing like this that will injure its greatest work.

Mr. BROWN, of Highland: It is very easy to see how the wind will blow if this is submitted with the initiative and referendum by observing what the politicians will do under those conditions. Now we have Mr. Lampson, who is a candidate for congressman-at-large; we also have Mr. Anderson, who wants to be governor, and we have the gentleman from Allen, who is a candidate for governor. All of these men have able organizations and these organizations have sub-organizations in every voting precinct in the counties from which they come, and the persons who will vote upon this amendment will do just as they have always done

before. They will go to the leader in that particular precinct and say, "How shall we vote?" And he will tell them to vote against the initiative and referendum because of this particular rider on it. I am in favor of it myself, am committed to it and I indorse everything the president said with reference to nonpartisan voting and when this comes up for a vote I will vote in favor of submitting it with the initiative and referendum because I believe in it from principle, but I do doubt the wisdom of it, and therefore I warn you if there is anything that can defeat the initiative and referendum or anything proposed that will go far toward defeating it, it will be this particular thing. There does not seem to be any doubt about it. Now, whenever you propose a change the persons controlling the organizations of political power are going to set their little acolytes to work to influence the voters in every small community against the thing which will tend to dethrone them.

Mr. FACKLER: Will that power of which you speak neutralize itself? In other words, in the counties where there is a minority party, that party and its organization would be just as much in favor of this as the other party would be against.

Mr. ANDERSON: That minority party is never so well organized as the majority party. It will incur the opposition of the party best organized.

Mr. BROWN, of Highland: I am in favor of it and will vote for it, but I believe it is bad judgment to put it in here now.

Mr. FESS: I, in company with many others who have spoken, believe in a thorough nonpartisan ballot for the good that may result from it. I believe also in taking the emblems off the ticket so that we may be insured a more intelligent vote by the individual voter. I am in favor of reducing the tyranny of the political organizations if possible. I do not think, however, that you can entirely eliminate political parties, for wherever you have a difference of opinion that will always formulate itself in organization, and if difference in political life obtains, it will always show itself in political organization and it makes no difference what sort of government we have. You have political organizations in democratic England. You also have political organizations in governments that are not so democratic. You always have political parties. There is no doubt about that. I would be in favor of reducing the tyranny of political organizations if we can and also increase the intelligence of the individual voters so that they will not be voted as groups. I am in favor of that, but, gentlemen of the Convention, that can be done by the legislature without our jeopardizing anything we have done here. I am afraid, as a friend of this measure and also as one who is interested in getting it in shape to be united upon, that injecting this at this time involves the sure defeat of the initiative and referendum at the polls. I am afraid of it for this reason: This will not be spoken of by the politicians as the initiative and referendum, but will be spoken of by them as an attempt to destroy political parties, and they will go out all over the state and use that argument against it. Now, gentlemen, since we can reach the nonpartisan ballot without putting it in here, why should we do it when it endangers the initiative and referendum question? Why not withhold it and keep it out of this place and save the initiative and referendum principle

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and then get the nonpartisan ballot later on? It seems to me quite unwise to put it in, and I do hope that you will reconsider the vote by which the Cassidy amendment was carried and do away with it.

Mr. HURSH: Do you think there is any law or vehicle by which we can successfully get a nonpartisan ballot except here?

Mr. FESS: I believe we have discussed this question thoroughly and I call for the previous question on the reconsideration.

Mr. DOTY: And I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 55, nays 51, as follows:

Those who voted in the affirmative are:

Anderson,	Hursh,	Okey,
Antrim,	Johnson, Williams,	Partington,
Baum,	Jones,	Peck,
Beyer,	Keller,	Pettit,
Bowdle,	Knight,	Read,
Brown, Pike,	Kramer,	Riley,
Collett,	Kunkel,	Rockel,
Colton,	Lambert,	Rorick,
Cordes,	Lampson,	Shaw,
Crites,	Leete,	Smith, Geauga,
Dwyer,	Ludey,	Stewart,
Eby,	Marriott,	Tetlow,
Elson,	Marshall,	Thomas,
Fess,	Mauck,	Wagner,
Fluke,	McClelland,	Watson,
Fox,	Miller, Crawford,	Winn,
Halfhill,	Miller, Ottawa,	Wise,
Harris, Ashtabula,	Moore,	Woods,
Hoskins,		

Those who voted in the negative are:

Beatty, Morrow,	Halenkamp,	Nye,
Brown, Highland,	Harbarger,	Pierce,
Cassidy,	Harris, Hamilton,	Price,
Cody,	Harter, Huron,	Redington,
Crosser,	Harter, Stark,	Roehm,
Cunningham,	Henderson,	Shaffer,
Davio,	Hoffman,	Smith, Hamilton,
Donahey,	Johnson, Madison,	Solether,
Doty,	Kehoe,	Stalter,
Dunlap,	Kerr,	Stamm,
Dunn,	Kilpatrick,	Stevens,
Earnhart,	King,	Stilwell,
Fackler,	Leslie,	Taggart,
Farnsworth,	Longstreth,	Tannehill,
Farrell,	Malin,	Walker,
FitzSimons,	Matthews,	Weybrecht,
Hahn,	Miller, Fairfield,	Mr. President.

So the motion to reconsider was carried.

The PRESIDENT: The motion to reconsider the amendment prevails and the amendment is now before the Convention. The question is on the adoption of the amendment.

Mr. WOODS: I move that the amendment be laid upon the table and upon that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 54, nays 55, as follows:

Those who voted in the affirmative are:

Anderson,	Colton,	Harris, Ashtabula,
Antrim,	Cordes,	Hoskins,
Baum,	Dwyer,	Hursh,
Beatty, Morrow,	Eby,	Johnson, Williams,
Beyer,	Elson,	Jones,
Bowdle,	Fess,	Keller,
Brown, Pike,	Fluke,	Knight,
Campbell,	Fox,	Kramer,
Collett,	Halfhill,	Kunkel,

Lambert,	Miller, Ottawa,	Rockel,
Lampson,	Norris,	Rorick,
Leete,	Okey,	Shaw,
Ludey,	Partington,	Smith, Geauga,
Marriott,	Peck,	Stewart,
Marshall,	Peters,	Tetlow,
Mauck,	Pettit,	Winn,
McClelland,	Read,	Wise,
Miller, Crawford,	Riley,	Woods,

Those who voted in the negative are:

Brown, Highland,	Harbarger,	Pierce,
Cassidy,	Harris, Hamilton,	Price,
Cody,	Harter, Huron,	Roehm,
Crites,	Harter, Stark,	Shaffer,
Crosser,	Henderson,	Smith, Hamilton,
Cunningham,	Hoffman,	Solether,
Davio,	Johnson, Madison,	Stalter,
DeFrees,	Kehoe,	Stamm,
Donahey,	Kerr,	Stevens,
Doty,	Kilpatrick,	Stilwell,
Dunlap,	King,	Taggart,
Dunn,	Leslie,	Tannehill,
Earnhart,	Longstreth,	Thomas,
Fackler,	Malin,	Wagner,
Farnsworth,	Matthews,	Walker,
Farrell,	Miller, Fairfield,	Watson,
FitzSimons,	Moore,	Weybrecht,
Hahn,	Nye,	Mr. President.
Halenkamp,		

So the motion to table was lost.

The PRESIDENT: The question is on the adoption of the amendment.

Mr. LAMPSON: I think it is perfectly evident that the amendment of Mr. Doty will not do and I move to lay that on the table.

Mr. DOTY: Mr. Lampson and I have been talking it over and the proposal is just as wrong as my amendment. There will have to be some way worked out different from that either of us has, and I withdraw the amendment so as to make room for amendment.

Mr. FACKLER: I move the previous question on the pending amendments, except the Crosser amendment.

The PRESIDENT: We had three amendments pending and then one was reconsidered; so we have four amendments pending. It seems to me it is proper to receive an amendment to this one that has been reconsidered because that is before the Convention. At any rate the president will so rule and the member from Defiance and the member from Cuyahoga [Mr. THOMAS] both have leave to offer amendments.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

Strike out the words in lines 1 and 2 "without party designation thereon" and insert period after the word "ballot" in first line and the following: "To the name of each candidate shall be added in initials the party or political designation as the name appears in the certificate of nomination or nomination papers."

Mr. THOMAS: I am heartily in favor of a separate ballot for the election of legislative candidates. The Massachusetts provision which Mr. Fackler spoke about is a facsimile of what is asked for in my amendment and it covers the proposition.

Mr. BROWN, of Highland: I move that this amendment be laid upon the table.

The motion to table was carried.

Mr. WINN: I now offer an amendment to the amendment of Mr. Cassidy.

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The amendment was read as follows:

Strike out the following: "the members shall be elected by a separate ballot without party designation thereon. The names of all candidates for the senate and house of representatives shall be separate with proper designations for each and shall be alphabetically arranged upon the ballot" and in lieu of the words so stricken out insert the following: "Members of both branches of the general assembly shall be elected upon a separate ballot without party designation thereon, and such ballot shall be prepared and printed as follows: The number of ballots to be printed for any county shall be divided by the number of candidates for members of the house of representatives or of the senate, as the case may be, and the quotient so obtained shall be the number of ballots in each series of ballots to be printed. The names of candidates for members of the house of representatives and for members of the senate shall be arranged as to each in alphabetical order and the first series of ballots printed. Then the first name shall be placed last and the next series printed, and the process shall be repeated in the same manner until each name shall have been first. These ballots shall then be combined in tablets, those containing the candidates for members of the house of representatives separate from those containing the names of candidates for the senate with no two of the same order of names together except where there is but one candidate."

Mr. WINN: This paper was prepared while debate was going on, but is practically a copy of the statute calling into existence this Convention and providing for the manner in which the names shall appear upon the ballot. I have attempted to change the words sufficiently only to make it applicable to members of the general assembly instead of the members of the constitutional convention, and it provides that the names shall be changed in their position so that each candidate will appear part of the time on each part of the ballot.

Mr. ELSON: How about nominations?

Mr. WINN: I am not dealing with nominations.

Mr. ELSON: How about the number of candidates?

Mr. WINN: I am not thinking about that.

Mr. ELSON: Is there any limit to the number?

Mr. WINN: No.

Mr. WOODS: I am against this proposition in this shape and I want to tell you why. I tried in the legislature several years to take the circles and emblems off the ballots and they ought to be taken off. I do not believe in voting a ticket with an eagle on it or a rooster on it. I would make the voter go down the line and mark every man he wanted to vote for. But now just stop for a minute and think what you are doing. We have a whole volume of election laws in Ohio. You cannot put anything like this into the constitution without so balling up the whole election laws that we won't know where we are this fall. You cannot provide for something like this in our constitution without knocking out a whole lot of sections of the statutes. If you put this proposition into the constitution and it is ratified by the people I want to say to you the governor of this state

will have to call the general assembly in extra session before you can have an election this fall. If you take time to look at the election laws and see what we are doing to them you will not consider doing this thing. It is simply ridiculous. It is just like changing the penalty for murder. You cannot do that without balling up our criminal statutes. You cannot change this without making unconstitutional a lot of election statutes now on the books. Now you may think this is a laughing matter, but it is not. It is a serious matter. We are going to have an election in the fall. There are one and a half million people here who want to have a chance to go to the polls and vote for Theodore Roosevelt. Now another thing. What is the use of mixing this up with your initiative and referendum? You ought not to mix this subject up with that. If this proposition is to be submitted it ought to be submitted separately and not mixed up with any other. You cannot afford to mix it up. You are going to have a whole lot of politicians against you if you do. I tried in the legislature to get these circles and emblems taken off and I didn't have any more chance than a snowball in hades. You have an opportunity to get the initiative and referendum now, and if you are wise you will not mix that up with this proposition.

Mr. HALFHILL: I would like to know if the member from Medina is now announcing his platform as congressman-at-large?

Mr. WOODS: No; I am not.

Mr. ANDERSON: I want to call attention of the friends of the initiative and referendum to the confusion they were in when they were voting for this amendment. Such advocates of the initiative and referendum as Mr. Crites, who for years and years has been going around over Ohio preaching the benefits of the great reform that will come through the initiative and referendum, and then my friend Judge King over there, another strong advocate of representative government, and then another strong advocate of the initiative and referendum, my friend from the suburbs of Youngstown, Judge Kerr—

Mr. NORRIS: Do you think that ten members of this Convention believe that you are sincere?

Mr. ANDERSON: It is hard for me to say what men think, but I can tell how they vote when they vote, and I want to say in all seriousness that the votes that I have registered have not been induced by politics or any idea of politics, and I appeal to members of the Convention if that is not true. I have not sidestepped anything, and I have not tried to get out of the way of any issue. I have stood here and told what I honestly believe, and I have let matters take care of themselves. Nothing that I have done has been induced by any hope of political preferment. I am in favor of the initiative and referendum, but I cannot be in favor of this proposition injected here at the last minute. I think it is a stab at the initiative and referendum, and I think it will injure the proposal. I voted to reconsider it. I think this amendment is worse than the calico patch referred to by my friend Stevens, and that I am right is indicated by the votes of the strong advocates of the initiative and referendum.

Mr. Anderson yielded the floor for a motion to recess.

On motion of Mr. Watson the Convention recessed until tomorrow morning at nine o'clock.

SEVENTH-EIGHTH DAY

(LEGISLATIVE DAY OF MAY 28)

MORNING SESSION.

WEDNESDAY, May 29, 1912.

The Convention met pursuant to recess and was called to order by the president.

Mr. ANDERSON: I move a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the door and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Beatty, Wood,	Harris, Hamilton,	Price,
Bowdle,	Johnson, Madison,	Rorick,
Brown, Lucas,	Leslie,	Shaw,
Cody,	Marriott,	Smith, Geauga,
Crites,	Miller, Crawford,	Stokes,
Elson,	Norris,	Tallman,
FitzSimons,	Partington,	Worthington,
Harris, Ashtabula,	Peck,	

The president announced that ninety-six members had answered to their names.

Mr. ANDERSON: I move that further proceedings under the call be dispensed with.

The motion was carried.

Mr. ANDERSON: Those of you who are opposed to the principles of the initiative and referendum and are voting with the mistaken friends of the initiative and referendum, had better take consideration of this fact, that if this amendment of Mr. Cassidy and the amendment of Mr. Stilwell became parts of the proposed organic law of Ohio, measures in which you are interested will receive thousands and thousands votes less than otherwise. In other words you jeopardize our whole work. Therefore, you had better pause and consider and not be prejudiced to the extent that you forget other things.

Can this go into effect if the amendments carry in October? I know what the other side would say and so do you. It will say that certain members of this Convention now nominated for the position of lawmakers and who are living in communities where they can receive more votes with a party emblem off used this Convention for their own selfish advantage, and who can say then nay? The evidence may be circumstantial, but it is in their favor. Why do we need wait for the constitution we are trying to make, provided it be ratified—why can we not wait a reasonable time for it to go into effect? Why all this haste and why does this question of the election of nonpartisan lawmakers become so paramount at this time? Why was it not so great before certain people were nominated as lawmakers? Why, I presume that some people had read about nonpartisan tickets before they came here. It was not an entirely new subject, and therefore I presume these men will say it is so much needed, it is the great reform and it was in their minds when the Convention convened.

Our friend Stevens told you about the calico patch

on the broadcloth trousers. Take your books and try to read this proposed amendment into the proposal and see how it fits. It is a monstrosity. It is worse than a calico patch. Some of you are voting in favor of it because you are in favor of it in the abstract, but you forget its application. I am in favor of it in the abstract, but I am not in favor of putting it in at this time and under these circumstances. What did Judge Peck tell you yesterday? He told you it had no place here, that this was not on the subject of primaries. This deals entirely with a different function of government and your answer is: "Oh, we didn't get it in before, let us put it in here because this is our only opportunity." If this be a good thing, and if it is agreed that the people all over the country are crying for it, how easy it is to obtain it through the initiative and referendum later on, and if we have the awakened conscience all over Ohio that has been so well described to us then I want to say to you that the awakened will send men to the house of representatives and to the senate who will enact this kind of a law, because a statutory law can be made complete and effective in bringing about this reform. It may be that by reason of an exaggerated idea of one's self we may think because our names as candidates for representatives and senators have to be placed on a ticket with an eagle or a rooster that we couldn't be elected, but if we can remove the eagle and the rooster from the ticket we can be elected. It may be a needed reform that will be brought in October; otherwise dire consequences might come to our grand old state of Ohio—one man might not be a law-maker and one man might not be speaker of the house; therefore, it is better that one man be elected than that the initiative and referendum become the law of Ohio, better that one man be promoted to the highest place in the state of Ohio than it is to get the initiative and referendum, for which we have been working, oh, so many years, becoming an accomplished fact. From that viewpoint there is a needed reform. Men, do not let us put ourselves in the position that we may be criticised through the press for having used this position for personal selfish ends. I move that the Cassidy amendment and the Winn amendment and the Stilwell amendment be laid on the table and on that I demand the yeas and nays.

Mr. DOTY: I demand a call of the Convention. There are only ninety-six here and you make a fifteen minute speech and then move to table.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Beatty, Wood,	Harris, Ashtabula,	Rorick,
Brown, Lucas,	Henderson,	Stokes,
Cody,	Leslie,	Tallman,
Crites,	Marriott,	Worthington,
FitzSimons,	Partington,	

The president announced that one hundred five members had answered to their names.

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Mr. DOTY: I move that further proceedings under the call be dispensed with.

The motion was carried.

The PRESIDENT: The question is, Shall the three separate amendments be laid on the table?

Mr. ANDERSON: Some delegates came to me and said that they would prefer that the Stilwell amendment be not included in my motion and that the Cassidy and Winn amendments be tabled, and therefore I ask unanimous consent to withdraw the Stilwell amendment from my motion.

The PRESIDENT: Does the member include in his motion only two other amendments?

Mr. SMITH, of Hamilton: I rise to a question of personal privilege. In the debate last evening Mr. Hoskins asked me if I did not know that this question on nonpartisan members of the legislature had been brought up and considered and finally laid on the table earlier in the session. I did not know that at that time.

Mr. ANDERSON: A point of order. You cannot get up here and argue under a question of personal privilege.

Mr. SMITH, of Hamilton: I was explaining my answer last night.

The PRESIDENT: The point of order is well taken.

Mr. SMITH, of Hamilton: I am making no arguments—

The PRESIDENT: The point is well taken.

Mr. DOTY: If the member from Mahoning withdraws his motion so that I can make a statement I think we can clear this matter. It appears that we have gotten into a tangle and that some think it wise when you are on a reform matter to do all the reforming you can, and others think it wise to have safeguards. It appears better perhaps to consent to the withdrawal or laying upon the table of the Cassidy and Winn amendments at this time, serving notice on you that we shall attempt to submit to the people this or some other later. This particular reform is of more importance than the initiative and referendum in many features. I therefore say that, so far as I am concerned, I shall vote for the motion of the member from Mahoning to lay the Winn and Cassidy amendments upon the table.

Mr. CASSIDY: By leave of my second I will withdraw my amendment.

Mr. DOTY: Mr. Winn must withdraw his first.

Mr. ANDERSON: If there is unanimous consent and an understanding that all amendments be withdrawn I will withdraw my motion to table.

Mr. WINN: With the permission of the Convention I am glad to withdraw my amendment offered last night.

Mr. CASSIDY: Now I will withdraw my amendment.

The PRESIDENT: So the question is on the adoption of the amendment of the member from Cuyahoga [Mr. STILWELL].

Mr. STILWELL: With the permission of the Convention I would like to withdraw my amendment.

The permission was given.

The PRESIDENT: The question is on the adoption of the amendment offered by the delegate from Cuyahoga [Mr. CROSSER].

Mr. HALFHILL: I have an amendment.

The amendment was read as follows:

Strike out the period at end of line 101, insert semi-colon and add the following words: "or to directly submit an amendment to the constitution authorizing an exercise of any powers or the passing of any law inhibited by this section."

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: When this matter came up for the second reading and we had before us what we called the middle-of-the-road compromise and it was laid upon our desks here at the end of two or three strenuous days of discussion, upon a hurried examination I discovered what was apparent upon even a cursory examination, that in that compromise the people who had been contending for the inhibition against the direct establishment of the single tax in Ohio had been compromised clear out of the running; and at that time I offered an amendment which is in substance this amendment, though not exactly so, in which I proposed to the Convention that instead of doing the foolish thing of putting in an inhibition against statutory law it really proceed to close the door and put something into the constitution that meant something. In other words, I did not propose, as far as I was personally concerned, to sit here in this Convention without some attempt to properly fight to the finish what I had seriously and earnestly contended against, the single tax. At the time we had the assistance of forty-two members and we had to vote against all the rest of the Convention. Now, gentlemen of the Convention, I want you to consider what you did with reference to this section when it was brought in here. What did you do with reference to my amendment when I proposed it on second reading, and then let us see, in the light of what you have done in this Convention, whether or not you will be consistent and support this amendment and put it into the constitution, or whether or not you will be compromised out of the fruits of what ought to have been a victory at the time of the second reading of this proposal?

Mr. KING: The adoption of your amendment with the provision in the proposal would prevent the submission of a constitutional amendment authorizing the classification of property or interfering with it afterwards if hereafter presented.

Mr. HALFHILL: I shall explain that. The question of classification of property and the single tax are separate and independent propositions. The classification of property is as old as government itself. It has been tried and found to work effectively in nearly all civilized governments. It has obtained for scores of years in all civilized countries of the earth, save in the state of Ohio and a few other states. It has existed from the foundation of the Union in several of the more important states. Single tax is a matter of recent growth, comparatively speaking, a philosophy created and put into existence by Henry George and carried forward by such disciples as Joseph Fels. They are separate and distinct propositions. And I repudiate the statement made that because I am in favor of the classification of property that I have therefore taken the first step in favor of the single tax. They are separate and independent propositions, but it is true that upon the generic statement of classification there came in the vote taken on the question a coalition or rather a combination

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of those singletaxers and those who advocated the classification of property.

The PRESIDENT: The gentleman's time has expired.

Mr. DOTY: I move that this amendment be laid upon the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 69, nays 45, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Peck,
Baum,	Harris, Hamilton,	Pierce,
Beyer,	Harter, Huron,	Read,
Bowdle,	Henderson,	Redington,
Brown, Highland,	Hoffman,	Rockel,
Cassidy,	Hoskins,	Roehm,
Cordes,	Hursh,	Shaffer,
Crites,	Johnson, Williams,	Shaw,
Crosser,	Kehoe,	Smith, Hamilton,
Davio,	Keller,	Solether,
DeFrees,	Kilpatrick,	Stamm,
Donahey,	Knight,	Stevens,
Doty,	Kunkel,	Stilwell,
Dunn,	Lambert,	Stokes,
Earnhart,	Leete,	Tetlow,
Evans,	Leslie,	Thomas,
Fackler,	Ludey,	Ulmer,
Farrell,	Malin,	Wagner,
Fess,	Marshall,	Walker,
FitzSimons,	Mauck,	Watson,
Fox,	Miller, Crawford,	Winn,
Hahn,	Moore,	Wise,
Halenkamp,	Okey,	Mr. President.

Those who voted in the negative are:

Antrim,	Halfhill,	Norris,
Beatty, Morrow,	Harris, Ashtabula,	Nye,
Brattain,	Harter, Stark,	Partington,
Brown, Pike,	Holtz,	Peters,
Campbell,	Jones,	Pettit,
Cody,	Kerr,	Price,
Collett,	King,	Riley,
Colton,	Kramer,	Rorick,
Cunningham,	Lampson,	Smith, Geauga,
Dunlap,	Longstreth,	Stalter,
Dwyer,	Marriott,	Stewart,
Eby,	McClelland,	Taggart,
Elson,	Matthews,	Tannehill,
Farnsworth,	Miller, Fairfield,	Weybrecht,
Fluke,	Miler, Ottawa,	Woods.

So the amendment was tabled.

Mr. LAMPSON: I offer an amendment.

The amendment was read as follows:

In line 166 strike out all after the word "express" and all of lines 167, 168, 169, 170, 171, 172 and 173 to the period and substitute "an affirmative or negative vote upon each law or proposed law or proposed amendment to the constitution."

Mr. LAMPSON: This is to straighten up the matter we had last night. If you turn back to page 3, line 60, you will find this language in the proposal:

If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case

of an amendment to the constitution, shall be the amendment to the constitution.

That covers substantially the same question there. Now I will ask the secretary to read my amendment in the proposal where it would come, beginning back in line 164 with the word "When".

The secretary read as follows:

When competing laws or competing amendments to the constitution are submitted to the electors, the ballot shall be so printed that the electors can express an affirmative or a negative vote upon each law or proposed law or proposed amendment to the constitution.

Mr. KNIGHT: I want to call the attention of the Convention to the fact that the clause spoken of in lines 61, 62, 63 and 64 is entirely different from this contemplated here.

Mr. LAMPSON: That is true, but it announces the method or principle of determining majorities, and this amendment standing by itself would cover it.

Mr. KNIGHT: Does this amendment permit where two competing measures, one initiated by petition, and a competing measure passed by the general assembly, are submitted alongside of each other—does it permit any voter to vote against both of them by making two marks?

Mr. LAMPSON: I so understand it, and if they both receive a majority then the one which receives the larger affirmative vote would prevail.

Mr. KNIGHT: A man who wants to vote for a measure uses a cross mark, and a man who wants to vote against both measures must make two cross marks?

Mr. LAMPSON: I don't understand it that way.

Mr. DOTY: That is right.

Mr. KNIGHT: If he opposes both measures he must vote twice.

Mr. LAMPSON: Yes, and if he wants to vote for both measures he can vote for both, but the one receiving the highest prevails.

Mr. STILWELL: No.

Mr. KNIGHT: It is absurd that a man should have to go to the polls and vote in that way.

Mr. DOTY: He might be allowed to vote for either measure. It would be the same thing. He votes for the one that gets the most votes. The same thing is in the proposal now. It is a Chinese puzzle, I will admit, but this amendment, so far as I know, is all right.

Mr. LAMPSON: To use the same illustration that I used last evening, suppose the legislature submits a proposition to issue \$10,000,000 and there is a competing proposition submitted to issue \$5,000,000. The voters, under this proposition, could vote for both of those and the one receiving the larger vote would prevail. Every man who wanted the \$10,000,000 would naturally, want the \$5,000,000 if he couldn't get the \$10,000,000, but there would be a lot of voters who did not want the \$10,000,000 and whichever got the larger number of affirmative votes would prevail, and those who wanted to vote against them could vote against both.

Mr. TANNEHILL: Take the ones who wanted the \$5,000,000, they would never vote for the \$10,000,000, but every negative man will cast two votes negatively, but the affirmative people cast only one vote.

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Mr. LAMPSON: A negative vote is against each proposition separately. It is the affirmative against the negative, but if both affirmatives have a majority over the negative then the affirmative which has the larger vote will prevail.

Mr. TANNEHILL: Does not that give the negative vote the advantage?

Mr. LAMPSON: No.

Mr. STILWELL: Would you give the negative voter two votes or one?

Mr. LAMPSON: He has to vote against each proposition.

Mr. STILWELL: Would you count that two?

Mr. LAMPSON: No, sir; it counts against each proposition.

Mr. STILWELL: Against each proposition?

Mr. LAMPSON: If he negatives the five-million proposition he is against that, and if he negatives the ten-million proposition he is against that, and if he votes for the affirmative five million and for the affirmative ten million, both do not prevail, but the one that has the most votes prevails.

Mr. STILWELL: But on for-or-against bonds, how would you count his vote, two or one?

Mr. LAMPSON: One against each. The proposition is for \$5,000,000 or \$10,000,000, or against \$5,000,000 or \$10,000,000.

Mr. STILWELL: That is not fair. It is giving the opposition two votes to one. You are dividing the affirmative vote. Suppose you and Mr. Doty are both for bonds, one for \$5,000,000 and the other for \$10,000,000, and you so mark your ballot. I am against the \$5,000,000 and against the \$10,000,000 and my vote negatives your two. That is not fair, and that is what we oppose.

Mr. LAMPSON: You cast one vote on the \$5,000,000 proposition—

Mr. STILWELL: Against it.

Mr. LAMPSON: On the proposition in the negative, and you cast another on the \$10,000,000 against it.

Mr. STILWELL: Yes, and that negatives your two votes.

Mr. LAMPSON: No, sir; it does not.

Mr. STILWELL: Why not?

Mr. LAMPSON: It negatives my vote in the affirmative on the \$5,000,000 and also an affirmative on the \$10,000,000. Suppose the \$10,000,000 was to build a state house and the \$5,000,000 was to build a penitentiary—

Mr. STILWELL: But you cannot have that issue.

Mr. LAMPSON: I am using that as an illustration. The same principle prevails so far as voting.

Mr. STILWELL: You can have \$10,000,000 to build a state house and \$5,000,000 to build a state house, but the other, as you put it, is not a competing measure.

Mr. LAMPSON: It does not change the principle so far as voting.

Mr. STILWELL: Yes, it does. It changes the affirmative vote.

Mr. LAMPSON: The affirmative voter has a right to vote to issue the \$10,000,000 and the negative voter has a right to vote against it; the affirmative voter has a right to vote for the issue of the \$5,000,000 and the nega-

tive voter can vote against it, but both the \$5,000,000 and the \$10,000,000 can not prevail.

Mr. ANDERSON: Suppose thirty vote for the \$10,000,000, fifteen for the \$5,000,000 and forty vote no?

Mr. DOTY: They have to divide that up between the negatives. There are two negatives and that must be divided.

Mr. LAMPSON: Take, for illustration, Mr. Anderson's fifteen votes upon \$5,000,000 and thirty votes for the \$10,000,000. That would be forty-five in all. If twenty votes were cast against the \$10,000,000 that would defeat it, and if twenty-five votes were cast against the \$5,000,000 as against the ten million—

Mr. STILWELL: As against thirty votes, it is.

Mr. LAMPSON: That would carry.

Mr. STILWELL: That is not what you said in the first place. You said the negative voter had a right to vote no upon both propositions, and you are giving him two votes. You are dividing the affirmative vote, while the negative vote is united.

Mr. DOTY: I say you are not.

Mr. STILWELL: I say you are.

Mr. DOTY: I can show it to you on the blackboard.

[Various members of the Convention here put a number of diagrams and examples on a blackboard. Various statements were made about them by pointing to the different parts of the ballot. The discussion is absolutely unintelligible, meaningless and without point in the absence of the various diagrams and the reporter was directed to omit this part of the discussion.—THE EDITOR.]

Mr. BIGELOW: I have had in mind all along very grave feelings as to this kind of indirect initiative. I am for the direct initiative. I believed all along that this was the correct form of it. I hesitate at this late day to suggest any other form because it is too late to make a radical change in the proposal. But because we are in a tangle about the ballot I think I ought to suggest to the Convention the form of indirect initiative that I think is correct, and then, if the Convention thinks the same, it will save us from this tangle.

Now, with your attention, let me explain what the Wisconsin indirect initiative is and how it differs from this and the advantages of it as compared with this.

The Wisconsin indirect initiative does not provide for the formulation of a bill outside of the legislature and its presentation to the legislature by petition. It provides that a measure to be initiated at all must first originate in the general assembly, just as any other measure must. Now, what there is to the Wisconsin initiative is this: The people outside, after the legislature has done its work, have the right not only to get up a petition against some law that the legislature has passed, but they have a right by petition to require a direct vote upon some measure that the legislature has refused to pass after it has been introduced. They have the right not only to require a direct vote upon a measure that has been presented to the legislature by some member, but they may take that bill in any form that it takes at any stage in the legislative procedure. They may take it exactly as some member has introduced it or with some amendment, and so draft their bill as to have a referendum on any stage. It is nothing but a referendum. Now you see the great advantage of that form of the initiative over this. The trouble with this initiative is this:

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I think on the whole our legislative assemblies are going to improve and that when measures are presented to the general assembly the general assembly is going to try in good faith to improve them, and if they make any change in them at all, very well. Suppose under the indirect initiative you present something to the legislature. Six per cent of the voters have to present it, sixty thousand electors have presented it. They have been careful in drafting the bill, but it is presented to the legislature and the legislature discovers some very vital mistake in the bill and makes a change and improves it so that every one of the sixty thousand petitioners would be grateful to the legislature for having made the change. They would be glad to have their bill passed, but under this form of the initiative they must nevertheless go to the election and have a popular vote on the question of whether the bill with the mistake—and which they agree is a mistake—shall carry, or whether the other bill of the legislature shall carry. I would suggest a modification the Wisconsin plan. I would suggest that one-half of the percentage required to submit a measure to a popular vote that the measure might be presented to the legislature and then let the people wait and see if the legislature passes it, or if the legislature makes an improvement so that they are satisfied, that is the end of it; but, if they are dissatisfied, if they think that the legislature has been hostile in amendment and has injured the measure, then let them by filing an additional number of signatures, say fifty per cent more, require a popular vote on the measure as they introduced it or in any form that it may have taken. How that would work out practically would be this: If it requires six per cent for a popular vote we could submit to the legislature on three per cent, we could put our bill in the legislative hopper on that and then we would wait and see and if we didn't like what the legislature did we would file the additional three per cent and get a direct vote on it; otherwise we would let it stand. I hesitate to suggest this at this time, but I would suggest that we refer this bill to a special committee with instructions to solve that ballot if they can, and if they cannot solve it to then bring in this other form of the initiative and I so move.

Mr. CROSSER: I do not think there is anything wrong with this ballot. I think the great majority of the men here understand it as plain as noon-day sun. I do not like this eleventh-hour submission of a proposition to be sugar-coated, and I think it will result in confusion worse confounded. I wonder how far we are going with this measure? Pretty soon we will have the proposition eliminated entirely.

Mr. PRICE: What would be the situation if both the \$10,000,000 and \$5,000,000 carried under the illustrations we have heard?

Mr. CROSSER: The one receiving the highest number of votes prevails, according to the language of the proposition. I think this is really the result of a timid, weak-kneed abandonment of the pledges that we made before the election. Every man here except nine men from Cincinnati pledged themselves to the direct form of the initiative.

Mr. KNIGHT: I differ with the gentleman.

Mr. CROSSER: There are only nine men pledged to anything like this sugar-coated thing.

Mr. HARRIS, of Hamilton: Are you not aware that Matthew Arnold says that the minority is always right?

Mr. CROSSER: I know there are fifty men who are in favor of the direct initiative and who will not stand for this thing if we can help it.

Mr. HARRIS, of Ashtabula: The motion to refer back is to see if the committee can work out a solution for this proposition.

Mr. CROSSER: I don't think a great majority of us are concerned about the solution. They see this ballot as plain as the nose on your face.

Mr. HARRIS, of Ashtabula: I am greatly concerned.

Mr. STILWELL: I do not think you would doubt my sincerity in this matter?

Mr. CROSSER: Not a bit.

Mr. STILWELL: And yet I disagree with you most seriously.

Mr. BIGELOW: So do I. I think he is wrong.

Mr. CROSSER: I may be a little bit wrong, but I have had sufficient provocation. I know what we started out to do and I know with what we have ended.

Mr. FESS: I do not believe that any form of ballot that has been submitted is free of pretty serious objection, and even with the luminous explanation of the member from Ashtabula [Mr. LAMPSON] it does not clear up what appears to me an undue advantage that might be taken. He says that the voter might vote for both issues of bonds. Gentlemen of the Convention, it is perfectly rational that if the objection to the ballot that I was speaking of is a legitimate one, you have no right to count the negative vote against the sum of the other two votes on the ground that when one voted in the negative he didn't want either, and while he would vote for the one as against the other, he would still prefer the other. I say you do not have any right to sum that up as an affirmative vote. If that is a legitimate objection, I ask you whether the same objection will not lie on the affirmative vote on the first proposition of the member from Ashtabula? This is an important point. When a man goes in there to vote he is not voting on the issue of bonds, as you suggest; he is voting upon the question of issuing this or that amount of bonds. If that is what you are determining he is not going to vote for both of them. He may be opposed to both of them and will vote that way, but he may be in favor of one and not in favor of the other and there is no right to count him as in favor of both simply because he votes for one. In view of the condition this has assumed, I believe the proper thing to do is to refer this matter to a committee with instructions that if they can bring in a satisfactory ballot to do so, and if they cannot let them submit a substitute that will be satisfactory, including the Wisconsin plan or any plan they can devise, and I would suggest that that report should come out at the earliest possible moment so as not to delay us further in this matter.

Mr. BIGELOW: Since I made the motion I want to withdraw it with this explanation, that I think the question of the pending amendment offered by the member from Cuyahoga [Mr. CROSSER] as to whether we want the direct initiative should be settled by this Convention first, because it was not in my mind in suggesting this special committee that that committee should assume to prejudice in the least that issue which is before the

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Convention, and since there may be a suspicion as to the intention I suggest that my motion be withdrawn and that we vote upon the pending Crosser amendment and then the matter will be clear. I withdraw my motion.

Mr. JOHNSON, of Williams: I would like to say a few words because I have not been in conference with any member since the so-called caucus, and I never voted in that caucus but was there simply as a spectator. I have thought from the time this proposition was presented to us with alternate proposals that we could not make a ballot which would be satisfactory, and with all the explanations we have had I do not think we can do so now. Hence I dislike to hear the gentleman from Ashtabula say it will be all right to be reported a certain way. I will say now I don't want to be on that committee, because I feel confident that they can only report in one manner, and that is that we cannot make these competitive proposals satisfactory. I believed it at the start when I voted for this amendment. I am ready and I have never changed my opinion. I do not agree with the explanation of any of these ballots and I do not think they are fair in some respects, but I am against having this committee. I think we should just get out of the difficulty by proceeding at once and discussing and solving the matter right here.

Mr. KILPATRICK: I think we all appreciate the fact now that we want the vote on this question, whether the direct initiative shall go into this proposal, and if we keep on talking for the next six weeks we shall never get any further than we are now. Consequently, I move the previous question on the proposition of putting in the direct initiative.

Mr. FESS: Before you put the previous question, to bring it to a test let me move to table the Crosser amendment.

Mr. DOTY: And on that I demand the yeas and nays.

The PRESIDENT: The question is, "Shall debate close upon the Crosser amendment?"

The main question was ordered.

Mr. FESS: We can have the vote just as well directly and I will withdraw the motion to lay on the table.

The PRESIDENT: The question is, "Shall the amendment be adopted?" and the secretary will call the roll.

The yeas and nays were regularly demanded, taken, and resulted—yeas 40, nays 72, as follows:

Those who voted in the affirmative are:

Bowdle,	Halenkamp,	Moore,
Cassidy,	Harbarger,	Okey,
Crosser,	Harter, Huron,	Pierce,
Davio,	Hoffman,	Read,
DeFrees,	Hoskins,	Roehm,
Donahey,	Hursh,	Shaffer,
Doty,	Keller,	Solether,
Dunn,	Kilpatrick,	Stilwell,
Earnhart,	Kunkel,	Tetlow,
Evans,	Lambert,	Thomas,
Fackler,	Leslie,	Ulmer,
Farrell,	Malin,	Watson,
FitzSimons,	Mauck,	Mr. President.
Hahn,		

Those who voted in the negative are:

Antrim,	Beatty, Morrow,	Brattain,
Baum,	Beyer,	Brown, Highland,

Brown, Pike,	Johnson, Madison,	Peters,
Campbell,	Johnson, Williams,	Pettit,
Cody,	Jones,	Price,
Collett,	Kehoe,	Redington,
Colton,	King,	Riley,
Cordes,	Knight,	Rockel,
Crites,	Kramer,	Rorick,
Cunningham,	Lampson,	Shaw,
Dunlap,	Leete,	Smith, Hamilton,
Dwyer,	Longstreth,	Stalter,
Eby,	Ludey,	Stamm,
Elson,	Marriott,	Stevens,
Farnsworth,	Marshall,	Stewart,
Fess,	Matthews,	Stokes,
Fluke,	McClelland,	Taggart,
Fox,	Miller, Crawford,	Tannehill,
Halfhill,	Miller, Fairfield,	Wagner,
Harris, Ashtabula,	Miller, Ottawa,	Walker,
Harris, Hamilton,	Norris,	Weybrecht,
Harter, Stark,	Nye,	Winn,
Henderson,	Partington,	Wise,
Holtz,	Peck,	Woods.

So the amendment was not agreed to.

Mr. MILLER, of Crawford: I move that this question of the ballot be submitted to a special committee.

Mr. DOTY: There have been two amendments proposed to the present proposal and that makes three; one was introduced by the gentleman from Ashtabula [Mr. LAMPSON] and the one in the proposal. Now wouldn't it be well to submit the whole matter to the committee and let them decide?

Mr. HARRIS, of Hamilton: Limiting the action of the committee to the amendments submitted?

Mr. DOTY: No; everything.

Mr. HARRIS, of Hamilton: Why not limit the committee to what is before us?

Mr. DOTY: It would be absurd to send out a committee and tell them to bring in what we have got here and not allow them to bring in something better if it is proposed to them.

The PRESIDENT: If the motion prevails the committee will be, including myself, Mr. Stilwell, Mr. Crosser, Mr. Lampson, Mr. Doty, Mr. Knight and Mr. Cassidy.

Mr. HARBARGER: I would like to know who has the floor and by what process you can get the floor?

Mr. DOTY: I have the floor, but I will yield it if the gentleman wishes it.

Mr. HARBARGER: I have been trying to get the floor for some time and the president it seems will not recognize me. I move that the amendment be laid on the table.

The motion was lost.

Mr. DOTY: Now I submit an amendment to the proposal. It is the one that I introduced last night.

The amendment was read as follows:

Strike out all after (X) in line 167 and all the following up to and including the first "be" in line 173, and substitute therefor the following: first, for the measure proposed by initiative petition, second, for the measure substituted by the general assembly, and third, against both measures. If the number of votes cast against both measures exceeds the total number of votes cast for both, neither shall prevail; if the total number of votes cast for both exceeds the number cast against both, the measure shall prevail which receives the larger number of votes.

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Mr. STOKES: I offer an amendment.
The amendment was read as follows:

After the word "reserved" in line 181, insert the following: "All ballots cast for or against the initiative and referendum or upon any proposed or competing law or constitutional amendment submitted to the electors for a vote thereon as herein provided, shall be returned by the election officers in separate envelopes to the officers to whom returns of a general election are to be made, who shall preserve said ballots under seal for six months, and if there is no contest involving their use at the expiration of six months, said officers shall destroy the same,"

Mr. MILLER, of Crawford: I move that the proposal and pending amendments be referred to a special committee.

Mr. RILEY: I move that the whole subject be referred to a special committee.

The motion was carried.

The president appointed the following committee: Messrs. Bigelow, Stilwell, Crosser, Doty, Lampson, Knight and Cassidy.

Mr. CODY: I move to reconsider the vote by which Proposal No. 334 was defeated.

Mr. LEETE: And I move to lay that on the table.

The PRESIDENT: Mr. Jones is entitled to the floor.

Mr. JONES: Gentlemen: The vote by which this proposal was defeated was fifty-nine to forty-eight. There were a number of absent members and there are also a number of members who voted against the proposal under a misapprehension as to the probable expense involved in the system. I did not on yesterday, in view of the very large vote that the proposal received on second reading, undertake to enter into any extended discussion of the merits of the proposal and I want to ask your indulgence not for that purpose now but for a very brief statement in regard to the proposal.

Mr. ELSON: There is one thing that you should make very clear and that is, if it be optional with counties, how the county will decide to use it? I voted against it yesterday. I was inclined to vote for it, if those things were cleared up.

Mr. JONES: I am obliged for the suggestion and will answer it in the course of my remarks. In the first place, gentlemen of the Convention, this proposal is to leave things to the legislature. It does not provide for any system or any scheme of registering land titles. It just authorizes the legislature to do it. It authorizes the legislature to provide a plan for registering titles. The plan that is usually adopted in jurisdictions where this has been dealt with has been what is known as the Torrens system. It would not necessarily follow that any particular type of the Torrens system or any other system would be adopted in Ohio, although there has never been anything suggested in fifty years since the registration of land titles has been used that has been much of an improvement over the original Torrens system. Right there I desire to answer the suggestion of the gentleman from Athens [Mr. ELSON]. The legislature could provide, as in Illinois, that it could be adopted in particular counties on a vote of the people

of that county. If a people of any particular county did not want to have it in that county they need not vote for it. The Illinois law was prepared especially with reference to the city of Chicago, because in the great fire all the records of Cook county were destroyed. It therefore happens that the Illinois law has not been adopted in any of the other counties of the state of Illinois because it was prepared especially with reference to Cook county. You could have that feature in Ohio, that it could be adopted by counties on a vote, or you could do it as done in nearly all other jurisdictions, and in those jurisdictions where adopted by the counties you can have it entirely optional with the landowner to come in under the system or not. Nobody has ever been required where the system has been adopted to register titles unless he desired to. It is entirely optional.

Now, in regard to another matter. The main purpose of this system has been to do the very thing that has been urged here as an objection to it. The purpose is to simplify and cheapen and facilitate the means of transferring titles to real estate. Take a farm, and I know the delegates from the country will see the force of the illustration, although it is not necessary for those who have studied it—but if a man comes out to your farm to buy a thousand dollars worth of hogs or sheep or cattle the transaction is closed in ten minutes and the money can be paid and the whole transaction wound up. If the party has any doubt whether there are any liens on the property all he would have to do would be to go to the recorder's office to see if there were any chattel mortgages. On that inspection he could determine everything necessary to close the deal, and so in dealing with any other piece of personal property. If a man owned a note or a bond and wanted to borrow money on it or wanted to borrow money on live stock all he would have to do would be to go to the recorder's office and see if there were any chattel mortgages; but what does a man have to do if he wants to buy a house? It is not possible to close up a deal with regard to any piece of real estate without the assistance of a lawyer. Now what does a lawyer have to do? He has to go to the court house and examine the title and if the party wants to be thoroughly satisfied the lawyer has to examine the title back one hundred years. If an abstract has been made at any time the party may or may not be satisfied with the person who made the abstract, and any prudent man will at least require, unless he is thoroughly acquainted with the man who is selling it, his own attorney to verify the correctness of that abstract. Then he has to have an examination of the abstract to see whether the title shown by the abstract is good, because an abstract doesn't make a title good, but merely states what the title is. The title may be good or bad and it is necessary to have an attorney to examine it to see whether it is good or bad. Now if the attorney goes through the abstract what does he have to do? He has to go and examine for mortgages, mechanics' liens, tax liens, foreign executions and home executions and for pending suits. All of those things have to be looked after and they cannot in the nature of things be looked up by a man not familiar with that work. It necessitates an examination every time a transaction takes place in regard to real estate unless the purchaser just wants to go blindly. The object of this proposal is to cheapen and to facilitate

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and simplify transactions with reference to real estate, so that two men who want to deal with regard to real estate can go together to the recorder's office and ask him to open the page of the record on which that man's title is registered and let them see it. If they can read, if they have enough intelligence for that, they can in a minute tell whether the man proposing to sell is the owner of the property and has a good title or not, and they can tell if there are any claims against that property, because under this system, wherever adopted, every mortgage and every judgment and every pending suit and every execution, home or foreign, and every tax lien and every mechanic's lien and everything that affects that property is entered upon that one page. It will make the dealing in land property just as simple as would be the selling of a bunch of hogs or sheep or cattle or horses. All you have to do is to go to the recorder's office and ask him to open to the proper page and you can there see everything about the property and anybody who can read can turn to the page and see whether the title is good.

Now complaint has been made that there would be great expense attached to the introduction of the system and especially that it would bear heavily on small owners of land that was not very valuable.

As I have said, the main purpose of the adoption of this reform every place it has been adopted has been to eliminate that expense. Now, how does it do it? A man asks to have his title registered in an addition of a town or city that was originally a one-hundred-acre tract of land. It has been laid off in five hundred lots and one of the parties owning a lot wants to register his title. The matter is referred to a referee and he traces the title back to where the addition was laid out; then he goes back to the government and he finds out whether that title is good, and the court, upon a full hearing, determines that there is a defect back of the man who laid out the addition and that the proper step to take is to clear up that defect and the title is made good. That may involve a little expense in one case but no great expense. In Massachusetts they provide for service in suit by registered letter, which makes it very cheap. After that expense is incurred there are five hundred lots that can be registered at a nominal expense, because the court has already gone over the whole matter. The same thing as to the owner of a small tract of five or ten acres carved out of a larger tract. The first man makes the application and the investigation is made and all defects cleared up, and the next man does not have to go to any considerable expense. There might be ten or twelve or two dozen small owners and the expense to them will be merely nominal, and we need not speculate about what the expense will be for the records show, and they have not been over \$25 on an average.

Now, with reference to the guaranty fund. That is provided merely as a safety fund to protect those who may be wrongfully deprived of their property. I have a letter from Massachusetts in which it is said in thirteen years nobody has been compelled to, but they gradually come in and in that thirteen years there has been only seven per cent come under the system; that the guaranty fund has gone up to \$163,000 and there has been but one case where there was a draft on the fund, so carefully has that system been administered. You can readily see that after thirteen years of experience it would have

the same result in Ohio with a merely nominal fee of one-tenth of one per cent. The legislature, with the facts before it, could say that all that is necessary is a nominal fee of one-tenth of one per cent.

I am interested in this as a reform. I have spent months and months digging into records and much of the success that I have had as a lawyer has been in a special line of real estate law. Consulting my own interest I would make more to continue my work as I have been doing, but I have learned to know the great reform permitted by the adoption of this system. The best evidence that the system is a good one is shown by the fact that it has never been abandoned any place where adopted, and it has been adopted wherever it could be. We adopted it in Ohio in 1896 by a unanimous vote of the senate and 70 to 19 in the house, but that law was declared unconstitutional, and this is an attempt to put the matter in such a state that the legislature can deal with the matter. I hope the matter will be considered and the proposal will pass.

Mr. LEETE: When I first listened to the gentleman upon this question I was rather inclined to favor it. I thought it was a good thing. At that time I had in mind dividing up large tracts of land, thinking that it would probably be a saving, but in most of our districts south of Chillicothe and along the Ohio river there are a good many counties where the land is divided into various small farms. I believe the system if allowed to be worked up by attorneys in those communities would be a great detriment to those small places, and I therefore hope that the motion will not prevail. In large cities, where the land is very valuable, I can concede that it would be an advantage to have it, but in the small counties like mine and the adjacent counties it would be a detriment, and I hope you people will vote it down. I therefore move that the motion be laid on the table.

Mr. PECK: Personally—

The PRESIDENT: A motion to table is not debatable except by unanimous consent.

Mr. PECK: This is a personal explanation. It has been stated to me that word has gone out that I had opposed this proposal and voted against it. That is a mistake. I am in favor of the proposal.

The PRESIDENT: The question is on the motion to table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 21, nays 79 as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Evans,	Miller, Fairfield,
Brattain,	Hahn,	Norris,
Brown, Pike,	Johnson, Madison,	Peters,
Cordes,	Kunkel,	Pettit,
Dunlap,	Lambert,	Price,
Dunn,	Leete,	Smith, Geauga,
Earnhart,	Malin,	Tetlow.

Those who voted in the negative are:

Anderson,	Colton,	Farnsworth,
Antrim,	Crites,	Farrell,
Baum,	Cunningham,	Fess,
Beyer,	Davio,	FitzSimons,
Bowdle,	DeFrees,	Fluke,
Brown, Highland,	Donahey,	Halenkamp,
Campbell,	Doty,	Halfhill,
Cassidy,	Dwyer,	Harbarger,
Cody,	Elson,	Harris, Ashtabula,
Collett,	Fackler,	Harris, Hamilton,

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Harter, Stark,	Mauck,	Stamm,
Henderson,	McClelland,	Stevens,
Hoffman,	Miller, Crawford,	Stewart,
Holtz,	Miller, Ottawa,	Stilwell,
Hursh,	Moore,	Stokes,
Johnson, Williams,	Nye,	Taggart,
Jones,	Peck,	Tannehill,
Kehoe,	Pierce,	Thomas,
Kerr,	Redington,	Ulmer,
Kilpatrick,	Riley,	Walker,
King,	Rockel,	Watson,
Lampson,	Roehm,	Weybrecht,
Longstreth,	Rorick,	Winn,
Ludey,	Shaffer,	Wise,
Marriott,	Shaw,	Woods.
Marshall,	Smith, Hamilton,	
Matthews,	Solether,	

So the motion to table was lost.

Mr. HARTER, of Stark: I demand the previous question on the motion to reconsider the vote by which Proposal No. 334 failed to pass.

The main question was ordered.

The motion to reconsider was carried.

The PRESIDENT: The question is now on the adoption of the proposal.

Mr. NYE: As I said yesterday—

Mr. WINN: I rise to a point of order. The previous question has been ordered.

The PRESIDENT: The previous question has been exhausted.

Mr. NYE: I thought, that this question was finally disposed of yesterday, but if it is not disposed of and if anybody is of a different opinion I desire to be heard further this morning. If the members of this Convention want this Torrens system then I have no objection to their voting for it, but I am personally opposed to it. I think it will impose upon the people of this state an expense, not as taxpayers but as individual property owners, almost if not equal to the amount that you have voted for good roads. The gentleman says that this system of transferring titles would make it very easy. I want to say to you if you can get your title perfected and get a certificate of title under the Torrens system for less than \$50 to \$100 in an ordinary case, and much more than that in most cases, you can get it for less than I think you will be able to do.

In the first place you have to have a lawyer to file your petition, and in the second place, if there is anyone else claiming a title, you will have to get service of some kind upon everybody that claims title to it. Under our law, passed in 1896, just such a notice is required and I went to the Ohio State Journal and ascertained that the publication of that notice would cost \$10 without any description of the property. If you want to fix a scheme of transferring your property and perfecting your title which will help every lawyer in this state then I advise you to pass this proposal, but if you want to have the same way of transferring your title as you have now then I would advise you not to pass it. The gentleman says that any place where they have adopted this scheme, they have never abandoned it. Gentlemen, you cannot abandon it. After you have your records made up that way and after you have conveyed your titles that way you have to let it remain that way and there is no other way to do it. In the first place you have to have special books for the purpose and those will cost the county something, and after you have those books you commence to fix

those titles and you change from making deeds to transferring the title and I say the transferring and perfecting of the titles will cost from \$50 to \$100.

Mr. JONES: Do you not understand that where the Torrens system has been adopted you can go on with making deeds and mortgages the same way as we have if you prefer that to the method provided by the legislature?

Mr. NYE: Not where you use the Torrens system.

Mr. JONES: Yes.

Mr. NYE: Where you use the Torrens system you transfer by this same way after you pay \$50 or \$1,000 or \$5,000 when you get the title correct.

Mr. RORICK: I would ask a question. You talk about the expense of getting a title correct under the Torrens system. No title has to be corrected that is good. When a title is not good do you not have to employ a lawyer and go on to a great big expense in court just the same as under the Torrens system? I have been in the business and I know.

Mr. NYE: If a man has a defect in his title we have a way now for quieting the title, but under the Torrens system everybody has to go into court.

Mr. RORICK: No, sir; if their title is good they do not have to.

Mr. NYE: If you have it perfected under the Torrens system you have to.

Mr. RORICK: Not a bit of it.

Mr. NYE: The Torrens system as provided for in this book covers forty-two pages and one hundred and sixty-eight sections, and you have to go through the entire process there if you have your land registered according to the Torrens system.

Mr. RORICK: Under the Torrens system?

Mr. NYE: Another thing has to be done. You have to pay one-tenth of one per cent of the value of your property when you have your title registered. That goes into a guaranty fund and that fund is provided in every county that adopts this system as a guaranty of the title of every piece of land, and if there is not money enough in that guaranty fund the county, according to this law, has to pay the balance of it. That is what this Massachusetts law provides.

Mr. JONES: There is nothing of that kind in this proposal.

Mr. NYE: I am talking about the Torrens system as adopted by every state that has used it; there is only one Torrens system and you are proposing the Torrens system.

Now I do not care to discuss this. If the people want it I have no objection to them having it. I am a practicing lawyer and I know it will make money for me and for my firm, as it will for every other lawyer in the state where it is adopted, but I want to say to you gentlemen that it will cost the people a large amount of money. Talk about a simple way! I want to say a word about that. We have now a very easy way of transferring land, but you must have a deed and it must be acknowledged and your justices of the peace throughout the state can make deeds and you go to them and you can go to them and transfer your land that way. There is no trouble about it. The gentleman says that you can transfer titles as easy as you can a promissory note. That is one of the faults about it, in my judgment, that there

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is apt to be more fraud about it. If you get a certificate and have it looked up and someone gets hold of it they may forge your name to that certificate and you could lose your property by that deed.

Here is another thing: The Torrens system is similar throughout all the states. A man has a piece of property and some one files a claim against it, or files a certificate against it, and if the court quiets title in that man's name then if you or some other person has an interest in the property you are precluded from getting the property back. You must bring suit against the person that deprived you of the title, making the treasurer of the county a party to the suit, and then if they cannot get it out of the man that defrauded them out of it they can resort to the county, but they cannot resort to the county until after they have exhausted their claim against the individual who deprived them of it.

Mr. KNIGHT: A question of privilege for a moment: I find that I cannot be here this afternoon and I will be unable to serve on that committee.

Mr. Harris, of Hamilton, was appointed to fill the vacancy.

Mr. MILLER, of Ottawa: I am intensely interested in the passage of this measure and its consideration. I think it is a duty we owe to the coming generations to fix the matter so that the expense that we are under for registering titles will be less than it is. I do not know how it is in the Ohio river counties, but in the northern Ohio counties when we wish to make a land sale or borrow money on land, abstracts of title are required, and the expense we are put to in some locations is immense. I live in a country which once was a part of Huron county. The old titles are recorded in Huron county and every time an abstract of title is required we have to pay a lawyer to go to Huron county to make the proper abstract. I believe every abstract attorney in the state is opposing this measure and I hope the farmer delegates will be for it.

Mr. PETTIT: When you get an abstract once that is all you have to do.

Mr. MILLER, of Ottawa: If I sold my farm the next fellow has to get an abstract too.

Mr. EARNHART: I hope the farmers and home owners of this Convention will study this question a little before the vote. As some of the members of the Convention know, for the last thirty-five years I have been engaged in buying and selling farms and other property, not as a real estate man but as a broker all the time. In all that time I have been forced to give but one abstract in selling property. I never demanded one in buying. The titles are so perfect that it is not necessary. We have in our county, and I think they have in other counties as well, such a system of indexing that anyone with ordinary intelligence can in a few minutes acquaint himself with the condition of a title. Any one must know that there must be considerable expense in regard to this system.

Now it is argued that we do not have to adopt it unless we want to. Suppose something of this kind should be adopted; we know it will entail great expense and it seems to me it is altogether needless. If there were a crying need for it, it would be another thing, but such is not the case in our county and I think it is the same all over the state of Ohio. I know it will be a good thing

for the real estate men and the lawyers possibly, but let us look a little for the home owners.

Mr. JONES: A question?

Mr. EARNHART: Just a moment.

Mr. JONES: I want to ask a question.

Mr. EARNHART: I do not oppose the measure because it comes from a certain member of the Convention, but I oppose it because I think it is unnecessary and will work a hardship upon the property owners. I hope that every farm and home owner will study carefully before he votes for this proposal.

Mr. STOKES: I move the previous question on the proposal.

The main question was ordered.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 70, nays 34, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Miller, Ottawa,
Antrim,	Halfhill,	Moore,
Paum,	Harbarger,	Peck,
Beyer,	Harris, Hamilton,	Pierce,
Rowdle,	Harter, Huron,	Read,
Brown, Highland,	Harter, Stark,	Riley,
Campbell,	Henderson,	Rockel,
Cassidy,	Hoffman,	Roehm,
Cody,	Hursh,	Rorick,
Collett,	Johnson, Williams,	Shaffer,
Colton,	Jones,	Smith, Geauga,
Crites,	Kehoe,	Smith, Hamilton,
Crosser,	Kerr,	Stamm,
Cunningham,	Kilpatrick,	Stevens,
Davio,	King,	Stewart,
DeFrees,	Lampson,	Stilwell,
Donahey,	Leslie,	Stokes,
Doty,	Longstreth,	Taggart,
Elson,	Marshall,	Thomas,
Fackler,	Matthews,	Ulmer,
Farnsworth,	Mauck,	Weybrecht,
Farrell,	McClelland,	Wise,
Fess,	Miller, Crawford,	Woods.
FitzSimons,		

Those who voted in the negative are:

Beatty, Morrow,	Johnson, Madison,	Nye,
Brattain,	Keller,	Okey,
Brown, Pike,	Kramer,	Peters,
Cordes,	Kunkel,	Pettit,
Dunlap,	Lambert,	Price,
Dunn,	Leete,	Redington,
Earnhart,	Ludey,	Shaw,
Evans,	Malin,	Solether,
Fluke,	Marriott,	Tetlow,
Fox,	Miller, Fairfield,	Walker,
Hahn,	Norris,	Watson.
Harris, Ashtabula,		

So the proposal passed as follows:

* Proposal No. 334—Mr. Jones. To submit an amendment by adding section 40 to article II, of the constitution.—Registering and guaranteeing land titles.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SEC. 40. Laws may be passed providing for a system of registering, transferring, insuring and

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guaranteeing land titles by the state or by the counties thereof, and for settling and determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

Mr. JONES: I now move that the vote whereby Proposal No. 334 was passed be reconsidered and I move to lay that motion on the table.

Motion to lay upon the table was carried.

On motion of Mr. Doty the Convention recessed until two o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. READ: I offer a resolution.

The resolution was read as follows:

Resolution No. 131:

Resolved, That the committee on Arrangement and Phraseology be instructed in their consideration of Proposal No. 331 to change the word "one" in line 7 to the word "four". The effect of this change will be to have the superintendent of public works appointed for a term of four years instead of one.

Mr. READ: I move that the rules be suspended and that the resolution be considered at once.

The motion to suspend the rules was lost and the resolution went over under the rules.

Mr. ANDERSON: I have been requested to ask unanimous consent to take up at this time the question of going to Cincinnati. It is a matter that should be decided one way or the other, and I ask that that resolution be taken up at this time.

The SECRETARY: The committee on Rules has the resolution.

Mr. ANDERSON: I ask that the committee on Rules report it out. This is a matter that should be determined now.

Mr. DOTY: As near as can be ciphered out now, it might be possible for this Convention to go to Cincinnati Saturday night. That presupposes the conclusion of work by Saturday noon. We are not in as good shape as we should be to decide that question. If we could let it go until night we would know where we were on the calendar.

The PRESIDENT: The chairman of the special committee wants to make a report.

Mr. STILWELL: Mr. President and Fellow Delegates: The committee was in session about one hour discussing the various forms of ballot that were discussed in the Convention. We fully realize the difficulty of coming to any conclusion upon the matter that will be entirely satisfactory to the Convention. During our discussion a plan to avoid this complication was sug-

gested and informally we got into a discussion of what is familiarly known as the Wisconsin plan of indirect initiative, and the committee has come back to the Convention to ask for some instructions upon this matter. We have agreed among ourselves in the committee that we should ask Mr. Bigelow to explain a little further what is meant by the Wisconsin form of indirect initiative, so that after the explanation we may ask for some instructions in order to find out what the attitude of the delegates may be toward that plan, with the purpose in view of avoiding the complicated form of ballot. So I am going to give way to President Bigelow in order that the plan may be more fully explained.

Mr. FESS: In order to make this perfectly parliamentary, I move you that this committee be instructed to bring in such reports as suggested after explanation from the president.

Mr. HARRIS, of Hamilton: I want to press the inquiry I made this morning.

Mr. BIGELOW: All of these questions will be answered in the course of the explanation.

As stated this morning, what is suggested here is not absolutely the Wisconsin plan. It is a modification which I will explain. Let me say that the attitude of the committee is this: That the committee is willing to go out and draft this amendment and bring it in for your consideration, but it does not care to do this work unless it has some assurance from you in advance that you would like to have it done.

Now, the plan to be drafted, if you vote for this motion, and which we will report to you in form of an amendment, is this: To initiate a measure under this plan the first step would be that those interested should have the measure drafted and printed in full just as under our present plan. They must get a certain number of signers, as the law may provide, to the petition asking for a direct vote upon this measure. Then they must file this measure with the secretary of state and he, when the legislature meets, transmits it to the legislature. If that bill is passed without change or amendment, then it is the law, unless someone after that gets up a referendum petition against that. Of course, it is subject to referendum. If it passes in a somewhat amended form it may be permitted to go into effect without a popular vote, reserving to the petitioners this right, that if in their judgment they think the amendments incorporated into the bill by the legislature have made the measure objectionable to them, they may on filing an additional number of signatures have a popular vote upon the measure. Now if your percentage required for this form of initiative is six per cent, as in the present measure, then the provision would be that upon filing of a bill with a three-per-cent petition it is placed before the legislature. By that three per cent the attention of the state is called to the fact that here is a measure that may be referred by an additional number of petitioners in case the legislature does not act to the satisfaction of those urging the measure. But this form makes it possible, as our form does not, that if the legislature approves the measure, it may stop there with the legislature, and we need not have the trouble of a vote upon it.

I think I had better possibly right here explain what will happen if the original three per cent of the petitioners are not satisfied with the bill as enacted by the

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legislature. An additional three per cent will be sent in. If your total per cent required is six, half of that is required to present to the legislature, and another half in addition is necessary to refer—of course, with the understanding that the vote may be had upon the measure as originally presented, or with any amendment incorporated at any time or in any stage of the legislative process.

Mr. FESS: Would that plan obviate the necessity of the competing measure of voting?

Mr. BIGELOW: Yes; there would be no competing voting.

Mr. ANDERSON: Would there be under this proposed plan any referendum at all except upon those measures that were first initiated?

Mr. BIGELOW: Yes; the referendum applies to everything.

Mr. ANDERSON: First, you have to have a petition signed by three per cent?

Mr. BIGELOW: Yes.

Mr. ANDERSON: That is, before you can initiate at all?

Mr. BIGELOW: Yes.

Mr. ANDERSON: That is filed at the secretary of state's office?

Mr. BIGELOW: Yes.

Mr. ANDERSON: Afterward, it is sent from there to the lawmaking body while in session. No doubt if the lawmaking body passed that law, or substantially that law, that would end it, provided three per cent more of the petitioners were not obtained to take it on through?

Mr. BIGELOW: Yes.

Mr. ANDERSON: Now, of course, if three per cent signed the petition and the law were passed, that would be subject to referendum, or subject to referendum if six per cent signed it?

Mr. BIGELOW: Yes.

Mr. ANDERSON: That would contemplate three different sets of petitioners? The first three per cent, and then if not satisfied another three per cent more, and then if it were not satisfactory a referendum?

Mr. BIGELOW: No, sir; it would require just two. The first three per cent would present it to the legislature, and the next three per cent would get a referendum vote upon the measure passed by the legislature.

Mr. LAMPSON: Suppose the next three per cent asked for a referendum vote; could there be a referendum vote upon it under your provision?

Mr. BIGELOW: Yes.

Mr. KING: You said that applied to a bill passed. It applies to a bill that passes or that is defeated?

Mr. BIGELOW: Yes.

Mr. PARTINGTON: I want to ask a question in regard to these extra petitioners. When are those signatures secured, before the legislature acts upon it or subsequent to the action of the legislature?

Mr. BIGELOW: It could be so provided that they would have to be procured after action is taken, or it could be provided that they were invalid if there were any duplicates.

Mr. PARTINGTON: It seems to me that if those signatures were secured before the act of the legislature

no one would know whether those petitioners desired a referendum vote or not.

Mr. NYE: If you had three per cent of the original petitioners, and the petition was submitted to the legislature, and that three per cent were satisfied with it, could you get another three per cent to have it submitted to the people, or must you have the same three per cent and another three per cent?

Mr. BIGELOW: Another three per cent. It would take six per cent in all, just as the present method, only you would allow half to propose to the legislature with the chance that the legislature would act satisfactorily and you would not have to vote.

Mr. NYE: If the three per cent originally presented were satisfied with what the legislature did, could another three per cent that was not satisfied with it still refer it to the people?

Mr. BIGELOW: Yes.

Mr. HALFHILL: By what method is it to be determined that the measure passed by the legislature is satisfactory or is not satisfactory to the first three per cent?

Mr. BIGELOW: You cannot determine that. The question is, Is it satisfactory to the public? and that is determined by whether or not there is an additional three per cent filed requesting a vote.

Mr. HALFHILL: Is it not possible to create some committee or power which will determine that?

Mr. BIGELOW: No, sir; that is not contemplated in the plan. That has often been suggested and considered, but it has always been set aside on the theory that it would not do to create such an irresponsible power outside to represent anybody and say when measures should or should not be submitted. As it at present exists six per cent are necessary to initiate a measure.

Mr. HALFHILL: Could six per cent be taken up by the circulators of the petition and only three per cent filed and the other three per cent held in reserve?

Mr. BIGELOW: That could be done unless you provided in your measure that the second three per cent must be signed after such and such a date.

Mr. HALFHILL: Is it not entirely possible to frame your petition that each signer would consent to the alternative of permitting his name to be used with the three per cent initiative or the second three per cent?

Mr. BIGELOW: Yes; that would be a sort of unofficial way of creating power, to say whether or not this thing shall stop in the legislature, its action having been satisfactory, or whether or not it shall go on to the people. The practical way of doing that will be, if they get six per cent instead of three asking for a vote upon some amendment, to hold three per cent and wait and see what the legislature does, filing the other three per cent. In case the action of the legislature is not satisfactory the three per cent that is withheld can be put in for a vote. That can be done if you want to, but you can provide that the dates appear on the second section in such a way as to prevent that being done if you do not think it is advisable.

Mr. HALFHILL: This plan does away entirely with the competing measure in the legislature?

Mr. KING: I want to know why when an individual or collection of individuals, or a society or an association, conceives the idea they want a law passed, they can

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not name in a petition a committee of three or four or five of the signers, and say in the petition that the undersigned are to be represented and bound by the action of the committee leaving to that committee the determination whether or not the passing of the law by the general assembly has fully carried out the purpose of the petition?

Mr. BIGELOW: The question raises a matter that has many features connected with it, but the reason it has never been proposed, as far as I know, is that it turns over to some three or four or five people the power that should be exercised by the entire public to say whether or not this measure is satisfactory. They have the power to put that on a committee of three or four or five men. That would be possible, but it would subject those men to tremendous temptation.

Mr. HURSH: What concerns me is in regard to the amendment to an initiated law that the legislature might pass. If that law were not satisfactory and the other three per cent were secured and sent to some kind of a referendum, would the entire law passed by the legislature be vitiated?

Mr. BIGELOW: If the votes were for the measure?

Mr. HURSH: Yes.

Mr. BIGELOW: Certainly; the original petition stands. It is part of the measure as a measure, and that may be referred after the action of the legislature is taken.

Mr. HURSH: Then the amendment the legislature might make would not be the law?

Mr. BIGELOW: No.

Mr. WINN: I want to see if I understand the proposition. A proposed statute petitioned for is enacted in some form by the general assembly and that is subject to referendum?

Mr. BIGELOW: Oh, yes.

Mr. WINN: It may be subject to the referendum the same as any other law that passes the general assembly?

Mr. BIGELOW: Yes.

Mr. WINN: Suppose the necessary number of petitioners asked for the enactment of some statute and the legislature enacted the statute in a modified form, and three per cent, or whatever per cent may be required, petitions to have it referred. At the same time that three per cent is asking for a referendum upon the action of the general assembly, another three per cent is asking that the original statute petitioned for be referred to the people, and then they both go to the people at the same time, one on the three per cent petitioning for the enactment of the law petitioned for by the people, and another on the referendum of the law passed by the general assembly. What will be the result?

Mr. BIGELOW: In case of a complication of that kind, you would have to have what you have in the proposal now before you—what is in the California and Oregon proposal—that in case two conflicting measures ever at any time be adopted by a direct vote, that measure receiving the larger number shall be the law.

Mr. WINN: It was suggested, if I understand that, assuming that six per cent of the electors might be required to initiate a law, that it might be so arranged that three per cent of them could start the action by the general assembly, and the other three per cent be held

back to know whether the action of the general assembly was satisfactory. Would not we then encounter the same objection that is offered to the committee's plan, that somebody must determine whether the action of the general assembly is satisfactory?

Mr. BIGELOW: That is true, but any three per cent in the state could do it.

Mr. WINN: I understand that, but can the three per cent who sign the petition before the law was enacted be used until somebody must determine whether the action of the general assembly was satisfactory? That could only be determined by the application of the first three per cent.

Mr. BIGELOW: No; the first three per cent is effective in that they can present the measure to the legislature, and that is an end of that three per cent.

Mr. WINN: And the other three per cent is only effective in case the legislature fails to enact the law satisfactory to the first three per cent?

Mr. BIGELOW: No; in case the legislature enacts the law unsatisfactory to anybody. It is a matter up to the public. No three per cent of the people have a monopoly of this.

Mr. WINN: What I am trying to find out is this: Whether or not it would be right to have the names of the petitioners obtained before the law is presented to the general assembly and part of them used as a means of initiating the law and the other part used after the general assembly has acted to get a referendum of the law.

Mr. BIGELOW: That could be framed up either way, according to how you prefer. Of course, the petition must be signed, and you could fix it so that you would have to have an entirely different three per cent obtained after the law was enacted by the legislature, if you wanted to.

Mr. WINN: It seems to me it must be an entirely new three per cent; if not, the whole thing is a farce.

Mr. BROWN, of Highland: If three per cent initiates before the legislature and gets a law and are satisfied with it, then can another three per cent file a petition for a referendum?

Mr. BIGELOW: Yes, but only on laws that are initiated by petitions.

Mr. ROEHM: What is there wrong about duplicate names provided they are gotten afterwards or supplementary to the petition? Why should not those who initiated have something to say whether or not it be referred, provided their signatures are obtained after the legislature has acted?

Mr. BIGELOW: That is the only trouble that can be raised, that you have not any official way of consulting them.

Mr. ROEHM: Why could not they be eligible to sign a second time?

The PRESIDENT: Oh, I didn't understand. I think there will be no objection to that.

Mr. HARBARGER: Does that contemplate the initiating of laws only under this plan?

Mr. BIGELOW: No, sir; both laws and constitutional amendments.

Mr. HARBARGER: And it does away with the direct initiative on constitutional amendments?

Mr. BIGELOW: No; it does not propose to touch

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anything in this proposal except to substitute one indirect initiative for another. Our report would not touch anything else in this proposal, but simply we would bring in the report on the form of indirect initiative which would avoid the ballot complications which we now are confronted with.

Mr. WOODS: I would like to ask why the way to solve this matter is not simply to provide that any bill introduced in the general assembly, say within six months after the general assembly adjourns, may be petitioned for and go on the ballot?

Mr. BIGELOW: I do not see any objection except that when you require petitions of a given number of signatures to be filed with your measure that is presented, you call public attention to that measure, and you restrict the right of initiative to those particular measures. This is a much more safeguarded form of initiative than the one you propose.

Mr. OKEY: As I understand your proposition, the minimum signatures to bring a law before the legislature is three per cent?

Mr. BIGELOW: Yes.

Mr. OKEY: Suppose in the first instance four per cent sign the petition—

The PRESIDENT: That would not make any difference. It would require three per cent afterwards just the same.

Mr. OKEY: That was my point.

Mr. PARTINGTON: Referring to what the member from Allen [Mr. HALFHILL] and the member from Erie [Mr. KING] have said in regard to a body to decide the matter of whether the petitioners are satisfied, whether the enacted laws are satisfactory, it would seem to me that the members of the legislature in the minority would be certainly a good committee to act. For instance, a petition has been presented to the legislature asking for a certain law and this law asked for has been changed by that body. The opposition by members of the legislature to the changes, if they were bitterly contested—if these members didn't want the changes made when the votes were taken—there would be a division nearly half and half, and it would seem there is a plain case of dissatisfaction.

Mr. BIGELOW: I do not think we need to open up this question for discussion. Questions are in order, of course, and a motion is before the Convention, and the purpose of this was simply to let the Convention know what they might expect if they instruct us to bring in the amendment.

Mr. HALFHILL: Is not this a result of the proposed plan, that any sort of a measure proposed may go through this channel and eventually be voted upon as a law without anything being done by the legislature?

Mr. BIGELOW: Yes, but with this advantage over the present plan, that if the legislature acts satisfactorily, although they make a change, it does not have to go to a vote at all, whereas, no matter how much the legislature may improve a bill, under our present form you have to have a vote on it.

Mr. HALFHILL: In law all conditions subsequent are looked upon with disfavor. That is a primary proposition. Now all of these conditions are not only subsequent conditions, but there is no way of determining whether definite or indefinite. You say the public is

not satisfied. That is so indefinite that it simply means that anybody who started out to submit any kind of a measure can just go on through with it and put it on the ballot. In other words, it goes around, through and above.

Mr. BIGELOW: On the six per cent it would have to go through the legislature.

Mr. HALFHILL: It circumvents the legislature in all respects.

Mr. BIGELOW: No more than the present form. It does the same thing. It goes through in spite of anybody.

Mr. HALFHILL: No, sir; the exception is in the present form, that the legislature can put in a competing measure which goes before the people. Now, in the form proposed any sort of a law framed for any purpose can, by having six per cent and passing through the legislature, go before the people, and the legislature is circumvented in its entirety.

Mr. BIGELOW: No, sir; the legislature has a chance to amend it. It goes into a deliberative assembly for discussion, an official deliberative assembly representing all of the people of the state, the greatest possible publicity, and with all of the advantage of the discussion preceding the action of the people, and also with the advantage which I fancy will occur in a great many cases, when the legislature acts satisfactorily where it approves a measure, everybody would be willing and want to have it stopped with the legislature. Now, why should we have a form of initiative that compels us to vote on a thing that nobody wants to vote on? That is the defect of our present system.

Mr. KING: The question is already saved by the present proposal, that if the three per cent asked for a given law and the legislature passes that law, that ends, of course, the effect of that petition. Of course, those opposed to the law may still go out and get a referendum petition.

Mr. FESS: As I understand the purpose of the whole thing, and I think there is a little confusion here, the work of this committee will be considerable, and they do not care to undertake their work unless instructions are given.

Mr. BIGELOW: Yes.

Mr. FESS: But there is no thought that what the committee does is final—it comes back here and everything is open to discussion on the floor?

Mr. BIGELOW: Certainly.

Mr. FESS: I think the members are confused. Now let it go to the committee.

Mr. STOKES: I move the previous question on this matter.

The main question was ordered.

The motion was carried.

Mr. LAMPSON: Now what is before the Convention?

The PRESIDENT: We will proceed to the reading of Proposal No. 261.

Vice President Fess here took the chair.

Proposal No. 261—Mr. Halenkamp was read the third time.

Mr. ELSON: The other day there was some discussion of this matter and it seemed to be understood or inferred that if this proposal passed in the form in which

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it is now it would preclude the use of the present printed matter in the state offices generally, a thing which we do not wish to tie ourselves down to.

Mr. THOMAS: I would answer that emphatically, no! That proposal reads plainly that the state may do its own printing in a manner as may be provided by law.

Mr. ELSON: In the present form?

Mr. THOMAS: It may do it in any manner or form it sees fit.

The VICE PRESIDENT: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Nye,
Antrim,	Halfhill,	Okey,
Baum,	Harbarger,	Partington,
Beyer,	Harris, Ashtabula,	Peters,
Brattain,	Harter, Huron,	Pettit,
Brown, Highland,	Harter, Stark,	Pierce,
Brown, Pike,	Henderson,	Price,
Campbell,	Hoffman,	Read,
Cody,	Holtz,	Redington,
Collett,	Hoskins,	Riley,
Colton,	Johnson, Madison,	Rockel,
Cordes,	Johnson, Williams,	Roehm,
Crites,	Kehoe,	Rorick,
Crosser,	Keller,	Shaffer,
Cunningham,	Kerr,	Shaw,
Dayio,	Kilpatrick,	Smith, Geauga,
DeFrees,	King,	Smith, Hamilton,
Donahey,	Kramer,	Solether,
Doty,	Kunkel,	Stamm,
Dunlap,	Lambert,	Stevens,
Dunn,	Leete,	Stewart,
Dwyer,	Leslie,	Stilwell,
Earnhart,	Longstreth,	Stokes,
Eby,	Ludey,	Taggart,
Elson,	Malin,	Tannehill,
Evans,	Marriott,	Tetlow,
Fackler,	Marshall,	Thomas,
Farnsworth,	Matthews,	Ulmer,
Farrell,	McClelland,	Wagner,
Fess,	Miller, Crawford,	Walker,
FitzSimons,	Milel, Fairfield,	Watson,
Fluke,	Miller, Ottawa,	Winn,
Fox,	Moore,	Wise,
Hahn,	Norris,	Woods.

So the proposal passed as follows:

Proposal No. 261—Mr. Halenkamp, to submit an amendment to article XV, section 2 of the constitution.—Regulating state printing.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XV.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

The PRESIDENT: The next proposal is Proposal No. 309 which the secretary will read.

The proposal was read the third time.

Mr. MARRIOTT: I offer an amendment.

The amendment was read as follows:

Strike out all of sections 2 and 3 and insert in lieu thereof the following:

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly shall be of the opinion that this constitution should be revised, altered or amended, they shall recommend to the electors of the state to vote, at a general or special election, for or against the appointment of a commission for that purpose; and if a majority of the electors voting at such election have voted in favor thereof, the governor of the state shall, within sixty days thereafter, appoint a commission of fifteen citizens of the state, the members of which shall meet, within thirty days thereafter, at the seat of government, for the purpose aforesaid. No revision, alteration or amendment of this constitution, agreed upon by such commission shall take effect until the same has been submitted to the electors of the state at a general or special election upon a day to be fixed by such commission and adopted by a majority of those voting thereon.

SEC. 3. The general assembly shall provide by law the method of submitting the question "Shall there be a commission to revise, alter or amend the constitution?"; and the method of submitting the work of such commission to the electors for adoption or rejection.

Mr. MARRIOTT: Gentlemen of the Convention, I am sure I have no disposition to delay the business of the Convention by any extended statement of the amendment which I have offered. It is shown, I apprehend, that early in the work of the Convention I offered a proposal substantially as the amendment I offer, in article XVI, section 2. The proposal there referred to the time or manner of amending the constitution, and I was treated with the utmost courtesy by the chairman of the committee by being given the privilege of appearing before the committee to make a statement. I was not present in the Convention when the proposed amendment was reported and voted upon at the second reading. I am therefore ignorant of the reasons offered or given to the Convention why this proposal should be adopted. Have the gentlemen of the Convention considered what is proposed in the Taggart proposal now under consideration? What changes does it make in article XVI, sections 1, 2 and 3, of the present constitution? If the members will compare it with article XVI, and it is very short, you will find that there are but three very minor, and I think unnecessary, changes in the section as it now stands. One is a provision for a nonpartisan ballot. I am not seeking to change section 1 of Judge Taggart's proposal. I am leaving section 1 just as the committee on Arrangement and Phraseology has left it. The only change in that section, as you will observe, is that it provides for the election of delegates to a future constitutional convention upon a nonpartisan ballot and without party emblem, and it changes the time from six months' publication to, I believe, eight weeks. Now, I appeal to you, gentlemen of the Convention, whether or not the changes are necessary. You go to section 2 of

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the proposal and the only changes there in our present constitution is the provision that the delegates shall be nominated by petition and elected upon a nonpartisan ballot. There is not a delegate in this Convention who was not nominated by petition and elected upon a nonpartisan ballot without an emblem. Therefore, where is the necessity for this change? I am opposed to the proposal, especially sections 2 and 3, first, because the language of the present constitution is changed wherein it provides the convention shall consist of as many members as the house of representatives. The language of the present constitution says they shall be chosen in the same manner as members of the house of representatives. This proposal changes that manner and uses the following language: "As provided by law." I do not know that that would make it possible to elect every member of the constitutional convention from one county or not, but why that change, "As provided by law"?

Now, gentlemen of the Convention, I insist that this proposal does not change our present constitution in such a way that it makes it necessary to submit a proposal to the people. Let me have your attention just a moment. I recognize the fact that up to this time every proposal that has passed the second reading has been adopted upon the third reading, and with all deference to my splendid friend Judge Taggart, who is the author of this proposal, and I have no complaint to make that my child that went into the committee came out with new clothing on it—I say that there is no occasion for this proposal. I call the attention of the delegates to what the Constitutional Convention is going to cost the state of Ohio. I insist that there never will be an occasion for another constitutional convention in this state. With section 1 left in the constitution as it is left in Judge Taggart's proposal, which leaves the liberty in the general assembly to provide amendments for the constitution and to submit them to the people, why do we want another constitutional convention composed of one hundred and nineteen or one hundred and twenty men, as the case may be, from the different counties of the state when we have the initiative and referendum, through which the people may amend the constitution?

Now let me direct your attention just for a moment to another matter. For this Convention \$200,000 has been appropriated. I hold in my hand the cost to the people of the state of the submission, merely the publication of the proposals, not to include the expense of the election, or the machinery of the election. In 1875 there were two proposals submitted to the people of the state, and the publication in the newspapers of those two amendments cost the people \$21,170.37. In 1877 there was one proposal submitted to the people of the state, and the cost of publishing that proposal for the vote of the people, without including the other expenses of the election, amounted to \$38,471. Now, gentlemen of the Convention, if the publication of one proposal in 1877 cost the people \$38,471, what will forty-two proposals cost them as a result of this Convention? I have made a little calculation, and assuming that these proposals will average with that one in 1877, the forty-two proposals will cost \$1,500,000.

Mr. STOKES: This proposal does not refer to the amendment that we are passing now, does it? This has reference to future amendments to the constitution—

Mr. MARRIOTT: Yes.

Mr. STOKES: And has no reference to the forty-two we expect to put before the people now?

Mr. MARRIOTT: I agree with the distinguished gentleman that it has no reference, but I am illustrating the force of my statement. I do not believe there is a necessity, or ever will be, for another constitutional convention to cost the people of this state \$2,000,000, which will be the cost of this Convention by the time these proposals are submitted, provided we submit them at a special election.

Mr. STOKES: If we have another constitutional convention, it will be called under provisions of the constitution other than at present, if this is adopted.

Mr. MARRIOTT: Certainly.

Mr. STOKES: Is it not true that this provision makes it much cheaper to have a constitutional convention in this, that the old constitution provides for publication six months while this provides for publication in each county in only one paper for eight weeks?

Mr. MARRIOTT: That would certainly lessen the expense of publishing, but let me suggest that many proposals—I am not criticising or complaining about the number of proposals—I am trying to enforce my argument that there will be no necessity for future constitutional conventions, and that, coming to the point, if the people of Ohio or the general assembly under section 1 ever deem it important to revise or amend the constitution, instead of calling a constitutional convention the amendment should be made by a commission of fifteen men appointed by the governor.

Mr. FACKLER: Is it not a fact that the provision with reference to the publication of amendments in Proposal No. 309 applies only to such proposed amendments as shall be submitted by the legislature and not by any convention which may be called?

Mr. MARRIOTT: If you will read section 2 you will find it does not. I would like only to say, if the Convention will indulge me, that objection has been offered by one of the delegates to the commission plan. First, I am opposed to this proposal because it provides a mandatory provision for a constitutional convention every twenty years.

Mr. SMITH, of Hamilton. Does it not provide for the question of whether or not a constitutional convention shall be held—that that be submitted to the people?

Mr. MARRIOTT: Yes; it does not necessarily follow that the people will ratify it and call the Convention.

Mr. FACKLER: Point in section 2, to where the provision is that compels the publication of an amendment proposed by a convention.

Mr. MARRIOTT: There is no such provision in that section 2.

Mr. DOTY: I move that this amendment be tabled.

Mr. MARRIOTT: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 84, nays 15, as follows:

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Those who voted in the affirmative are:

Antrim,	Halfhill,	Peters,
Baum,	Harbarger,	Pettit,
Beatty, Morrow,	Harris, Ashtabula,	Pierce,
Beyer,	Harter, Huron,	Price,
Brattain,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Campbell,	Hoskins,	Rockel,
Cody,	Johnson, Madison,	Roehm,
Collett,	Johnson, Williams,	Shaffer,
Colton,	Jones,	Shaw,
Cordes,	Kehoe,	Smith, Geauga,
Crites,	Keller,	Smith, Hamilton,
Crosser,	Kerr,	Solether,
Cunningham,	Kilpatrick,	Stalter,
Davio,	Kramer,	Stamm,
Doty,	Kunkel,	Stewart,
Dunlap,	Lambert,	Stilwell,
Dunn,	Lampson,	Stokes,
Earnhart,	Leslie,	Taggart,
Fackler,	Malin,	Tannehill,
Farnsworth,	Marshall,	Tetlow,
Farrell,	Matthews,	Thomas,
Fess,	Mauck,	Ulmer,
FitzSimons,	McClelland,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Moore,	Wise,
Halenkamp,	Okey,	Woods.

Those who voted in the negative are:

Dwyer,	Longstreth,	Partington,
Elson,	Marriott,	Riley,
Evans,	Miller, Ottawa,	Rorick,
Harter, Stark,	Norris,	Stevens,
King,	Nye,	Winn.

So the motion to table was carried.

Mr. MARRIOTT: I offer an amendment.

The amendment was read as follows:

Strike out all of sections 2 and 3 and insert the following:

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention shall have voted for a convention, the general assembly shall, at their next session, provide by law, for calling the same. The convention shall consist of as many members as there are members of congress from this state, who shall be chosen by the electors from each congressional district as provided by law, and shall meet within three months after their election at the seat of government for the purpose aforesaid.

No revision, alteration or amendment of this constitution agreed upon by such convention shall take effect until the same has been submitted to the electors of the state at a general or special election upon a day to be fixed by the convention and adopted by a majority of those voting thereon.

SEC. 3. The general assembly shall provide by law the method of submitting the question "Shall there be a convention to revise, alter or amend the constitution," the method of electing delegates and the method of submitting the work of such

commission to the electors for adoption or rejection provided that no convention shall be called oftener than once in every twenty years.

Mr. MARRIOTT: If this proposal should be adopted, gentlemen of the Convention, it will change the present constitution only that instead of the constitutional convention being elected from the counties, the same number as we have members of the house, they will be elected from the congressional districts, and you will have twenty-one members of the constitutional convention elected, one from each congressional district. The only other change from Judge Taggart's proposal is that it leaves out all about nonpartisan ballot, but provides that the general assembly shall provide the method both for submission of amendments and the manner of electing delegates. I submit that we do not know what plan the general assembly may adopt twenty years from now.

Mr. DOTY: Suppose the state of Ohio through the general assembly should exercise the right to have only one district in the state instead of twenty-one or twenty-two. How many members of the constitutional convention would you have under your amendment?

Mr. MARRIOTT: Qne.

Mr. DOTY: If you think that I am the one, I do not mind voting for it.

Mr. MARRIOTT: I have no doubt that whatever way I would fix it Mr. Doty would try to be the one.

Mr. HARRIS, of Ashtabula: Do you think the general assembly should consist of one member, and if not, why not?

Mr. EARNHART: I move to table the amendment. The motion was carried.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out all of section 3 beginning at line 31 and ending with the word "but" in line 38.

Insert before "no" in line 38 the words and figures "Sec. 3." and capitalize the letter "N" in word "no".

Mr. KING: There cannot be any possible reason why we should incorporate in the constitution a provision that there must be a constitutional convention called in 1932 and every twenty years thereafter.

Mr. SMITH, of Hamilton: You have not stated that quite right. Do you not mean that there is not any necessity for providing that the question shall be submitted to the people whether a convention shall be held?

Mr. KING: Yes, that is it. The first two sections cover the whole question, and with the amendment on the revision of the constitution, except the last clause of section 3, which, of course, I concede ought to go into the constitution, that any revision or amendment of the constitution should be submitted to a vote of the electors, and as amended in the proposal, and as reported back it should be adopted by a majority of those voting upon the particular amendment—that should be preserved, and I have preserved it in my amendment by calling it section 3. It might just as well have been attached to and made a part of section 2.

Mr. DOTY: This is only submitted once every twenty years at a regular election for the people to say whether they want a constitutional convention. Now,

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why take that right away from the people rather than leave it as it is? It does not save any money. I do not suppose it does anything other than "safeguard" the people so that they can't vote for what they want.

Mr. KING: That right is fully preserved in section 2 of the constitution.

Mr. DOTY: I cannot keep in mind the sections technically as some of the gentlemen seem to do; but, as I remember, section 2 simply makes it possible for the legislature to say whether the people shall have the right to vote whether or not they shall have a constitutional convention. I move that the amendment be laid on the table.

The motion was carried.

Mr. FOX: I offer an amendment to Proposal No. 309.

The amendment was read as follows:

In line 11 strike out "eight" and insert "five".

Mr. FOX: Submitting these amendments is a very expensive proposition. The advertising has cost \$464,000 for the amendments we have passed during the last twenty-five years, as shown by Judge Marriott. That is a great expense. Now, if we consider that during the next twenty or twenty-five years, with the publicity that is now given to almost everything, five weeks are just as good now as six months used to be, it will save between \$150,000 and \$200,000. And it is just as good.

The amendment was agreed to.

Mr. MOORE: I move the previous question.

The main question was ordered.

The VICE PRESIDENT: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 105, nays 1, as follows:

Those who voted in the affirmative are:

Antrim,	Harbarger,	Norris,
Baum,	Harris, Ashtabula,	Nye,
Beatty, Morrow,	Harris, Hamilton,	Okey,
Beyer,	Harter, Huron,	Partington,
Bowdle,	Harter, Stark,	Peck,
Brattain,	Henderson,	Peters,
Brown, Highland,	Hoffman,	Pettit,
Brown, Pike,	Holtz,	Pierce,
Campbell,	Hursh,	Price,
Cody,	Johnson, Madison,	Read,
Collett,	Johnson, Williams,	Riley,
Colton,	Jones,	Rockel,
Cordes,	Kehoe,	Roehm,
Crites,	Keller,	Rorick,
Cunningham,	Kerr,	Shaffer,
Davio,	Kilpatrick,	Shaw,
Donahay,	King,	Smith, Geauga,
Doty,	Knight,	Smith, Hamilton,
Dunlap,	Kramer,	Solther,
Dunn,	Kunkel,	Stamm,
Dwyer,	Lambert,	Stevens,
Earnhart,	Lampson,	Stewart,
Eby,	Leete,	Stilwell,
Elson,	Leslie,	Stokes,
Evans,	Longstreth,	Taggart,
Fackler,	Ludey,	Tannehill,
Farnsworth,	Malin,	Tetlow,
Farrell,	Marshall,	Thomas,
Fess,	Matthews,	Ulmer,
FitzSimons,	Mauck,	Wagner,
Fluke,	McClelland,	Walker,
Fox,	Miller, Crawford,	Watson,
Hahn,	Miller, Fairfield,	Winn,
Halenkamp,	Miller, Ottawa,	Wise,
Halfhill,	Moore,	Woods.

Mr. Marriott voted in the negative.

So the proposal passed as follows:

Proposal No. 309—Mr. Taggart, to submit an amendment to article XVI, sections 1, 2 and 3, of the constitution.—Methods of submitting amendments to constitution.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVI.

SEC. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly, shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SEC. 3. At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution", shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amend-

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ment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. Stokes rose to a question of privilege, and asked that his vote be recorded on Proposal No. 170, by Mr. Worthington. His name being called, Mr. Stokes voted "aye."

Mr. Brattain rose to a question of privilege, and asked that his vote be recorded on Proposal No. 184, by Mr. Peck. His name being called, Mr. Brattain voted "no."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 118, by Mr. Lampson. His name being called, Mr. Eby voted "no."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 122, by Mr. Farrell. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 166, by Mr. Stilwell. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 5, by Mr. Cunningham. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 163, by Mr. Miller, of Crawford. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 169, by Mr. Worthington. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 7, by Mr. Nye. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 240, by Mr. Anderson. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 333, by Mr. Peck. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 151, by Mr. Anderson. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 96, by Mr. Fess. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 15, by Mr. Riley. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 212, by Mr. Johnson, of Williams. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 51, by Mr. Miller, of Crawford. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 184, by Mr. Peck. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 322, by Mr. Bowdle. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 64, by Mr. Miller, of Fairfield. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 134, by Mr. Halenkamp. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 34, by Mr. Thomas. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 93, by Mr. Earnhart. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 91, by Mr. Kilpatrick. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 242, by Mr. Roehm. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 272, by Mr. FitzSimons. His name being called, Mr. Eby voted "aye."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 170, by Mr. Worthington. His name being called, Mr. Eby voted "aye."

Mr. Doty here took the chair as president pro tem.

The PRESIDENT PRO TEM: The next order of business is Proposal No. 329.

Proposal No. 329—Mr. Knight, was read the third time.

Mr. KNIGHT: Owing largely, I think, to what must have been a misunderstanding of the proposal on the part of the school officials of the state, information seems to have been sent abroad over the state that this proposal undertook to place in the hands of every school district complete and absolute control over all school matters. There is not a word, letter, line or syllable in the proposal that warrants any such statement. It is just what it purports to be—direct authority, incontrovertible, in the state to control the public school and educational system of the state, provide for organization, administration and control of it, and provide a referendum in its original form only upon the subject of the size of the school board and its organization. It does not in one particle change the power of the school board when organized. When the proposal passed second reading the motive was to permit the cities of the state to determine for themselves the size and organization of the school board, an opportunity which they had long desired and long needed. It was originally in the cities proposal and was taken out because it was deemed unwise that that proposal should deal with anything like the subject

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of education, believing that the subject of education was a state and not a city question. Now, in order to provide this for the cities, the original form of this proposal provided that all school districts should have the referendum opportunity, and it seems in some portions of the state, probably due to the fact that the school board had complete control over the matter, that there is objection to its application to rural school districts. As a member of the Convention I have no desire to force a referendum on any people who do not want it. The cities do want it, and I offer an amendment which covers the last objection that there can be to it:

The amendment was read as follows:

In line 7 after the word "district" insert the word "embraced wholly or in part within any city"; also in line 10 change "the" to "such".

Mr. KNIGHT: It will read: "Each school district embraced wholly or in part within any city, shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provisions shall be made for the exercise of this power by such school district." It, therefore, does not touch in any way any school district which does not lie wholly or in part in a city.

Mr. FESS: I hope this amendment will pass. It will keep faith with the committee on Municipal Government. I do not want to interfere in any way with the rural community, and this was for the purpose of giving home rule to the cities, without interfering in the matter of schools. I hope the amendment will pass. It will remove all of this fear that rural districts will go back to where they were some years before.

Mr. HARBARGER: What do you understand by district? Is it a subdistrict?

Mr. KNIGHT: No. A district, a township, a city district, and this applies to city districts.

Mr. HARBARGER: They have subdistricts in the country?

Mr. KNIGHT: There is no subdistrict lying wholly or in part in any city. It is to remove that that I am offering this amendment.

Mr. MILLER, of Crawford: I hope this amendment will pass. It will then remove all objections from the rural districts.

Mr. PARTINGTON: What is contemplated in this term "public"?

Mr. KNIGHT: Public schools of the state supported by taxation.

Mr. PARTINGTON: The State University?

Mr. KNIGHT: That is not a public school. The legislature could include any other educational system under the term. It does not make it mandatory, but simply puts it in the power of the lawmaking body of the state to have one system from top to bottom.

Mr. PARTINGTON: In the committee on Common Schools I had remarked that I would favor anything that would improve the school system of the state of Ohio, but then, as now, I am opposed to the state controlling our high schools and our common schools and then permitting separate normal schools for the state of Ohio doing as they like. If this law or this proposal contemplates or includes the whole system, I would like to know it.

Mr. KNIGHT: It is intended to provide that the lawmaking power may use it whenever the time is ripe for it. One complete educational system for the schools and all educational institutions supported by public taxation.

Mr. PARTINGTON: If such is the case, my objection to this is removed, but it still remains with me if the normal schools of Ohio are above the control and are not operated under these laws as are our common schools and high schools. We are proud of our high schools in Sidney, as is doubtless true of every other man who has the interest of his home schools at heart, and if we are to surrender—you will notice, members, if you surrender to some authority—if I understand aright—the organization of your schools—

Mr. KNIGHT: The school system.

Mr. PARTINGTON: The administration and control. If it is contemplated to build up one grand harmonious system, my objections are removed, but otherwise I am not willing, as a member from Shelby county, to surrender the organization and administration and the control. Those are pretty strong words. You will note this, that your schools, the control and organization of your schools, are taken away from you. They are lodged in the state of Ohio. Now, if you can have in the state of Ohio a man at the head of our school system that is going to build up one harmonious school system for Ohio, that will include these normal schools, and will really mean a school system for Ohio, then my objections are removed, and if it does not do that I am opposed to it, and I pause to reflect what is contemplated when you say to me that the cities, the small cities, would be benefited. We last summer sold \$100,000 worth of bonds to build a high school, and this proposal says that the organization, administration and control of those schools of ours is under the domination and control of one central body. Now, if that organization and that system and that man at the head—if it is a perfect system, and if they have the right man at the helm, we may be glad, we may feel proud that we did surrender the organization and the administration and the control of our schools to some central authority, but if that system is wrong or the central authority be not right, gentlemen, I am afraid of what the result might be.

Mr. PIERCE: I offer an amendment.

The amendment was read as follows:

In line six strike out the words "and educational".

Mr. PIERCE: If we take out those words it will read: "Section 3: Provision shall be made by law for the organization, administration and control of the public school system of the state." That simply omits the words "and educational" as they are in the proposal. It now says the control of the public schools and educational system. I am afraid that the educational system is too broad, and it might possibly include things that we do not want, and therefore I want to have it stricken out.

Mr. KNIGHT: What else might it include?

Mr. PIERCE: It might include the high schools and the parochial schools.

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Mr. KNIGHT: I have no objection to putting before the word educational the word "public". There is no intention to put anything that is not supported by taxation under this system.

Mr. PIERCE: Would you answer me a question?

Mr. KNIGHT: Yes, if I can.

Mr. PIERCE: What do you claim the phrase "and educational" means?

Mr. KNIGHT: In most states, or in many states of the Union organized like ours, as every state in the North is, the phrase "public educational system" means educational system supported in whole or in part by general and local taxation. In a majority of the states, as in this state, the general organization has been in the hands, as it should be, of a central lawmaking body. Now the import of those two words, "and educational" is this: We are reaching out at the present time and developing a normal school for the training of teachers for our public schools. We are supporting and maintaining three colleges, Ohio State, Ohio University and Miami University. The intent of that phrase "and educational" is that whenever, or if ever, it seems wise to the lawmaking body of the state to try to make a unified public educational system from the kindergarten at the bottom to the highest educational institutions supported by taxation, this proposal gives undoubted authority to do that, and there is nothing intended beyond that, and the insertion of the word "public" before educational will remove any ambiguity and all doubt about the intent to cover parochial schools in any way. That never entered the mind of anybody who had anything to do with this.

Mr. ELSON: I think the word "public" inserted would not cover the objection at all. I think a general objection is that under such educational system the public schools and universities should not be included. If there is a system for the organization, administration and control of the schools it should not include the universities. The first thing that would naturally come up would be whether to coordinate the high schools with the lower classes of the university and articulate them, which would be an exceedingly unwise thing to do. Not many months ago I attended a faculty meeting and this subject came up. The subject of articulating the high schools and the colleges of liberal arts in the universities. I made the statement there and will make it here that we cannot afford to do it. If the university wishes to modify its entrance requirements in such a way as to make it a high school, very well, but we cannot expect to modify the high schools and colleges so as to articulate them. We would simply have to choose between the two, to do away with the universities or with the high schools. It would be better to sink our universities in the sea than to give up the high schools. I said that certainly not from the standpoint of personal indulgence, because I have never been connected with high schools to amount to anything. My life is identified with university work, but I realize that high schools are of far more benefit to the state of Ohio than the universities, and if this goes through to include both, the danger will be that there will be an articulation between the two which would not be best for either.

Mr. McCLELLAND: The argument which has just been advanced by the member from Athens [Mr. ELSON]

seems to me to be one of the strongest arguments against the conclusion he reaches. One of the great things he justly complains of is the apparent dictation of the universities to the high schools in regard to what they shall do to prepare for the university, and this matter leaves it in the hands of the general assembly, which will represent the high schools rather than the universities. It seems to me it would be very unfortunate for us to accept the amendment of the delegate from Butler [Mr. PIERCE].

Mr. OKEY: I hope the amendment of the delegate from Butler will prevail. If you leave the word "educational" in this proposal it is too comprehensive. It can mean almost anything, and from my standpoint I think it has entirely too much latitude. Now, as far as I am concerned, it seems to me there has been no explanation that is satisfactory, to me at least, as to the ultimate object of this proposal. I want to vote for the proposal if it will tend to benefit the schools, but I want to know wherein it benefits them. And I want to know exactly what these very comprehensive words "organization, administration and control of the public schools and educational system" mean.

Mr. KNIGHT: It means the public school system and the educational system. That is what it means.

Mr. OKEY: What do you mean by "system"?

Mr. KNIGHT: This proposal puts in the hands of the lawmaking power unquestioned authority to organize such a system. It does not contemplate taking out of the hands of the local authorities the control and administration of their local schools, but it does give to the state, beyond any question, the right to fix the standard and the right to organize an entire system, leaving to each local community the determination of the schools in the system.

Mr. OKEY: Does it contemplate the appointment of the teachers?

Mr. KNIGHT: No, sir.

Mr. STOKES: I offer an amendment.

The amendment was read as follows:

In line 6 after "state" add "supported by public funds".

Mr. KNIGHT: I will accept that.

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is on the amendment offered by the delegate from Butler [Mr. PIERCE].

Mr. KRAMER: I want to ask this question of Professor Knight: In his amendment he limits the right to control, etc., to cities. We have villages in Richland county, or one village at least, that are very near the limit of a city, and I do not see why a village that desires to change its school organization ought to be forbidden the right.

Mr. KNIGHT: Because under the present law that is likely to continue a village and not a township school district. Unless it becomes a special district by some special action it is not taken outside of the township district and that is not true in the case of a city.

Mr. COLTON: I want to call attention to a provision of the present constitution: "The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund,

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will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state."

Now that gives full control over the general schools, but there is doubt whether the legislature has complete control over the educational system of the state that we desire it should have. The provisions of the amendment leave to the legislature full control over the public schools and educational system of the state, and I hope this proposal will pass without the provisions proposed by the member from Butler.

Mr. HARRIS, of Hamilton: Mr. President and Gentlemen of the Convention: I trust the proposal as amended by the member from Franklin [Mr. KNIGHT] and as it stands by the acceptance of the amendment of the member from Montgomery [Mr. STOKES] will pass. The member from Franklin has stated the case as nearly as it could be stated. Instead of having three or four systems the scheme is to have one grand system under the charge of the legislature. Your committee on Municipal Government was broad enough to surrender and strike from their original proposal section 4 in which large latitude was given to the municipalities, but we wanted the whole matter of education to be under the direction and charge of the state. Our committee agreed to the elimination of section 4 and asked the committee on Education to provide one in its place and to give to the cities the right and power to designate the size of the school board for the various cities. The amendment of the gentleman from Montgomery has removed the last possible objection that could be raised by anyone, and that objection is the fear—an object never contemplated or dreamed of, and I don't think it could possibly be so interpreted—that this proposal might give the state the power to take charge of or direct the parochial schools of the state. There was nothing of that kind in our minds, but the objection is absolutely removed by the amendment offered by the gentleman from Montgomery, and I therefore move that the amendment of Mr. Pierce be tabled.

The motion was carried.

Mr. HALFHILL: Gentlemen of the Convention: I have no doubt that several gentlemen who have spoken and who claim that by virtue of this amendment every possible objection to this proposal has been removed, believe what they say, but it occurs to me that there may be some objections to this proposal that have not yet reached the ears of the gentlemen. I am perfectly willing to be convinced that this proposal is the right thing, but up to date the objections that have come to me from outside of the Convention have more convincing weight and power with me than the arguments that I have heard here. I agree that it is advisable and right for the city districts to have entire control of their boards of education so that they may limit the number or in any other way do that which seems best. That is removed from competent objection because it was argued that under this proposal as originally drawn we might go back to the old system of three directors of a sub-district and thus destroy what we have built up through the intelligent action of the legislature. But I say that is removed by this amendment introduced by the author of the proposal, so that that objection is out of the way.

But another objection that has come to me from sources outside of the Convention is to this effect, that when you read this proposal down you will find it contains within it power of creating an administrative board of officers who can usurp and take away the absolute control of the local schools to the full extent save and except a local board that will levy taxes and provide for supplies. That objection comes to me and it looks to me much like an administrative effort under the first part to take away all authority of the local board save and except the right to levy taxes. I see the author shakes his head and thinks that the objection is not good, but there is certainly another objection which was referred to in argument and which I must hurriedly scan and that is it is to be hoped at least under this we are not endeavoring to dovetail the high school into the university. I have not heard that sufficiently answered. The objection to the high school now is that it teaches too many things and puts on too many frills and fanciful things and has become a sort of preparatory school so that you can graduate from it into the college. The fact is a great majority of the children of the state never even get through the grades and only a very small per cent of them get through the high schools, and in getting through the high schools this small per cent ought to have experience and accuracy to do things brought to their attention better than they have it brought to them under the present system. Now I am not an educator, but I have great respect for those men whose life work is in that profession. I candidly believe that this proposal will meet with very grave objection even as now amended, and I would like to hear my objection as outlined answered a little further. I call on the author and would be pleased to have him answer the questions.

The PRESIDENT PRO TEM: The member from Allen has one minute. If the gentleman from Franklin wishes to occupy it with the permission of the gentleman from Allen he can do it.

Mr. KNIGHT: There are two things to be stated briefly about this proposal. The primary object is from the standpoint of the public schools. There is no man in the state of Ohio who would be less inclined than I am to do a single thing to injure the public schools. In this proposal there is not a working of the public school into the high school and of the high school into the university, but provision that there shall be on behalf of the educational authorities of the state the guiding and controlling of the educational public school system. There is not a single word in it, in my judgment, that warrants the idea that we are taking out of the hands of the local board anywhere control over the administration of the local schools. It just points the way toward the general unification of the public educational system.

Mr. ELSON: I move to take from the table this amendment. I think we voted this down without any reason and I would like to explain.

The motion was carried.

The PRESIDENT PRO TEM: The motion to take from the table the amendment of the delegate from Butler [Mr. PIERCE] is carried and the question is on the motion of the delegate from Butler [Mr. PIERCE] to amend the proposal.

Mr. McCLELLAND: I rise to a point of order. The member from Athens has spoken on that amendment.

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The PRESIDENT PRO TEM: The chair would ask the gentleman from Athens if that is so?

Mr. ELSON: I spoke on something.

The PRESIDENT PRO TEM: The chair will resolve the doubt in favor of the Convention and if anybody else wants to speak on the amendment will recognize him; if not, the chair will recognize the delegate from Athens.

Mr. ELSON: I gave one reason for securing the adoption of the amendment and I wish to give another which I hoped I would not have to mention. The reason I gave was that the danger of such a board having control of the organization of the public school system of the state is that it will articulate the high school with the university, which will be a calamity to the school districts because the high school is a place to educate the children and only a small percentage of the people that live there get into the university.

Mr. COLTON: Under our present constitution has not the legislature the power to coordinate the high schools in the university?

Mr. ELSON: I do not know.

Mr. COLTON: I think it has.

Mr. ELSON: My other reason is this: I fear it would be a source of trouble among some of the higher educational institutions. Three or four years ago there was a crusade made through the state legislature—I don't say how it originated, the object of it was to rob two of our time-honored state universities of much of their importance and prestige and to use that in building up the State University at Columbus. The idea was to degrade them to mere normal schools in order to build up the State University at Columbus. I believe the state of Ohio will not stand for anything of the sort. That movement was resisted and successfully. Now, if there was such a thing as this proposal provides for passed, I feel sure the same old trouble would arise. I do not say Professor Knight had anything of the sort in his mind, but it opens up the old fight and it is not good for higher education. We all know the universities at Athens and Oxford are old time-honored institutions, doing an immense good in the state. The Ohio University at Athens is the oldest collegiate institution west of the Alleghenies unless we except Transylvania at Lexington, Kentucky, which claims priority by about one year.

Mr. ULMER: I think the American Book Trust is behind this movement.

Mr. ELSON: I do not know. If Ohio intended to build up one single great institution as Michigan and Wisconsin have done it should have begun sooner, but Ohio has three instead of one, and while that fact may to some extent preclude the possibility of building up a great university in the center of the state, nevertheless the educational facilities of the state are doubtless better than they would be with one such central university. Go down to Ohio University and Miami University and you will find the best possible opportunities for the people to get education. They go there at little cost and it would be a calamity to the educational institutions of the state if we were to degrade them to mere normal schools.

Mr. ULMER: I move the previous question on the amendment and the proposal.

The main question was ordered.

The PRESIDENT PRO TEM: The question is on the amendment of the delegate from Butler.

The yeas and nays were regularly demanded, taken, and resulted—yeas 49, nays 54, as follows:

Those who voted in the affirmative are:

Antrim,	Farrell,	Marshall,
Baum,	Fluke,	Mauck,
Beatty, Morrow,	Fox,	Miller, Fairfield,
Bowdle,	Hahn,	Miller, Ottawa,
Brattain,	Halenkamp,	Okey,
Brown, Highland,	Halfhill,	Peck,
Brown, Pike,	Hoffman,	Pettit,
Campbell,	Holtz,	Pierce,
Cody,	Hoskins,	Read,
Crites,	Jones,	Rorick,
Dunlap,	Kehoe,	Stalter,
Dunn,	Keller,	Stewart,
Dwyer,	Kunkel,	Stilwell,
Earnhart,	Longstreth,	Stokes,
Eby,	Malin,	Watson,
Elson,	Marriott,	Woods.
Farnsworth,		

Those who voted in the negative are:

Anderson,	DeFrees,	Hursh,
Beyer,	Doty,	Johnson, Madison,
Collett,	Fackler,	Johnson, Williams,
Colton,	FitzSimons,	Kerr,
Cordes,	Harbarger,	Kilpatrick,
Cunningham,	Harris, Ashtabula,	King,
Davio,	Harris, Hamilton,	Knight,
Kramer,	Partington,	Stamm,
Lambert,	Peters,	Stevens,
Lampson,	Price,	Taggart,
Leete,	Redington,	Tannehill,
Ludey,	Riley,	Tetlow,
Matthews,	Rockel,	Thomas,
McClelland,	Roehm,	Ulmer,
Miller, Crawford,	Shaffer,	Wagner,
Moore,	Shaw,	Walker,
Norris,	Smith, Geauga,	Winn.
Nye,	Smith, Hamilton,	Wise.

So the amendment was not agreed to.

The PRESIDENT PRO TEM: The question is on the amendment offered by the delegate from Franklin.

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is: "Shall the proposal pass"?

The yeas and nays were taken, and resulted—yeas 58, nays 49, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Riley,
Beatty, Morrow,	Harris, Hamilton,	Rockel,
Beyer,	Harter, Huron,	Roehm,
Bowdle,	Hoffman,	Shaffer,
Campbell,	Hursh,	Smith, Hamilton,
Cassidy,	Johnson, Madison,	Solether,
Colton,	Jones,	Stamm,
Cordes,	Kerr,	Stevens,
Crosser,	Kilpatrick,	Stilwell,
Cunningham,	King,	Taggart,
Davio,	Knight,	Tannehill,
Doty,	Kramer,	Tetlow,
Dunn,	Lambert,	Thomas,
Earnhart,	Lampson,	Ulmer,
Fackler,	McClelland,	Wagner,
Farrell,	Moore,	Walker,
FitzSimons,	Nye,	Wise,
Hahn,	Peters,	Woods,
Halenkamp,	Redington,	Mr. President.
Harbarger,		

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Those who voted in the negative are:

Antrim,	Holtz,	Miller, Fairfield,
Baum,	Hoskins,	Miller, Ottawa,
Brattain,	Johnson, Williams,	Norris,
Brown, Highland,	Kehoe,	Okey,
Brown, Pike,	Keller,	Peck,
Cody,	Kunkel,	Pettit,
Collett,	Leete,	Pierce,
Crites,	Leslie,	Price,
DeFrees,	Longstreth,	Read,
Dunlap,	Ludey,	Rorick,
Dwyer,	Malin,	Shaw,
Eby,	Marriott,	Smith, Geauga,
Elson,	Marshall,	Stalter,
Farnsworth,	Matthews,	Stewart,
Fluke,	Mauck,	Watson,
Fox,	Miller, Crawford,	Winn,
Halfhill,		

So the proposal not having received the requisite number of votes failed to pass.

The PRESIDENT PRO TEM: The next proposal is Proposal No. 252.

Proposal No. 252—Mr. Weybrecht, was read the third time.

Mr. HOSKINS: What I desire to say is at the request of Mr. Weybrecht, who came to my desk and asked me to speak on it when the proposal was called. The section is just the same as the old one except that it adds the last sentence and permits a suit to be brought against the state in a manner to be provided by law. On the second reading the author explained that we have often had cases where by special acts of the legislature somebody was authorized to sue the state, and there is not any reason why the state should be any different from a private individual. The legislature ought to have a right to provide by law for the adjustment of controversies between its citizens and the state. That is the sole purpose of this proposal.

Mr. WOODS: I am against this proposal and I want to tell you why. If you are going to pass this proposal you ought to add an amendment to it to just about triple the force in the attorney general's office. I don't think the state can afford to throw open this door. Every time there is a flood from one of the canals the state will have a whole lot of lawsuits on its hands. Every time the general assembly meets they flock around the finance committee with all sorts of claims.

Mr. PIERCE: Would you deny the public justice because it would increase our legal force?

Mr. WOODS: They can get justice now. I don't think this door should be thrown open so wide.

Mr. PECK: Why should the state be exempt from just claims?

Mr. WOODS: The state always pays its ordinary claims.

Mr. MARRIOTT: Is not the fact you have just stated, that so many people come around the finance committee of the legislature, a great reason for the adoption of this proposal?

Mr. WOODS: No, sir; there is no trouble if you have anything like a just claim. If this door is thrown open it will be a great expense to the state. The cases will have to be tried by juries in the local county and the idea will be that "The state has a lot of money and we will make the state pay."

Mr. HALFHILL: In your judgment is there any more danger of the state's being imposed upon when the case is tried under the rules of evidence and the law than there is of the finance committee of the general assembly being imposed upon?

Mr. WOODS: Yes, I think so; and not only that, but you are putting the state to the expense of conducting a court matter. You had better pay the claims off than to fight them, and I think it would be cheaper.

Mr. ANDERSON: Consistency is a good thing to observe. This is the first time that Mr. Woods has ever said anything for the general assembly.

Mr. WOODS: I object.

The PRESIDENT PRO TEM: The objection is sustained and the gentleman from Mahoning will proceed.

Mr. ANDERSON: The gentleman's position is that it would be far safer to trust a committee of the general assembly than it is to trust any court in the state of Ohio. That is one reason it ought to be killed. The second reason that this proposal ought to be killed is because it would require more attorneys in the attorney general's office, because if a man's property is injured it is a just claim and we ought not to employ attorneys to take care of just claims and therefore it should be killed.

Mr. MARRIOTT: I move the previous question.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 71, nays 12, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Peck,
Antrim,	Harris, Hamilton,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beatty, Morrow,	Holtz,	Price,
Beyer,	Hoskins,	Redington,
Bowdle,	Hursh,	Riley,
Brown, Highland,	Johnson, Madison,	Rockel,
Brown, Pike,	Johnson, Williams,	Roehm,
Campbell,	Kramer,	Shaffer,
Colton,	Kunkel,	Shaw,
Cordes,	Lambert,	Smith, Geauga,
Crites,	Lampson,	Stamm,
Cunningham,	Leete,	Stewart,
Davio,	Leslie,	Stilwell,
Dwyer,	Longstreth,	Stokes,
Earnhart,	Ludey,	Tannehill,
Farnsworth,	Malin,	Tetlow,
Farrell,	Marriott,	Thomas,
FitzSimons,	Matthews,	Ulmer,
Fluke,	Mauck,	Walker,
Fox,	McClelland,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halfhill,	Okey,	Wise,
Harbarger,	Partington,	

Those who voted in the negative are:

Brattain,	Kerr,	Peters,
Doty,	Miller, Crawford,	Rorick,
Dunlap,	Miller, Fairfield,	Stevens,
Fackler,	Nye,	Woods,

So the proposal passed as follows:

Proposal No. 252—Mr. Weybrecht, to submit an amendment to article I, section 16, of the constitution.—Suits against the state.

Suits against the State—Judge of Court of Common Pleas for Each County.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Proposal No. 304—Mr. Halfhill, was read the third time.

Mr. HALFHILL: I offer an amendment. The amendment was read as follows:

Strike out the period at the end thereof and add the following: "and the additional judges, provided for herein, shall be elected at the general election in the year 1914."

Mr. HALFHILL: Gentlemen of the Convention: That amendment has been submitted to the Schedule committee and it meets with the approval of that committee and will coordinate with the general schedule. You will observe that the proposal in no way changes the jurisdiction of the court of common pleas and that the only change in the organization of the court is that there is a provision made for one judge of the court of common pleas in each county and such additional judges as may be made necessary by the size of the county and the amount of business. In other words, the legislature can decrease or increase the number of common pleas judges as it deems proper. That will make some changes. Some counties that do not now have judges will eventually receive a judge under this proposal. The original proposal provides that the judges of the court of common pleas in office elected thereto prior to January 1, 1913, shall hold their office for the term for which they were elected. That was put in so there will be no possible conflict between the operation of this constitution and the judges who would be nominated and elected at the ensuing November election. We think that this amendment just read to you, which is in these words, "and the additional judges provided for herein, shall be elected at the general election in the year 1914," would so shape this proposal that there would be no possible conflict with any existing work of the court.

Mr. WALKER: Are the salaries of these judges paid by the state?

Mr. HALFHILL: In part by the state and a certain part by each county.

Mr. WALKER: I notice that your proposal provides for the possibility of combining the work of the probate judge in the common pleas court. In my county they will not want to do that, but the proposal provides for the probate judge and that salary is now paid by the county. I was wondering how that salary would be provided for if the two are combined.

Mr. HALFHILL: We discussed that fully at the time of the second reading. The probate judge is paid by fees from those who transact business in his office,

or rather he gets the fees and covers them into the treasury and then draws back his salary, so that really he is paid out of those fees. That would be done away with and those fees would be covered into the county treasury and if the two courts were combined there would be a saving of a material amount.

Mr. HURSH: It requires some temerity for a mere farmer to enter into a discussion with the legal fraternity of this Convention, but when it comes to a matter of necessity and a matter of economy, we are surely all equally interested.

It has been urged in the former argument for this proposal that our poor common pleas judges of the state of Ohio are very much overworked. Another argument is that the cases are such that many litigants do not get a fair show because the litigants cannot get into the court often enough. I am aware that as the courts of Ohio are now constituted the common ordinary common pleas judges are not permitted to take more than five or six or seven months' vacation during the year, and I am also aware of the fact that litigants are prevented from having their cases heard because, for reasons, that are urged by attorneys, cases are deferred and postponed from term to term and year to year until their cases are oftentimes put off a considerable length of time. The delay is not caused by the few terms of the court in the county each year. This proposal adds from twenty-two to twenty-five new judges of the state to be put on the payroll. What for? I say it is an absolutely unnecessary measure from the standpoint that any business man does his business or that any farmer does his business or that any laboring man does his business. Four thousand dollars a year is certainly enough to compensate the common pleas judges of Ohio for the work they do, and I want to say further that you are making a county office of this thing, and if there is such a thing as lowering the standard of the judiciary, you are doing it here and now. The better lawyers usually do not want the positions of judges. The judge will be a county official who will be seeking the job. It will generally be a one-horse lawyer who cannot make a living at his profession. Really, he does not need to be a lawyer, but only a good politician, and he can draw that extra \$4,000 for what? To do six weeks' work in the county for you and me and our farmers and laboring men pay for it. The taxes finally come down on those who produce the wealth, and they will have to produce from \$80,000 to \$100,000 every year to pay a few men to put in six weeks' work upon the bench that is already provided for. Gentlemen, I cannot see, in the face of the tendency toward economy, how you can favor this measure.

They say you can combine the common pleas with the probate judge. What do we want to do that for? We haven't elected a lawyer in a generation in my county as probate judge. We elect a big-hearted, humane man who doesn't follow all of the technicalities of the law, but who, in the goodness of his nature and the overflowing of the milk of human kindness in his soul, provides for the widows and orphans whose interests come into his court. Now, gentlemen, in all seriousness, as a member of this Convention and as a taxpayer and as a farmer, and one of the men who has every year to help to dig up this \$100,000 to help to pay this bill for law-

Judge of Court of Common Pleas for Each County.

yers who can't make a living for themselves, I am opposed to it.

Mr. PARTINGTON: I offer an amendment.

The amendment was read as follows:

Strike out "at such election in line 22 and insert "thereon".

Strike out "at such election" in line 26 and insert "thereon".

Mr. PARTINGTON: If the members will notice, the amendment is in accord with all of the other work of this Convention. Wherever we have submitted a question we have provided that the number of votes cast on it shall control. This is in strict keeping with that.

The amendment was agreed to.

Mr. MAUCK: I agree with considerable that has been said by the member from Hardin. If the present common pleas judges were properly distributed we have an abundance to do the work. I also sympathize with the movement by Mr. Halfhill because there are some counties in the state of Ohio that ought to have common pleas and probate courts. But in the smaller counties of the state it would be a grievous wrong, as suggested by the member from Hardin, to impose upon the taxpaying public the expense of a common pleas and probate court. I undertake to say that in the majority of the counties of the state of Ohio one able-bodied man with a fair amount of intelligence can do all of the work of a judge of both courts and not consume over one-half of his time. Now the proposal as it stands provides that laws may be passed to combine these courts. In the large counties of the state there ought to be no combination, and in the smaller counties of the state there ought to be such a combination, and the possibility of effecting that combination ought not to be left to the grace of the general assembly.

The amendment I shall presently offer provides within the proposal itself the machinery by which this combination may be effected in the smaller counties of the state. I have taken counties of less than 40,000 and I have drafted an amendment that I think properly provides for the matter. I have sent it up to be read.

The amendment was read as follows:

Strike out all of section 7 after the period in line 19 and insert the following in lieu thereof:

"Whenever ten per cent of the number of the electors voting for governor at the next preceding election in any county, having less than forty thousand population as determined by the next preceding federal census, shall petition the county commissioners of any such county not less than ninety days before any general election for county offices, the commissioners shall submit to the electors of such county the question of combining the probate court with the court of common pleas and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question, vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined."

The PRESIDENT PRO TEM: The question is on the amendment of the member from Gallia.

Mr. NYE: I want to ask a question. Has it not been the policy of the Convention not to insert in the constitution the names of merely statutory officers? I wonder if the gentleman cannot find some way that he could not insert county commissioners, which are not constitutional officers?

The PRESIDENT PRO TEM: The question is on the amendment of the member from Gallia.

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is now on the amendment of the gentleman from Allen [Mr. HALFHILL].

The amendment was agreed to.

Mr. EBY: I offer an amendment.

The amendment was read as follows:

After the semi-colon in line 7 insert the following:

"any civil or criminal action of a general public nature, shall upon the filing of a petition signed by twelve per cent of the electors of the county in which such action is instituted, with the chief justice of the supreme court, the chief justice shall order the removal of such suit from the jurisdiction of the common pleas judges of county from said county to the county's common pleas court, which said petition shall designate;"

Mr. EBY: That language, as a member says, is not very elegant, because it was gotten up on the spur of the moment and sent out for copying, and some mistakes have been made. The object is this: We have certain places in the state where it would be impossible to get these cases of special public interest tried except before a judge who owes his election to a political machine. For instance, in New York several years ago, Governor Hughes said it was impossible to get some cases tried thoroughly before any judge who owed his election to Tammany Hall, and I have heard it repeatedly said that George B. Cox in the proceedings instituted against him before any judge down there could not have been convicted. Now this simply provides that where such condition obtains a reasonable number of the electors can file a petition before the chief justice and have the case removed to some other county. In other words, under this, twelve per cent of the electors of Hamilton county could have had those actions removed to the courts of Butler county, or over to Scioto county before Judge Blair, and given Cox a clear, clean bill of health or convicted him.

Mr. OKEY: I move that the amendment be laid on the table.

The motion was carried:

Mr. BROWN, of Highland: This proposal of the delegate from Allen [Mr. HALFHILL] seems to be a good thing. It was threshed out very thoroughly on the second reading and it was understood that the added expense by reason of the added number of judges might be compensated for by a reduction of the expenditures in the number of probate judges that will be taken out of office if this is carried. And, in view of that hope, that there would be a sufficient number of probate judges vacated to establish a solvent situation when it comes

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to the consideration, I think it is not a good policy to combine the counties that can take advantage of this proposal to those in which there are only a population of 40,000.

I think there are counties with 45,000 and 50,000 that may not have sufficient business for the two courts, and in case such a situation is found to be true, those that have a population of over 40,000 could not, under this proposal as amended by the gentleman from Gallia, avail themselves of the provision of this section. Therefore I offer this amendment.

The amendment was read as follows:

In line 19 strike out "40,000" and insert "60,000".

The PRESIDENT PRO TEM: The motion is out of order in the form in which it is presented. If you desire to offer an amendment to the amendment proposed by the delegate from Gallia, it will be necessary to reconsider the vote by which that was adopted and then amend it and adopt it again.

Mr. BROWN, of Highland: I will offer it as an amendment to the proposal as amended.

The amendment was agreed to.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 304 as amended as follows:

In line 19 change "county commissioners" to "judge of the court of common pleas" and in the same line change "commissioners" to "judge of the court of common pleas".

Mr. KNIGHT: The reason for that is because the county commissioner is not a constitutional officer.

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is "Shall the proposal pass"?

The yeas and nays were taken, and resulted—yeas 85, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Nye,
Antrim,	Harter, Huron,	Okey,
Baum,	Henderson,	Partington,
Beatty, Morrow,	Hoffman,	Peck,
Beyer,	Holtz,	Peters,
Bowdle,	Hoskins,	Pettit,
Brattain,	Johnson, Madison,	Pierce,
Brown, Highland,	Jones,	Price,
Brown, Pike,	Kehoe,	Read,
Campbell,	Keller,	Rockel,
Cody,	Kerr,	Roehm,
Collett,	King,	Shaffer,
Cordes,	Knight,	Shaw,
Crites,	Kramer,	Smith, Geauga,
Crosser,	Kunkel,	Stalter,
Cunningham,	Lambert,	Stamm,
Davio,	Leslie,	Stevens,
Donahey,	Longstreth,	Stillwell,
Dunlap,	Ludey,	Stokes,
Dwyer,	Malin,	Taggart,
Earnhart,	Marriott,	Tannehill,
Eby,	Marshall,	Thomas,
Fackler,	Matthews,	Ulmer,
Farrell,	Mauck,	Walker,
FitzSimons,	McClelland,	Watson,
Fluke,	Miller, Crawford,	Winn,
Hahn,	Moore,	Wise,
Halenkamp,	Norris,	Woods,
Halfhill,		

Those who voted in the negative are:

Colton,	Johnson, Williams,	Riley,
Doty,	Lampson,	Solether,
Dunn,	Leete,	Stewart,
Harris, Ashtabula,	Miller, Fairfield,	Tetlow.
Hursh,	Miller, Ottawa,	

So the proposal passed as follows:

Proposal No. 304.—Mr. Halfhill, to submit amendments to article IV, sections 3, 7, 12 and 15, of the constitution.—Judge of court of common pleas for each county.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE IV.

SEC. 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein.

SEC. 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per cent. of the number of the electors voting for governor at the next preceding election in any county, having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county offices, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question, vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined.

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years.

SEC. 15. Laws may be passed to increase or diminish the number of judges of the supreme

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court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided. The judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges, provided for herein, shall be elected at the general election in the year 1914.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. King rose to a question of privilege, and asked that his vote be recorded on Proposal No. 252, by Mr. Weybrecht. His name being called, Mr. King voted "aye."

MR. KING: I move that the rules be suspended and that Proposal No. 340 be taken up for the second reading.

The motion was carried.

Proposal No. 340—Mr. Taggart, was read the second time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 103, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Okey,
Antrim,	Harter, Huron,	Partington,
Baum,	Henderson,	Peck,
Beatty, Morrow,	Hoffman,	Peters,
Beyer,	Holtz,	Pettit,
Brattain,	Hursh,	Pierce,
Brown, Highland,	Johnson, Madison,	Price,
Brown, Pike,	Johnson, Williams,	Read,
Campbell,	Jones,	Riley,
Cody,	Kehoe,	Rockel,
Collett,	Keller,	Roehm,
Colton,	Kerr,	Rorick,
Cordes,	King,	Shaffer,
Crites,	Knight,	Shaw,
Crosser,	Kramer,	Smith, Geauga,
Cunningham,	Kunkel,	Smith, Hamilton,
Davio,	Lambert,	Solether,
Donahey,	Lampson,	Stalter,
Doty,	Leete,	Stamm,
Dunlap,	Leslie,	Stevens,
Dunn,	Longstreth,	Stewart,
Dwyer,	Ludey,	Stilwell,
Earnhart,	Malin,	Stokes,
Eby,	Marriott,	Taggart,
Elson,	Marshall,	Tannehill,
Fackler,	Matthews,	Tetlow,
Farrell,	Mauck,	Thomas,
FitzSimons,	McClelland,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Fairfield,	Walker,
Hahn,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Winn,
Halfhill,	Norris,	Wise,
Harbarger,	Nye,	Woods.
Harris, Ashtabula,		

So the proposal passed as follows:

Proposal No. 340—Mr. Taggart, to submit an amendment to Schedule No. 4.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

That the several amendments passed by this Convention or any of the same when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided in any of said amendments. And all laws then in force not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts at the time this amendment takes effect shall be heard and tried in the same manner and by the same procedure as is now authorized by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Proposal No. 249—Mr. Tannehill, was read the third time.

Mr. SMITH, of Hamilton: I offer an amendment.

The amendment was read as follows:

At the end of said proposal add the following:

"Candidates for all judicial officers of counties and candidates for members of the general assembly shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever."

Mr. TANNEHILL: This proposal is so easily understood that I think it needs no further comment.

Mr. SMITH, of Hamilton: The proposal is an excellent one, but it could be better. The members of this Convention were nominated and elected as provided in my amendment.

Mr. ULMER: I offer an amendment.

The amendment was read as follows:

At the end of line 16 add the following:

"All primary tickets shall be placed upon the same ballot".

Mr. ULMER: I take it for granted that every member of this Convention, and I think every citizen of Ohio, is in favor of the Australian ballot system. It protects the citizen. It keeps his vote secret. He does not have to expose his political affiliation when he goes to the polls and I think if that is a good thing at a regular election it is a good thing at a primary election. I think every man here will agree with me that this secrecy is one of the fundamental principles of government. It is just as important that this selection be one of the fundamental principles of government. It is just as important to select a man properly as to elect him. After this election is made you have no other choice. If you have a ticket made up of poor men it is simply a choice between three or four poor men. In the last primary I heard a great number of complaints of citizens because they had been asked, "What kind of a ballot do you want? Are you a republican or a democrat or a socialist?" I have seen citizens walk away from the booths saying it is an outrage to compel a free man to express his political affiliation. I say it is all wrong and

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I want as much secrecy in the primary as there is in the main election.

Mr. LAMPSON: Would you think it would be entirely fair to have the members of one party determine the nominees of the other party? That would certainly be done under your amendment.

Mr. ULMER: It makes no difference who nominates the men if the men are good men. If I am a democrat and there is a good man on the republican ticket I should have a right to help nominate him.

Mr. TANNEHILL: In regard to the amendment offered by the gentleman from Hamilton county I want to say that when my neighbors start a rough house and kill the family cat, I resist with all the power I have any disposition on their part to cast the carcass over into my back yard; and if I have any friends in this Convention, and I think I have, I hope they are going to side with me and not insist on the obsequies being held on my premises. In this proposal I have one of the most necessary reforms that will go out from this Convention. It is a matter that I have given a life study to and I know we have it in good shape. It will carry by a good big majority in the state and I do not believe in this trying to cover the whole field of reform at one sweep. I think we have in this proposal all the reform that we want at this time, and I hope the Convention will stay with me as on the second reading and put the proposal through just as it is. The amendment of the gentleman from Lucas entirely vitiates the proposal as it stands. It injects politics and will endanger the passage of the proposal.

Mr. SMITH, of Hamilton: What has happened over night to make you change so completely?

Mr. TANNEHILL: I am in favor of what you are proposing, but not to fasten it onto this. My proposal deals with primaries, but not with elections. I move that both amendments be tabled.

Mr. FACKLER: I ask for a division and I demand the yeas and nays.

Mr. PECK: I have been demanding recognition for five minutes.

The PRESIDENT PRO TEM: The gentleman from Morgan had the floor and I could not recognize any other gentleman.

Mr. PECK: That is the fourth or fifth time that this has been done.

The PRESIDENT PRO TEM: I beg your pardon, I have not done it at all. The question is on laying the amendment of the delegate from Hamilton on the table and the yeas and nays have been demanded.

Mr. ANDERSON: A point of order. The amendment as it reads is meaningless.

The PRESIDENT PRO TEM: The member may be stating a fact, but it is not a point of order. As a point of order it is overruled and the secretary will call the roll on the motion to table the amendment of the delegate from Hamilton [Mr. SMITH].

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 57, nays 49, as follows:

Those who voted in the affirmative are:

Anderson,	Holtz,	Partington,
Antrim,	Hoskins,	Peck,
Baum,	Hursh,	Peters,
Beatty, Morrow,	Kerr,	Pettit,
Brattain,	Knight,	Read,
Brown, Highland,	Kramer,	Rockel,
Brown, Pike,	Lampson,	Roehm,
Collett,	Longstreth,	Rorick,
Colton,	Ludey,	Shaw,
Donahey,	Marriott,	Smith, Geauga,
Dunlap,	Matthews,	Stevens,
Earnhart,	McClelland,	Stewart,
Eby,	Miller, Crawford,	Stokes,
Elson,	Miller, Fairfield,	Taggart,
Fluke,	Miller, Ottawa,	Tannehill,
Fox,	Moore,	Thomas,
Halfhill,	Norris,	Wagner,
Harris, Ashtabula,	Nye,	Watson,
Harris, Hamilton,	Okey,	Woods.

Those who voted in the negative are:

Beyer,	Halenkamp,	Marshall,
Bowdle,	Harbarger,	Pierce,
Campbell,	Harter, Huron,	Price,
Cassidy,	Henderson,	Riley,
Cody,	Hoffman,	Shaffer,
Cordes,	Johnson, Madison,	Smith, Hamilton,
Crites,	Johnson, Williams,	Solether,
Crosser,	Jones,	Stalter,
Cunningham,	Kehoe,	Stamm,
Davio,	Keller,	Stilwell,
Doty,	King,	Tetlow,
Dunn,	Kunkel,	Ulmer,
Dwyer,	Lambert,	Walker,
Fackler,	Leete,	Winn,
Farrell,	Leslie,	Wise,
FitzSimons,	Malin,	Mr. President.
Hahn,		

So the amendment offered by the delegate from Hamilton [Mr. SMITH] was laid on the table.

The PRESIDENT PRO TEM: The question is: "Shall the amendment of the delegate from Lucas [Mr. ULMER] be laid on the table?"

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 69, nays 27, as follows:

Those who voted in the affirmative are:

Anderson,	Hoskins,	Partington,
Antrim,	Hursh,	Peters,
Baum,	Johnson, Madison,	Pettit,
Beatty, Morrow,	Johnson, Williams,	Pierce,
Bowdle,	Jones,	Read,
Brattain,	Kehoe,	Rockel,
Brown, Highland,	Kerr,	Roehm,
Brown, Pike,	King,	Rorick,
Campbell,	Knight,	Shaw,
Collett,	Kramer,	Smith, Geauga,
Colton,	Lambert,	Solether,
Crites,	Lampson,	Stalter,
Cunningham,	Longstreth,	Stevens,
Dwyer,	Ludey,	Stewart,
Eby,	Marriott,	Stokes,
Elson,	Matthews,	Taggart,
Fluke,	McClelland,	Tannehill,
Fox,	Miller, Crawford,	Tetlow,
Halenkamp,	Miller, Fairfield,	Thomas,
Halfhill,	Miller, Ottawa,	Wagner,
Harris, Ashtabula,	Moore,	Walker,
Harris, Hamilton,	Nye,	Watson,
Holtz,	Okey,	Woods.

Those who voted in the negative are:

Beyer,	Davio,	Dunn,
Cody,	Donahey,	Farrell,
Cordes,	Doty,	FitzSimons,

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Hahn,	Malin,	Shaffer,
Harter, Huron,	Marshall,	Smith, Hamilton,
Hoffman,	Norris,	Stamm,
Keller,	Peck,	Stilwell,
Kunkel,	Price,	Ulmer,
Leslie,	Riley,	Wise.

So the motion to table was carried.

Mr. JOHNSON, of Williams: I offer an amendment.

The amendment was read as follows:

In line nine strike out "two" and insert "five".

Mr. JOHNSON, of Williams: The people in my county are unanimously opposed to this proposal. We have two towns of nearly four thousand each and one of over twenty-five hundred, and I do not think there is a single person in either place that is for this proposal. I hope the amendment will be adopted.

Mr. HARRIS, of Hamilton: I move that the amendment be tabled.

The motion was carried.

Mr. STOKES: I offer an amendment.

The amendment was read as follows:

Strike out the word "shall" in line 13 after the word "delegate" and insert "may."

The amendment was not agreed to.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

At the end of the proposal add Sec. 8, to Art. V.

Sec. 8. The candidates whose nominations for any office specified on the ballot have been duly made, and not withdrawn, shall be arranged in groups under the designations of the office for which such candidates have been nominated. To the name of each candidate shall be added his party or political designation in initials, as the same appears in the certificate of nomination or nomination papers.

The amendment was not agreed to.

Mr. PECK: I offer an amendment:

The amendment was read as follows:

In line 6 after the word "petition" insert "or otherwise".

Mr. PECK: I do not think it is wise to tie up this matter of primary election by any hard and fast constitutional rule, that can never be changed, and I want to put in words that will give the general assembly some way to change these matters if occasion requiring a change arises. All the wisdom is not in this room. I do not believe that any system of direct primaries is such a valuable thing as some people think, although it may be an improvement in some cases. I know of cases where the worst machines in this state are supported and run on direct primaries, and you cannot oust the gang, because they control the direct primaries. George B. Cox cannot be beaten in Cincinnati at a primary. Talk about direct primaries! They feed the machines right along because the machines can always get more people out to the primaries than anybody else can. Cox ordered all of his men to vote on a particular election one time and succeeded in bringing out twenty-two thousand votes when there was really no contest and only

one ticket, but he ordered his henchmen to turn out and get everybody out they could and they brought out twenty-two thousand votes, which was five times as many as anybody could bring out against him. The primary can be made a machine as well as any other sort of a machine. When you nominate men by direct primaries now the nominations are really made by a little clique meeting somewhere in a back room and selecting the men and then passing out the word that Smith and Jones are the men to be put on the ticket. That is the way it is done now.

Mr. TANNEHILL: I hope the Convention understands that these words vitiate everything that we are trying to get, and I move that the amendment be laid on the table.

On this motion the yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 45, nays 57, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Pierce,
Antrim,	Harris, Ashtabula,	Roehm,
Baum,	Holtz,	Shaffer,
Beatty, Morrow,	Hoskins,	Stevens,
Colton,	Kehoe,	Stewart,
Crites,	Knight,	Stilwell,
Crosser,	Kramer,	Taggart,
Donahey,	Lampson,	Tannehill,
Doty,	Longstreth,	Tetlow,
Dunn,	McClelland,	Thomas,
Earnhart,	Miller, Crawford,	Wagner,
Fackler,	Miller, Fairfield,	Walker,
Farrell,	Moore,	Watson,
Fluke,	Nye,	Winn,
Fox,	Okey,	Woods.

Those who voted in the negative are:

Beyer,	Harter, Huron,	Mauck,
Bowdle,	Henderson,	Miller, Ottawa,
Brattain,	Hoffman,	Norris,
Brown, Highland,	Hursh,	Partington,
Brown, Pike,	Johnson, Madison,	Peck,
Campbell,	Johnson, Williams,	Peters,
Cody,	Jones,	Pettit,
Collett,	Keller,	Price,
Cordes,	Kerr,	Read,
Cunningham,	King,	Riley,
Davio,	Kunkel,	Rockel,
Dunlap,	Lambert,	Rorick,
Dwyer,	Leete,	Shaw,
Eby,	Leslie,	Smith, Geauga,
Elson,	Ludey,	Smith, Hamilton,
FitzSimons,	Malin,	Solether,
Hahn,	Marriott,	Stalter,
Halenkamp,	Marshall,	Stamm,
Halfhill,	Matthews,	Ulmer.

So the motion to table was lost.

The PRESIDENT PRO TEM: The question is on the amendment offered by the gentleman from Hamilton [Mr. PECK].

Mr. ANDERSON: Let us be consistent in voting upon this Proposal No. 249. With the words "or otherwise" in it, it means nothing. Let us analyze it.

Mr. PECK: It won't hurt anybody.

Mr. ANDERSON: "Or otherwise" means anything that the legislature wants to do—any old thing. It has been said here, and with truth, that sometimes bosses control at a primary. That is the exception when they do. It is the exception when they do not through the convention. A convention spells boss rule. The candi-

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dates elected in a state convention are half made by the bosses and the object of this proposal was to let the people have some chance. Could Pennsylvania have ever thrown off the shackles of the bosses if it hadn't been for the primaries? They tried it for years and years and never succeeded.

Mr. MAUCK: Didn't Pennsylvania hold a state convention—

Mr. ANDERSON: Yes, but in the state convention they didn't dare disregard the primaries.

Mr. PECK: When was it that Pennsylvania threw off the bosses? I thought they had them as bad as ever.

Mr. ANDERSON: I am rather more familiar with Pennsylvania than you are. It is true they threw off a number of bosses and took on one or two bosses, but they have gotten in the habit now of getting rid of the bosses. They couldn't get rid of all because there were some bosses on each side, but they have learned, thank God, to get rid of bosses. If you are not in favor of this proposal with "or otherwise" out of it, vote against it. With those words in it, is absolutely worthless.

Mr. NYE: I do not care especially to speak on the subject of the amendment, but I do want to speak against the whole proposition. I believe that there ought to be in the nomination of officers consultation and conference between the best citizens of the community. You cannot have that in the proposal that was presented here because every individual can go forward and get his name put on the ticket. All he has to do is to say I nominate myself and he can get enough friends to sign the paper to put him on the ticket.

Mr. ANDERSON: Does not that give the people as much of an opportunity to pick any one candidate they please as it does letting a few of these alleged citizens pick them for them?

Mr. NYE: But there is no sort of a connection. Suppose you get ten men on a ticket; no one has a second choice as to who they will vote for, but if you have a convention of representative men from your county or your district or your state you can get together and have a conference and if you cannot get your first choice you can get your second choice. It seems to me you are putting this into the hands of the worst kind of bosses. This is bossism all of the time, but if you have a convention of the leading men of your community you can then get together and confer together and nominate good men. I do not know how it is in the cities, but I have lived in a rural district for more than forty years and we have always had good officers because the people got together and they talked the matters over and listened to objections and argument, and if they couldn't get their first choice they would take their second choice, and under this process that is proposed here you cannot have any second choice. You just vote indiscriminately. Ten men vote for one man, and ten for another, and ten for another, and eleven for another, and the one who gets the eleven votes out of the forty-one votes is nominated.

It seems to me that you are making a mistake in passing this. Read it through. How are you going to carry it out? I do not believe that you have read the proposal or considered it. I believe, as was said by the member from Auglaize [Mr. HOSKINS] last night, that the life of a country and of a state depends upon par-

ties, and if you cannot have parties you cannot be successful.

Mr. TANNEHILL: Gentlemen of the Convention: I want to ask you in all earnestness to at least vote down the Peck amendment when it comes up. Do not make a joke of the proposal. If you are like the gentleman who has just taken his seat, whom I honor, vote against the proposal. I have no objection to your voting against the proposal, but don't put in an amendment that makes a joke of the whole matter.

Mr. PECK: I do not think that my amendment makes a joke of this matter. It leaves the power plainly conferred by the constitution upon the general assembly to pass such laws as are necessary under the subject of primary elections. I think that is something more than a joke. It seems to me that that is a valuable thing if you want to have primary elections regulated by law, which is a matter of very doubtful propriety at any rate. All of us who are past middle age can remember the time when there was no such a thing as a primary under the law. We got together in a convention and had our ballot and the whole matter was voluntary. It was a meeting of free citizens attending to their public affairs, as they had a right to do, and not at the expense of the community or anybody's expense but their own. We believed that any set of men had a right to meet in any hall and discuss and determine what to do about public affairs and there was no constitutional convention or legislature that had a right to regulate that meeting. It was a thing that was guaranteed by the bill of rights. The people have a right to assemble together to freely discuss their affairs and here you propose to regulate. I say there has never been any propriety in these primary election laws, from the old Baber law down to the present time. They are frauds and humbugs and they have been going on from bad to worse, and this proposal if adopted would give the general assembly what, in my judgment, it never has had, constitutional power to regulate primary elections. I do not believe any general assembly has the right to interfere with the power of the people to come together and agree on whom they will support.

Certainly I did not intend to make any joke of this proposition. I intended it in dead earnest. I do not know how this went through on its second reading. I don't believe I was present. At any rate it had nearly a unanimous vote. But that does not affect me much. I am like the fellow was at the revival meeting. Once upon a time there was a fellow somewhat inebriated staggered into the back part of a church where there was a revival meeting going on, and he dropped down into a pew and went to sleep. After a while the minister got worked up and he was down in front of the platform walking back and forth and he said "All of you who believe in a hereafter and who want to go to Heaven stand to your feet." The congregation rose as one man. Then he requested them to sit down and he called for all who wanted to go in the opposite direction to rise. Just at that moment the inebriated individual awoke and he stumbled to his feet and said, "Mr. Chairman, I don't know just what this question here is that we are voting on, but I do know that you and I are in a very small minority."

I don't care anything about being in a minority if I

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think I am right and I believe I am right on this subject of primary elections. I have been thinking about it for years and I have never had any faith in them and the legislature should have a right to regulate them.

Mr. WATSON: I hope the amendment by my good friend Judge Peck will not prevail, as each one of us knows that it will destroy the efficacy of the proposal. I hope the proposal will go through as presented.

Mr. STEVENS: I am surprised at the statement that the member from Hamilton does not know how this proposal came to pass on the second reading. If you will turn to the journal of April 16 you will find that the name of the gentleman from Hamilton is recorded as voting for this proposal. That will probably give him some information as to how the proposal got through and there were one hundred votes for it and only two against it. If you don't like the proposal and want to beat it, vote against it fair and square, but don't kill it by amendment. Meet your enemies fair and square.

Mr. PECK: I have no enemies in this Convention. I vote on principles. I never vote for personal reasons.

Mr. WINN: I just want to say a word about the proposal. I have for a good many years hoped to see the day when elective officers of the state, district, county and municipality would all be chosen at primary elections. I believe that is the only fair way, and I have hoped, as many of us have, against hope that sometime the legislature would see fit to enact a statute by which all of those officers would be nominated at primaries. But the legislature has refused, as you know, time and again to make a provision through which senators might be nominated that way; so that we have this peculiar situation: We go to primaries to nominate members of the house of representatives but always go to a convention to nominate senators because there are always so many men in the senate who know they could not get back if they were to depend upon primaries.

Now I hope that this proposal will be adopted. I am not going to be a candidate for anything, but I want this proposal to be adopted nevertheless. If this amendment offered by the gentleman from Cincinnati [Mr. PECK] is adopted it means that the whole proposal is absolutely nothing.

Mr. STOKES: I move the previous question on the amendment of the gentleman from Hamilton and on the proposal itself.

The main question was ordered.

Mr. TANNEHILL: I demand the yeas and nays on the passage of the amendment offered by Judge Peck, of Cincinnati.

The yeas and nays were taken, and resulted—yeas 34, nays 68, as follows:

Those who voted in the affirmative are:

Bowdle,	Hahn,	Malin,
Brattain,	Halfhill,	Marshall,
Brown, Pike,	Hoffman,	Matthews,
Campbell,	Johnson, Madison,	Mauck,
Cody,	Johnson, Williams,	Miller, Ottawa,
Collett,	Keller,	Norris,
Cordes,	Kerr,	Nye,
Cunningham,	King,	Peck,
Dwyer,	Ludey,	Price,

Read,	Shaw,	Stalter,
Rockel,	Smith, Geauga,	Stamm,
Rorick,		

Those who voted in the negative are:

Anderson,	Harris, Ashtabula,	Peters,
Antrim,	Harris, Hamilton,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beatty, Morrow,	Henderson,	Roehm,
Beyer,	Holtz,	Shaffer,
Brown, Highland,	Hoskins,	Smith, Hamilton,
Colton,	Hursh,	Solether,
Crites,	Kehoe,	Stevens,
Crosser,	Knight,	Stewart,
Davio,	Kramer,	Stilwell,
Donahay,	Kunkel,	Stokes,
Doty,	Lambert,	Taggart,
Dunn,	Lampson,	Tannehill,
Earnhart,	Leete,	Tetlow,
Eby,	Leslie,	Thomas,
Elson,	Longstreth,	Ulmer,
Fackler,	Marriott,	Wagner,
Farrell,	McClelland,	Walker,
FitzSimons,	Miller, Crawford,	Watson,
Fluke,	Miller, Fairfield,	Winn,
Fox,	Moore,	Wise,
Halenkamp,	Okey,	Woods,
Harbarger,	Partington,	

So the amendment was not agreed to.

The PRESIDENT PRO TEM: The question now is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 78, nays 23, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Peters,
Antrim,	Harris, Ashtabula,	Pettit,
Baum,	Harris, Hamilton,	Pierce,
Beatty, Morrow,	Harter, Huron,	Read,
Beyer,	Henderson,	Rockel,
Bowdle,	Hoffman,	Roehm,
Brown, Highland,	Holtz,	Shaffer,
Brown, Pike,	Hoskins,	Smith, Geauga,
Colton,	Hursh,	Smith, Hamilton,
Cordes,	Jones,	Solether,
Crites,	Kehoe,	Stamm,
Crosser,	King,	Stevens,
Davio,	Knight,	Stewart,
Donahay,	Kramer,	Stilwell,
Doty,	Kunkel,	Stokes,
Dunn,	Lambert,	Taggart,
Earnhart,	Lampson,	Tannehill,
Elson,	Leete,	Tetlow,
Fackler,	Leslie,	Thomas,
Farrell,	Longstreth,	Ulmer,
FitzSimons,	McClelland,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Moore,	Winn,
Halenkamp,	Okey,	Wise,
Halfhill,	Partington,	Woods,

Those who voted in the negative are:

Brattain,	Keller,	Norris,
Campbell,	Ludey,	Nye,
Cody,	Malin,	Peck,
Collett,	Marriott,	Price,
Cunningham,	Marshall,	Riley,
Dunlap,	Matthews,	Rorick,
Dwyer,	Mauck,	Shaw,
Johnson, Williams,	Miller, Ottawa,	

So the proposal passed as follows:

Proposal No. 249—Mr. Tannehill, to submit an amendment by adding section 7, to article V, of the constitution.—Primary elections.

Resolved, by the Constitutional Convention of

Primary Elections—Organization of Board of Education.

the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE V.

SEC. 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

Mr. MARRIOTT: When Proposal No. 329—Mr. Knight, was before the Convention for final passage, I voted against it and the proposal failed. Since that time I have been reliably advised that the American Book Trust has been for weeks lobbying against this proposal. There must be something good in it if the American Book Trust opposes it. I have known a little of the blighting effects of that monopoly upon the people of this state and I move to reconsider the vote by which this Proposal No. 329 was lost.

Mr. LAMPSON: I now move that we recess until eight o'clock tonight.

The motion to recess was carried.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president pro tem [Mr. Dory].

The PRESIDENT PRO TEM: The question is on the motion to reconsider the vote whereby Proposal No. 329 was lost.

Mr. MARRIOTT: I demand a call of the Convention.

The PRESIDENT PRO TEM: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Beatty, Wood,	FitzSimons,	Redington,
Bowdle,	Hahn,	Rorick,
Brown, Lucas,	Henderson,	Shaffer,
Brown, Pike,	Kilpatrick,	Stamm,
DeFrees,	Leslie,	Tallman,
Dwyer,	Matthews,	Weybrecht,
Evans,	Miller, Fairfield,	Worthington,
Farnsworth,	Partington,	Mr. President.
Fess,	Peck,	

The president pro tem announced that ninety-three members had answered to their names.

The PRESIDENT PRO TEM: The sergeant-at-arms will dispatch his messengers for the absentees.

The sergeant-at-arms appeared at the bar of the Convention with Mr. Partington and Mr. Shaffer.

Their names being called they answered "here."

Mr. TAGGART: I move that all further proceedings under the call be dispensed with.

The motion was carried.

The PRESIDENT PRO TEM: The question is on the motion of the delegate from Delaware [Mr. MARRIOTT] to reconsider the vote by which Proposal No. 329 was lost.

Mr. KNIGHT: Personally I regret extremely that the motion to reconsider has brought into discussion a factor which, as one interested in this proposal, I had purposely avoided introducing. Sometime before this amendment was proposed and offered in this Convention I had been aware of the fact that there were three kinds of opposition to it that might be looked for. I was notified by some of my colleagues and by gentlemen of long acquaintance upon the street, with whom I had talked over the proposal, that as soon as it was introduced it would receive the active opposition of a very large concern interested in the publication of public school books. No sooner was the proposal introduced than that statement seemed to be verified. There have been three kinds of opposition. One entirely honest opposition, as I am glad to believe, from those interested in the rural schools in the state of Ohio, and that opposition I believe has been entirely removed by the amendment, which was offered by myself and accepted and adopted this afternoon, confining the referendum vote to city school districts alone and leaving the rural districts entirely untouched.

The second form of opposition came from an unexpected quarter because it was farthest from the minds of any that it would be involved here and that seemed to hint at suppressing or crippling the good work or life or activity of two old colleges in the state of Ohio, the Ohio University and the Miami University. The proposition has nothing of that sort in view and that opposition may easily be allayed if there is any longer an idea that the proposal has any such purpose, by the acceptance of the amendment of the gentleman from Butler. I cannot speak for anyone else, but I am so interested in two features of this proposal that I am willing, for the sake of having those two main features adopted, so far as I am personally concerned, to have the amendment adopted striking out the words "an educational," making it applicable to the public school system.

The third opposition has come from those who feared that the proposal would in some way take out of the hands of all school districts and centralize in the state control of every school and the management of the school system of the state of Ohio. As to the last I have given a most careful examination of the proposal and compared it with similar proposals in other states that are now upon the statute books, and I am unable to find anything in the proposal which will warrant, in the least degree, any fear on that ground. If there be anything in it that does it, I shall be extremely glad to have it pointed out so that I can take away that feature. What this tries to provide for is what we have never had—a head of the public school system, a supervisory

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power, and without doubt control in the lawmaking power over the educational public school system as a unit.

The third opposition came also—and I can see why it came—from a large body of citizens of this state who are interested not only in the public schools, but in the private parochial schools, and the objection from that source was relieved by the acceptance of the amendment of the delegate from Montgomery, which makes it clear that this proposal touches no schools except those supported by public funds. The state has been circularized from one end to another by circulars which are absolutely untrue as to the contents of this proposal. These circulars have stated that the adoption of this proposal would place in the hands of each school district in the state the power to defeat the compulsory education law and would leave to each district to decide whether we would have the schools a minimum length of time, and it would conflict with the state requirement as to the minimum wage scale for teachers, and all that. That statement is false from start to finish. It was furnished to the newspapers of the state to be sent over the state, and but for the kindness of one newspaper man it would not have come to my notice until it was spread over the state. There is not now and never has been in the proposal a thing to warrant any such statement. I know, and other members of this Convention know, that for the last four weeks there have been constantly in the galleries and in the lobbies of this building and in the lobby on this floor those who have been working against this proposal, and I might say incidentally that among those is at least one person who within the last year has been actively working against the initiative and referendum in the state of Ohio and still is. This does not bear on this proposal, but it is information worth while. I regret that this was brought in here. Personally I have no idea that any gentleman who voted against the proposal this afternoon was influenced thereto by any such matter. I have learned that every one of my hundred and eighteen colleagues is here doing what he feels individually to be best for the state of Ohio, and I am very certain that the gentleman who moved the reconsideration has no such feeling with reference to any of our colleagues; but facts are facts, and I feel that no one who voted against the proposal this afternoon should feel that he is under an imputation personally. I desire that this proposal, if it is reconsidered, shall stand or fall upon its own merits, but I do believe that we ought to know, since the subject was raised here these facts. I think that the proposal is necessary for two reasons:

1. Because the municipal home rule proposal which we have passed is so broad that there is a possibility that unless this is adopted the city of Columbus might have power to do a good deal more in the way of control of its educational system than is desirable it should have. It would be inconsistent with the unified public school system of the state. As I stated on second reading, I was convinced more than ever before of the necessity of the first part of the proposal and the second part deals solely with the referendum, the right of the cities to decide the size of their school board. I hope the motion to reconsider will be adopted and if adopted, as I have already stated, so far as I am personally concerned, the

amendment of the gentleman from Butler will be satisfactory to me.

Mr. HOSKINS: I have been in doubt about this proposal and I have been opposed to it. Nobody has put up any argument to me, but I should like to know the specific things which the educators have in view in the public school system.

Mr. KNIGHT: There are no present specific changes of any kind, but simply unquestioned authority on the part of the lawmaking power of the state to make such changes from time to time, under state control and under state centralized legislation, as the advancing of the state education and the demands of education in the state require. I have absolutely nothing up my sleeve.

Mr. HOSKINS: I did not insinuate you had anything up your sleeve. I supposed you had an idea of what you wanted to do.

Mr. KNIGHT: Personally I had an idea that we need in this state two things which we have never had. The best proposal that has been adopted by this Convention takes care of one of those, namely, it does provide for a head supervisor of the entire public school system and practically compels the legislature to provide for that. This one which we are now considering provides for all authority to the legislature to enact such legislation as shall under his guidance and direction make that school a real system. Now I speak as one who has come in contact with education, and while I am interested in higher education I am not entirely a university man. My entire life and education has been in the public schools supported by public taxation. All of my teaching has been there. While it is admitted that we have in Ohio the making of a good school system we have lacked that recognition of it outside of the state which has come from the fact that we have not a head of it as more than half of the states of the Union have provided in their constitutions and that the legislature has never had the power to do those things necessary, nor has the school commissioner, because he is a statutory officer and might be legislated out of office at a moment's notice at any time he urged anything contrary to the desires of the legislature.

Mr. HOSKINS: Is it the intention of the proposal to confer any power of any sort to do anything except the management of public schools, and are all colleges and universities excluded from the operation of this proposal?

Mr. KNIGHT: What do you mean by all colleges?

Mr. HOSKINS: Does this proposal affect Miami or Athens?

Mr. KNIGHT: Not with the amendment of the gentleman from Butler, which, so far as I am personally concerned, I am willing to put in.

Mr. HOSKINS: It would not have in contemplation the creation of power to create a state board of regents to have supervision?

Mr. KNIGHT: This proposal does not give it unless it exists now.

Mr. HOSKINS: Do you think there is anything in this proposal that does not already exist in the legislature?

Mr. KNIGHT: In view of what is in the home rule proposal, I will have to answer this way: I feel that this proposal is necessary to make sure that the power hith-

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erto exercised by the general assembly may not be split up into pieces among the various municipalities.

Mr. PIERCE: You have already heard the statement of the gentleman from Franklin [Mr. KNIGHT] and, so far as I am personally concerned, I trust the Convention will look at it in the same light. I would like to see the reconsideration ordered and thereupon I shall offer my amendment.

Mr. WINN: I shall vote against this proposal and I want two or three minutes to tell why. I shall vote against it because there is not a single thing that can be accomplished under this proposal that cannot be accomplished under existing constitutional provision. I forget what section it is, but one provision of the bill of rights—I think it is the seventh section—enjoins upon the general assembly of the state of Ohio the duty of establishing public schools. Section 2 of article VI provides in general terms that the general assembly shall make provision by taxation or otherwise for the establishment of a system of public education. Now go back with me to the old case of State vs. Cincinnati, decided in 19 O. S., away back before the colored men were enfranchised. Under existing provisions of the constitution Cincinnati provided for a special district to be presided over by a board of education of colored people to be chosen at the ballot box by the colored people. That was the case that first made Judge Foraker famous or infamous, whichever it may have been. It was maintained that inasmuch as the colored men were not citizens they could not be members of the board of education, yet the supreme court said if the legislature saw fit to create that special district of colored people, and to provide that the colored people should choose their own officers, they had a right under the constitution to do it. Just turn to one case decided by our supreme court. It is in the case of the State vs. McCann:

The system of public education in Ohio is the creature of the constitution and statutory laws of the state. * * * It is left to the discretion of the general assembly in the exercise of the general legislative power conferred upon it [by article II, section 1] to determine what laws are suitable to secure the organization and management of the contemplated system of common schools without expressed restriction except that no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this state.

So you see the general assembly is left to do as it sees fit to do except that it cannot require any religious tests. Now, what can the legislature do under this Proposal No. 329 that cannot be done under the present constitution?

Mr. KNIGHT: Was it not the gentleman from Defiance [Mr. WINN] who introduced—and subsequently drafted an amendment—a complete substitute for section 7 of the municipal home rule proposal in place of the one drafted by the committee?

Mr. WINN: Yes, I did.

Mr. KNIGHT: That was adopted?

Mr. WINN: Yes, it was adopted.

Mr. KNIGHT: And it is because of that amendment so drafted that it becomes now questionable

whether the power he has referred to in the constitution of 1851 is still such as to keep the cities from punching holes in the state educational system.

Mr. WINN: And do you claim that this Proposal No. 329 was drafted with reference to that amendment? I think the proposal was introduced long before the amendment.

Mr. KNIGHT: At the time it was on second reading was it not expressly stated that an additional strong reason for this was the adoption in the forenoon of the same day, at the instance of the gentleman from Defiance, of an amendment or substitute?

Mr. WINN: That may have been stated. I would not undertake to say what was said that day by the gentleman from Franklin. He may have said it on the floor or in the hall or in the smoking room.

But let us read this. I regard it as just that much reading matter of no importance. No person has asked me to vote for it or against it and outside of what I read in the paper, which you all read and which was to the effect that there was a movement on foot to defeat the proposal, I know nothing about the opposition. I read that in the paper the day after we voted on it on second reading.

"Provision shall be made by law for the organization, administration and control of the public schools and educational system of the state." This is already in the constitution. Now, there is just this much in the proposal that has some merit in it: "Provided, that each school district shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education."

But that also can be done now under existing provisions of the constitution.

Mr. STALTER: I desire to ask the member from Franklin [Mr. KNIGHT] if there is any difference between the language used in the present constitution which provides for an efficient system of common schools, and the language used in the proposal for the control of the public schools and educational system of the state. And then, inasmuch as the question has been raised about the American Book Company, I believe the information ought to be made known to this body whether the American Book Company has a registered lobbyist here, and if the company has not it would assist me to learn if the party making the charge about the American Book Company is registered. That would give me information.

Mr. ELSON: May I at this time make a reference to the statement of Mr. Stalter?

The PRESIDENT PRO TEM: The gentleman has five minutes, if he can do it in that time.

Mr. ELSON: When I heard the gentleman from Delaware [Mr. MARRIOTT] I felt absolutely sure, as I still feel, that he was entirely sincere in what he said, but that he was altogether mistaken. Soon after that vote was taken this afternoon the air was full of rumors about the American Book Company and it was hinted that a certain person was lobbying for the American Book Company. I knew who was meant and I felt I was well enough acquainted to go to headquarters and make inquiries and I did so. I think it is perfectly proper for me to say about whom I am talking, Mrs.

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Mary Lee. I went to Mrs. Lee and I said, "Answer me this question directly and frankly: 'Are you employed by the American Book Company?'" She said, "On my honor I am not, and I never was for a single hour of my life. I have never received a dollar from that company." I said, "Whom do you represent as lobbyist here?" And she took two documents from her pockets and proved to me—I have them both here—whom she represented. One is signed by the master and secretary of the grange at Westerville, showing that she is representing them before the Fourth Constitutional Convention of Ohio. The other is from the Ohio School Improvement Federation, which she has labored for for several years and is laboring for now. I think those are the institutions she represents. I have not the slightest doubt of her statements. She is a woman of absolutely irreproachable and unimpeachable character. She is a public-spirited woman who takes an interest in public questions, and would that we had thousands of other such women in Ohio as Mrs. Mary Lee. She was also accused some time ago of representing the Chamber of Commerce—the Ohio State Board of Commerce. I am absolutely sure that she never did anything of the sort. She opposed the initiative and referendum proposal and had as much right to do that as any one else had to be for it. She did it because she is in sympathy with a large class of farmers who oppose the initiative and referendum. I think it is due to the character of this excellent woman to say on the floor of this Convention what I have said, for if any one thinks she has done anything in the nature of work for the Chamber of Commerce or the American Book Company this explanation refutes it.

Now Professor Knight has agreed to take out the two words mentioned in the Pierce amendment. I have no personal reason to object to the reconsideration of this proposal, and if I do not vote for it in the end it will be because I believe with Mr. Winn, of Defiance, that it is covered entirely now by present provision. It seems to me a proposal providing for a school superintendent with powers to be defined by law would cover the whole ground, and that as far as the number of members of school boards in cities is concerned it seems to me that ought to be taken care of in the home rule proposition.

Mr. MARRIOTT: Gentlemen of the Convention: I think I should state, in justice to myself, my reasons for having made the motion to reconsider, and in corroboration of the statements just made by the gentleman from Athens [Mr. ELSON] I would state that I do not know if I ever saw a lobbyist. I would not know one if I was to see him. Information came to me after the vote was had upon Professor Knight's proposal that the American Book Company was interested in its defeat and that it had a lobbyist here lobbying against the adoption of that proposal. Members of this Convention in whom I had and have the most implicit confidence—as I have in every member of this Convention—gave me that information. Among other things that were stated it was said that the American Book Company had a lobbyist here in the person of a lady whose name has been mentioned by Professor Elson. I had never met this lady. She has never spoken to me nor had anyone else, before the vote was taken, either for or against this proposal. I had the pleasure of meeting that lady as I left the

hall and I asked her the same question that Professor Elson has just said that he asked her. I am very sure if she were here she would give her consent that I state that she disclaimed representing the American Book Company and handed me a circular letter which had been sent out over the state, and probably to numerous delegates to this Convention, in opposition to the Knight proposal. She stated that she was interested in its defeat and had spoken to members of this Convention. I have no reason in the world to doubt the statement of the lady when she stated that she was not in the employ of the American Book Company but with the information that came to me I was unwilling to go upon record as voting for this proposal with the word going out that the American Book Company had employed a lobbyist here to lobby against this proposal, and I therefore made the motion to reconsider. I hope very much the matter will be reconsidered and that we may have another vote upon the proposal.

Mr. PARTINGTON: Members of the Convention: When I talked this afternoon I stated then that if the purpose and object of this proposal was to make for Ohio a unified system of public schools and place at its head the very best and brightest and most progressive school man that can be found anywhere in Ohio or outside, I would not object to it. After the amendment had been made this evening you will notice that the proponent has personally said that he is willing that the words "and educational" shall be taken out. That was my objection this afternoon and I want to say to you now that I have served on the educational committee in the legislature and every time that any system of schools was attempted to be worked out by the educational committee in the legislature we had this contest on between the Ohio State University and the other universities of the state. Now, if we are going to have a unified system of education, I ask you, when you reconsider this vote and when the question is before you again, if you can have a unified system of education in Ohio if Miami is absolutely independent and has a board of its own, if the same thing is true of Athens and with the Ohio State University and if it will be true of the normal schools? If these words are taken out those are outside of the unified system of education in Ohio. I state this not to injure the educational institutions of Ohio. I am in favor of them and they ought to be under the system if Ohio is to have a system of education just as well as any schools in the state of Ohio. They want to be independent. The gentleman from Athens [Mr. ELSON] knows that his opposition will cease if this institution can remain independent and run its own affairs as its own board sees fit. That is the question before the Convention tonight, and I say to you now, and I repeat, if Ohio wants to build up a system of public schools of which we and the people of Ohio can be proud, we cannot have half a dozen different boards; we must have one. Nobody from whatever source has any influence with me on this question. No American School Book Company or its agents would swerve me one tittle from my own purpose. I am not wishing to cripple or interfere with in any way Miami or Athens or any other school in the state, but this question is simply, Shall Ohio have a system of public schools with some individual at the head with an office at the

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state house at Columbus, or will we have half a dozen heads? That is the question, whether we shall have one system or half a dozen.

Mr. HURSH: I just want to say a word in conjunction with what the gentleman from Athens [Mr. ELSON] said. It was said that there was a lobbyist before this Convention for the Grange. I belong to four granges and no person who represents the Grange ought to leave the impression that the Grange is against the initiative and referendum. I am sure that the great majority of the granges in Ohio are in favor of the initiative and referendum.

The motion to reconsider was carried.

The PRESIDENT PRO TEM: The question now is, "Shall the proposal pass?"

Mr. PIERCE: I offer an amendment to strike out the words "and educational".

The PRESIDENT PRO TEM: The only way to do that is to move to reconsider the vote by which that amendment was lost.

Mr. PIERCE: I make that motion.

The motion to reconsider was carried.

The PRESIDENT PRO TEM: The question is now on the amendment, which reads, "In line 6 strike out the words 'and educational'."

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is now on the passage of the proposal.

Mr. HOSKINS: If we had a resolution prepared we would introduce it now to recall you if you do not stop running this Convention too fast.

* The PRESIDENT PRO TEM: The point of order is well taken.

Mr. HOSKINS: This proposition is in much better shape than it was before this amendment was consented to. I was opposed to the proposition, and, with the gentleman from Defiance, I yet fail to see any necessity for it. But there is one word of protest I want to utter. I do not like to hear charges that sinister influences are at work in this Convention and that some awful crime against the common people is about to be committed by some poor lone woman on a hundred and nineteen able-bodied men and that some poor woman from somewhere has made her appearance here for the purpose of influencing the gentlemen from Cuyahoga and Ashtabula and all the other provinces of the northeastern part of the state. It is unbecoming to even make such a charge on the floor of the Constitutional Convention. No one has ever approached me upon this proposition. I do not think that I am any better than any other member of the Convention.

DELEGATES: Agreed.

The PRESIDENT PRO TEM: The Convention will be in order and not interrupt the member.

Mr. HOSKINS: I am very glad to have this matter cleared up. I do not like to have a charge made at any time. I will tell you what I am afraid of in the proposal and if the proposal has been cleared up so that it relates only to unification of the public schools, I have no objection to it, but I do want to say to you that there has been a persistent effort in the state of Ohio for ten years past on the part of certain educational forces of the state to crush out the life of the weaker and smaller

colleges in the interest of some larger colleges, and they have been laying their grip upon the life and vitals of some of the best educational institutions of the state, and some of the best educational institutions of the state are right now up against the power and influence of a certain college that would choke out their lives. And, when they come to provide the public educational system of the state, I fear that it will extend to the appointment of a board of regents or something of that sort who would have the supervision of the college affairs of this state and the power to grant degrees and the power to describe conditions on which degrees should be granted by different colleges. I want to say to you that I am a believer in the small educational institutions, in the diversified education that brings it nearer to the doors of the people, and I do not want to see anything adopted by this Convention that would militate against that, and that is the reason why I have looked with suspicion on this proposition and the reason why I failed to vote for it when it was up for passage. I have no objection as long as it relates to the unification of the public schools of the state.

As I say, I have been at a loss to see what purpose could be accomplished by the provision of the proposal contained in the first two lines, and not being able to see what purpose could be accomplished except the one I have mentioned, I have been disposed to be against it.

It is a fundamental proposition in constitutional law that the legislature has all legislative power that is not denied it. Now what legislative power has it on the school question under the present constitution?

Another fundamental principle is that if any constitutional provision is to be effective with reference to legislative power it must do one of two things: It must either restrict or deny power or it must regulate or control already existing power.

Now let us see what the present power is. The present power is unqualified except in one respect. There is one thing enjoined upon the legislative power now with reference to the public schools and that is solely to raise enough revenue to provide for those schools. In every other respect the legislative power over schools now is absolute and complete. What can be the effect of this proposed amendment? It is not a grant of power. It does not curtail power and it does not deny the power to act upon any subject, but it is solely an attempt to restrain the exercise of power, to guide or control the exercise of power. Now, the query with me was, What is to be the effect? In what way is it to be guided or controlled? In what way is it to be exercised? The language of this proposal is, "Provision shall be made by law for the organization, administration and control of the public school system of the state." It therefore follows, this being not a denial of power, that it is a simple provision prescribing the manner in which the power shall be exercised. Not just as with the taxation question. The power of the legislature is complete over taxation now with the provision that laws shall be passed levying, etc. That is simply a regulation of the manner of the exercise of that power. Applying that principle to this proposal, it amounts to a restriction of the manner in which the power may be exercised. It therefore follows that legislation now can be enacted and restricted to what is herein provided. What would that

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be? Provide for the organization and control of the public school system. Control by whom—by what? If by some central power, what central power? Controlled by this new constitutional officer created by this other provision referred to.

Mr. ELSON: I want to make an answer to a statement by Mr. Partington. He seems to be greatly distrustful from the fact that the universities are not dependent upon one another. Is the work that they are doing coordinate and equal work? Is there any possibility of their being dependent on one another? Are our high schools dependent upon one another?

Mr. ROEHM: I move the previous question on this matter.

The main question was ordered.

The PRESIDENT PRO TEM: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 71, nays 26, as follows:

Those who voted in the affirmative are:

Anderson,	Henderson,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beyer,	Hoskins,	Pierce,
Bowdle,	Hursh,	Read,
Cassidy,	Johnson, Madison,	Riley,
Cody,	Kehoe,	Rockel,
Colton,	Kerr,	Roehm,
Crosser,	King,	Shaffer,
Davio,	Knight,	Smith, Geauga,
Donahey,	Kramer,	Smith, Hamilton,
Doty,	Lambert,	Solether,
Dunn,	Lampson,	Stamm,
Earnhart,	Leete,	Stilwell,
Fackler,	Leslie,	Stokes,
Farrell,	Marriott,	Taggart,
FitzSimons,	Marshall,	Tannehill,
Fluke,	McClelland,	Tetlow,
Fox,	Miller, Crawford,	Thomas,
Hahn,	Moore,	Ulmer,
Halenkamp,	Norris,	Wagner,
Halfhill,	Nye,	Walker,
Harbarger,	Okey,	Wise,
Harris, Hamilton,	Partington,	Woods.
Harter, Huron,	Peck,	

Those who voted in the negative are:

Baum,	Elson,	Miller, Ottawa,
Brattain,	Jones,	Price,
Brown, Highland,	Keller,	Rorick,
Brown, Pike,	Kunkel,	Shaw,
Collett,	Longstreth,	Stevens,
Crites,	Ludey,	Stewart,
Dunlap,	Malin,	Watson,
Dwyer,	Mauck,	Winn.
Eby,	Miller, Fairfield,	

So the proposal passed as follows:

Proposal No. 329—Mr. Knight, to submit an amendment by adding section 3 to article VI, of the constitution.—Organization of boards of education.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE VI.

SEC. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds; provided, that each school district embraced wholly or in part within any city

shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. KNIGHT: There was a motion passed the other day that all proposals amended be referred to the committee on Arrangement and Phraseology. I now move that all proposals be referred to that committee in order that they can bring in the grand resolution at the end

The motion was carried.

Mr. HALFHILL: I move that one thousand copies of Proposal No. 304 as passed be printed.

The motion was carried.

Mr. PECK: I desire leave to call attention of the Convention to the matter of the invitation from Cincinnati. It is about time that we should make answer. If we are going down there Saturday they ought to know it.

However, the president suggests that we wait until we are through with this initiative and referendum proposal and I will defer.

Mr. CROSSER: I submit the following report:

The report was read as follows:

The special committee to which was referred Proposal No. 2—Mr. Crosser, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 17 strike out the word "twelve" and in lieu thereof insert "ten".

Strike out lines 28 to 50 inclusive and in lieu thereof insert the following:

"SECTION 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form it shall be subject to the referendum. If said proposed law shall not be passed, or if it shall be passed in an amended form, or if no action be taken thereon, within four months from the time it is received by the general assembly, the same shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which petition must be filed with the secretary of state within ninety days after such proposed law shall have been rejected by the general assembly or after the expiration of such term of four months in the event no action has been taken thereon or after the law

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as passed by the general assembly shall have been filed by the governor in the office of such secretary. Such proposed law shall be submitted in the form demanded by such supplementary petition which shall be either in the form as first petitioned for or after there shall have been incorporated therein any amendment or amendments thereto introduced in the general assembly. In the event that a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect, as herein provided, in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors."

In line 52 strike out "in the case of proposed laws" and insert period after "petition".

In line 53 strike out words "or in case of proposed amendments".

In line 107 after "initiative" insert ", supplementary".

In line 110 after "initiative" insert ", supplementary".

In line 131 after "initiative" insert "and supplementary".

In line 135 after "initiative" insert ", supplementary".

In line 149 strike out all after the comma (,).

In line 150 insert after "any" the word "proposed".

In the same line strike out "initiative" and in lieu thereof insert "supplementary".

In line 164 strike out all after the period (,).

Strike out all of lines 165, 166, 167, 168, 169, 170, 171, 172 and to and including the period in 173.

In line 173 after "initiative" insert the words "and supplementary".

Strike out all of lines 53, 54 and 55 up to and including the period.

The committee further recommends that all pending amendments be indefinitely postponed.

Mr. CROSSER: Mr. President and Gentlemen of the Convention: The committee's report simply carries into effect that which the president suggested as a good compromise this morning. Of course, it is unnecessary for me to say it is not entirely pleasing to me. At the same time I presume it is equally as good or better than what was there before.

The only thing that needs explaining is in the solid type on the first page. The other amendments were to take care of the changes made by that. The provision for competing measures had to be cut out. I suppose in strict justice I ought to say that Mr. Cassidy could do more toward answering questions than I can.

Mr. CASSIDY: The object of the committee was to get rid, if possible, of the form of ballot which gave us so much trouble this morning. In order to do that we had to remodel entirely section 4, lines 28 to 50, inclusive. The committee struck out entirely the indirect initiative on constitutional amendments. That goes out entirely. We have recommended in place of that the di-

rect initiative on constitutional amendments, reducing the percentage on direct initiative from twelve to ten. That is the change made in line seventeen. We suggest that "twelve" be stricken out and "ten" be inserted, reducing it two per cent on the direct initiative on constitutional amendments.

With regard to conditions for legislation, in the original proposition as passed on second reading, there was the indirect initiative on constitutional amendments on eight per cent. Striking that out as we did, we recommend to reduce the direct per cent from twelve to ten. With regard to petitions to be filed to secure legislation, we applied, to distinguish all of the way through from initiated petitions, what we call supplemental petitions or referendum petitions. This suggestion of the committee would require a petition signed by three per cent of the electors of the state. This percentage must be distributed over the state in the different counties just the same as the percentage required in the original proposal. When the petition filed by three per cent of the electors is presented to the secretary of state or filed with him ten days before the opening session of a general assembly, he transmits the proposed bill so petitioned for to the general assembly just as in the former proposal. The general assembly can either fail to take any action on it, amend it and pass it in its amended form or pass it just as proposed. If the general assembly enacts the proposal as asked for, that is an end of it all, unless six per cent ask for a referendum under the referendum section, which is left intact, just as it was.

Mr. BROWN, of Highland: After that law is passed according to the initiative petition, then six per cent refers it?

Mr. CASSIDY: Yes.

Mr. BROWN, of Highland: The three per cent that has already been used, does that count in the six per cent?

The PRESIDENT: Go on with your explanation.

Mr. CASSIDY: Let me continue and I will come back to that point a little bit later. When a bill has been petitioned for by three per cent of the electorate the general assembly can either pass it as it was proposed or in an amended form, or can reject it or take no action on it. If it is passed as proposed or petitioned for, that is the end of the whole matter, unless action is taken under the referendum section, which is left intact as it was in the original proposal.

If they amend it and pass it in the amended form then it becomes a law unless an additional three per cent — not the same petitioners in the first petition, but an additional three per cent, making it altogether six per cent. Unless this additional three per cent file a petition within ninety days afterward for an election, asking to have that proposed law, either in the form in which it was petitioned originally or containing any amendment which may have been offered thereto while in the general assembly, submitted in that form at the next regular or general election. If such petition is filed within ninety days after the bill has been passed or filed with the secretary of state, then the bill as petitioned for in that supplementary petition is submitted to the voters to be voted on. If a majority vote against it then the amended bill as passed by the general assembly remains the law, but if a majority vote in favor of that bill as

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asked for in the supplemental petition, then it takes the place of the bill as passed by the general assembly and becomes the law. If the general assembly fails to take action on the proposed bill for four months, then, within ninety days after the expiration of that four months, an additional three per cent to the three per cent originally petitioning can present a petition for that measure and that also is submitted to the voters; or, if the bill has been rejected by the legislature and voted down by the legislature, then within ninety days after it has been so rejected, if an additional three per cent petitions for it, it is also in that case submitted to the electorate, requiring a total percentage of six, the same as in the original proposal, to put any measure to a vote of the electors. The requirements for this supplemental petition, as far as being verified, and all others, are the same as for the petition in the original proposal.

The only other change made was the inserting of the word "supplementary" where it was necessary all through the proposal. We leave out entirely the lines referring to the former ballot. Now, if any one has any question I shall be glad to answer.

Mr. HALFHILL: I would like to inquire when the signers must put their names upon that additional three per cent called the supplementary petition?

Mr. CASSIDY: There is no specific requirement in the report saying when they shall put their names to it. The presumption would be that they would not be called upon to prepare this supplementary petition until it is evident that it will be needed.

Mr. HALFHILL: Why not make that clear by the language, "which petition must be filed with the secretary of state ninety days after the proposal shall have been rejected"? Why not make it read this way: "Which petition must be signed and filed—

Mr. CASSIDY: I had not thought myself that those supplementary petitions would ever be gotten up until they were evidently necessary.

Mr. HALFHILL: Don't you know that six per cent could be taken at the time the petitions were circulated and three per cent could be filed and the other three per cent held as a club to compel the general assembly to do what was wanted?

Mr. CASSIDY: The present proposal requires an election on six per cent, but the proposal also provides for a competing measure. This proposal takes out all question, and there is no competing measure here that goes to the people.

Mr. HALFHILL: Have you any objection to inserting the words that the petition must be filed and signed with the secretary of state, etc.?

Mr. CASSIDY: Speaking as one member of the committee, I would have to think of that. I cannot answer for the whole committee. The point was not discussed.

Mr. HALFHILL: What do you think about it?

Mr. CASSIDY: I do not think I would personally want to vote for that.

Mr. HALFHILL: Why not?

Mr. CASSIDY: I would not without further consideration.

Mr. HALFHILL: What objection have you to it personally?

Mr. CASSIDY: It might be that ninety days would

prove a mighty short time to get three per cent of the voters of the state. If I were preparing a bill I might want to work longer than that. We have only three months after the bill is rejected.

Mr. HALFHILL: Suppose you make it one hundred and twenty days; would you have any objection?

Mr. CASSIDY: Not so much as to ninety.

Mr. HALFHILL: Is there any objection in your mind against having these signatures taken at a date subsequent to the first signatures?

Mr. CASSIDY: Not if the time is long enough.

Mr. KNIGHT: May I ask you right there: Is it not true that in the case of a pure referendum you have only ninety days to get the per cent?

Mr. CASSIDY: That is true.

Mr. KNIGHT: Would there be more objection here to getting three per cent in ninety days than getting six per cent in ninety days?

Mr. CASSIDY: The point is novel to me. I hadn't thought of it.

Mr. KNIGHT: I would like to ask what, if anything, in this proposal would prevent—assuming the general assembly has not passed the measure, but that several different amendments have been offered in the general assembly—what prevents two three-per-cent petitions?

Mr. CASSIDY: There might be something.

Mr. KNIGHT: One would embody a certain amendment, and the other would embody a certain other amendment.

Mr. CASSIDY: Yes.

Mr. DOTY: That thing has happened in the general assembly itself in some years.

Mr. CASSIDY: And the result would be taken care of by lines 60 to 64 of the original proposal.

Mr. KING: You have all of those made pretty short. I do not know a state in the Union that has a system like this that doesn't give much longer time. Wisconsin requires those petitions to be filed four months before the next general state election, giving ample time, and the period of four months after the legislature looks to me that you might find it was too short.

Mr. CASSIDY: But the reason why I personally adhere to four months and ninety days provided the measure was introduced in the legislature on the first of January is in order to get the law before the people in time for the November election—that would be seven months.

Mr. HARRIS, of Hamilton: As a member of the committee, I feel like answering Mr. Halfhill's question myself, to say that it is a simple, practical, common-sense proposition. Why should we go to great expense and trouble to get the six per cent petition until after the legislature had refused to enact the law? We always have to furnish that additional three per cent. The whole object of the general underlying principle of this proposal is to avoid as many elections on questions submitted back to the people as possible. If the legislature appreciates the wisdom of the proposed law and enacts it, that ends it, and we are satisfied. Now, if the legislature refuses to do it for good reasons, then we have to furnish three per cent more, making a total of six per cent before we can get it before the people.

Mr. HALFHILL: I understand, but I do not know

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whether you understand fully what I had in mind. I want that extra three per cent signed within ninety days after the bill is passed on by the legislature. In other words, I object to getting six per cent and then presenting three to the legislature and holding the other three back to present at a later time.

Mr. HARRIS, of Hamilton: It is a self-evident proposition that the securing of the three per cent when one-half of them have to be secured in not less than one-half of the counties of the state, is an expensive sort of a proposition, and nobody would try to get six per cent in the first throw out of the box because of its enormous expense and trouble. This thing is not a spontaneous proposition and there is no necessity for that additional expense and trouble until after the legislature has refused to accept the bill. Then the greater burden is put upon those who advocate the bill by having to go out again to get the additional three per cent. And yet they will do it in ninety-nine out of a hundred cases on account of the first initial charge of getting the six per cent.

Mr. HALFHILL: Would you personally as a member of the committee, object to inserting the necessary words to have it read "which petition must be signed and filed with the secretary of state within ninety days" and so forth?

Mr. HARRIS, of Hamilton: That question did not come up in the committee while I was there. Now permit me to ask a question. Assuming, for the sake of argument, we will agree to do that, will you agree to support this proposal?

Mr. HALFHILL: Not until I look over it and find out what it means. I do not know whether I shall support it or not. It is a wide departure from what it was before.

Mr. HARRIS, of Hamilton: I think it is conservative.

Mr. ANDERSON: I want to ask Mr. Cassidy a question. To get a law initiated there must be three per cent and then we will say that the legislature refuses to pass the law. Then on supplemental petition of three per cent it could be submitted to the voters?

Mr. CASSIDY: Yes—six per cent in all.

Mr. ANDERSON: But if the legislature passed it in an amended form—assuming, for the sake of argument, that in its amended form it would be entirely satisfactory to all the people who signed the first petition, that would not in any way prevent its enemies from getting up another petition of three per cent. Then, as a matter of fact, haven't you left the door wide open so that the enemies of any measure can have full power to nullify practically everything the friends of the measure have done?

Mr. CASSIDY: You cannot close the door against enemies and leave it open to friends.

Mr. DWYER: You strike out in line 17 the word "twelve" and insert "ten"?

Mr. CASSIDY: We suggest that.

Mr. DWYER: This says, "If said proposed law shall be passed by the general assembly either as petitioned for or in an amended form, it shall be subject to the referendum." Why do you put that in?

Mr. CASSIDY: If any person wants to defeat the

measure entirely he can exercise the powers under the referendum at six per cent.

Mr. SMITH, of Hamilton: I take it that under this proposed plan it is probable that any one seeking to submit a law will usually try to get the six per cent while they are on the job, and that they could use the three per cent to bring it to the attention of the legislature and hold the other three per cent in reserve. Now the question is, after the legislature has amended the proposal and passed it, who are we going to have determine whether this three per cent is satisfied or dissatisfied with the amendment? I do not know whether the committee has considered that, but if you have let me have an explanation.

Mr. MILLER, of Crawford: In case the measure is initiated and the legislature passes it just as presented could it be referred by three per cent more or would it require six per cent?

Mr. CASSIDY: It would require six per cent.

Mr. DOTY: I would like to say that the committee that had charge of this work delegated to a subcommittee the actual drafting of the report. This subcommittee has worked very hard all afternoon and the total output is upon one sheet of paper. I only call your attention to that to show you that while their work took a long time the net output of words is comparatively small. Every word there has been carefully considered. I am speaking about this with special reference to the inquiry of the gentleman from Allen as to whether the members can answer all questions, and if not whether they will admit one word or two. The putting in of those one or two words might unbalance some other part. The other suggestion he makes I cannot answer, and I doubt whether the subcommittee which has been working on this matter this afternoon can do it. Now, I suggest this, that we vote upon receiving and agreeing to the report of the committee and when we have done that we can offer amendments. When we have done that, we are then in a position where it would be possible to amend if there is any part of the report you desire to amend further. It is not possible to amend the report of the committee. I suggest that we get it in the shape of a proposal so that we can proceed in regular order in the way that we are familiar with.

Mr. KNIGHT: Would not the committee consent to the change of one word in line 20?

Mr. DOTY: The committee might agree to make the change, but the Convention cannot.

Mr. KNIGHT: I suggest that the committee change the word "such" to "the".

Mr. DOTY: If there is no objection the secretary can incorporate that. Now I trust that we may at this time adopt the report, and then we have the proposal in engrossed shape so that we can proceed in regular order if we desire.

Mr. PETTIT: I move that the report of the committee be agreed to.

The report of the committee was agreed to.

The PRESIDENT: The question now is "Shall Proposal No. 2 pass?"

Mr. STILWELL: I offer an amendment.

The amendment was read as follows:

Strike out of lines 65 and 66 the words "and approved by the electors".

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Mr. STILWELL: The sentence will then read, "No law proposed by initiative petition shall be subject to the veto power of the governor".

The purpose is that after the law has been initiated and passed by the general assembly it may not be vetoed by the governor, and if that is left in as it is the veto power of the governor extends to initiated legislation, which in my judgment is wrong. That was not the intention of the framers of this proposal.

Mr. WOODS: You want to amend this so that the governor cannot veto a bill which the electors of the state have not voted upon?

Mr. STILWELL: Yes.

Mr. WOODS: The three per cent may petition now and the general assembly may enact the bill into law and the people never vote on it.

Mr. STILWELL: That is true.

Mr. WOODS: Do you not think that if the people have not voted upon it that the governor should have the right to veto it?

Mr. STILWELL: Not if it has been initiated by the people. Not after going to the trouble of petitioning for the bill and it has been taken to the general assembly and the general assembly has passed it. I do not think that should be open to the veto power of the governor.

Mr. WOODS: I do not think that the three per cent influence should be so great as to override the ninety-seven per cent.

Mr. STILWELL: But it should be sufficient in this instance to overpower the governor after it is approved by the general assembly.

Mr. COLTON: What would be the case as to the veto power of the governor if the bill submitted by the initiative has been amended so that it comes from the legislature practically a different bill from that initiated by petition?

Mr. STILWELL: In my judgment the veto power of the governor even in that instance should not be applicable. After a matter has been thoroughly threshed over by the general assembly the governor should not be allowed to veto it. It has not been long that the governor had any veto power at all.

Mr. ULMER: Would not the veto power rest in the people when they can change it by three per cent? When we have the referendum the governor would have no veto power at all. It is with the people.

Mr. STILWELL: If there were such serious objection as to require the veto power of the governor it could be beaten by a referendum.

Mr. KING: About one-third of the way down, after having spoken about the three per cent—about the middle of the proposal—it says, "shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which petition must be filed with the secretary of state within ninety days after such proposed law shall have been rejected by the general assembly or after the expiration of such term of four months in the event no action has been taken thereon or after the law as passed by the general assembly shall have been filed by the governor in the office of such secretary." Does not that admit the power of the governor to pass upon the bill and veto or approve by filing it in the office of the secretary of state

and does not your amendment conflict with that of your colleague [Mr. CROSSER]?

Mr. KEHOE: Might not the governor's veto be an advantage sometimes when the proposed measure was amended to such an extent as to justify the veto? Would it not save the expense of a referendum?

Mr. STILWELL: I hardly think so. Personally I would not expect the general assembly to emasculate a bill petitioned for by the people. The referendum will always operate as a veto if it is seriously objectionable to any considerable number of people.

Mr. KEHOE: Would it not save the trouble if a measure was mutilated and the governor's veto could be effective?

Mr. STILWELL: Personally I would not expect him to do that.

Mr. MOORE: If they mutilate by amendment would not the three per cent come in on the original proposed law and the governor's veto become null and void?

Mr. NYE: Would you not be taking away from the governor the power to protect the people?

Mr. STILWELL: That protection is still there with the three per cent additional as provided for or the six per cent upon the referendum, if there is any serious objection to it.

Mr. NYE: Then with the three per cent of the electors are you not taking away from the ninety-seven per cent the right of the governor to protect the rest of the people?

Mr. STILWELL: No, I don't think that way, for the very reason that if there is any merit in the veto it can be accomplished by an additional three per cent of the electors.

Mr. NYE: Suppose the people wanted this and you are depriving the people of the right to ask the governor to veto it?

Mr. STILWELL: But that can be done with the additional three per cent.

Mr. NYE: But you have to vote on it?

Mr. STILWELL: Yes; you have to vote, of course.

Mr. NYE: Would it not be better to leave this in as it is?

Mr. STILWELL: I do not think so. That is simply my opinion. They have gone to the expense of initiating legislation and it has been approved by the general assembly and I maintain that the governor ought not to have the power to veto legislation of that character.

Mr. NYE: In the case you are speaking of you have the petition only.

Mr. STILWELL: That is true and the legislature might amend it to the disadvantage of those who had petitioned for it and still the governor could not veto it. That is true.

Mr. NYE: And the legislature might amend it to the disadvantage of those who had petitioned for it and still the governor could not veto it; doesn't that put it in bad shape?

Mr. KING: Do you understand that your amendment taking away the veto power only applies to those bills passed as petitioned for?

Mr. STILWELL: Yes.

Mr. MOORE: Suppose the bill as petitioned for by three per cent of the electors has passed the general as-

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sembly precisely as the petition was and the governor sees fit to veto that; what happens?

Mr. STILWELL: The bill fails.

Mr. MOORE: How would you get it before the people?

Mr. STILWELL: A referendum on six or eight per cent.

Mr. FLUKE: There is a part of this proposed amendment that provides for a petition, but it must be by three per cent of the voters of the state. That is purely an initiative petition?

Mr. STILWELL: Yes.

Mr. FLUKE: Is there anything in this amendment that would interfere with getting six per cent of the voters and using one-half of them to initiate and reserving the other one-half to secure the referendum?

Mr. STILWELL: That question was asked and answered by Mr. Cassidy a while ago.

Mr. FLUKE: It seems to me that the three per cent should be obtained after the action of the legislature.

Mr. STILWELL: Yes.

Mr. FLUKE: It seems to me that the three per cent to initiate should be first secured and then the additional three per cent obtained in the way of a referendum petition after the action on the bill. Is not that right?

Mr. STILWELL: No; the three per cent is additional and added to the original three per cent.

Mr. ROEHM: Suppose a law is initiated and there should be a number of amendments proposed in the legislature and those amendments should be voted down and possibly a substitute amendment adopted. Then upon a three per cent petition of signatures could any subsequent amendment go right directly to the people?

Mr. STILWELL: Yes.

Mr. BROWN, of Highland: It was suggested here this evening that those interested could in securing the three per cent with which they expected to initiate a law, get an additional three per cent to hold in readiness as an additional requirement to refer with. If that could be done how is it to be decided which half of the six per cent would be used for the initiative and which for referendum? In other words, would it not be obtaining signatures under false pretenses and would it not be better to put in this proposal that the subsequent three per cent must be secured at a date later than the time when the legislature acted?

Mr. STILWELL: That same question has been asked and has been answered.

Mr. BROWN, of Highland: I was called out of the room and I don't know what the answer was.

Mr. STILWELL: The last three per cent must be secured after the legislature has acted.

Mr. WOODS: I want to call attention now to this proposed amendment. This amendment strikes out words from lines 65 and 66 and if you adopt the amendment it will read, "No law proposed by initiative petition shall be subject to the veto power of the governor." Now a bill may be petitioned into the general assembly and that general assembly may strike out everything except the title and insert something else. Now that something else may be something that the people do or do not want and you have it so that the governor cannot veto it. It seems to me if the governor is to have the veto power at all it is for that very proposition. I think we want to

be careful. I do not think that this amendment should go in and I move to lay it on the table.

The motion to table was carried.

The PRESIDENT: The question is on the adoption of the proposal.

Mr. SMITH, of Hamilton: I offer an amendment. The amendment was read as follows:

Insert after "signed" in line 17 of section 1b as shown in the journal "subsequent to actions on the proposed law by the general assembly or in case the general assembly fails to act then subsequent to four months after the proposed law shall have been transmitted to the general assembly by the secretary of state".

Mr. SMITH, of Hamilton: I am not quite sure where I want that to go in, but it is in the committee's report and it is after the word "signed" in line 17.

Mr. HALFHILL: I have an amendment.

Mr. SMITH, of Hamilton: Do you not think it would be best to handle one amendment at a time?

Mr. HALFHILL: Mine is on the same subject.

The PRESIDENT: The member from Allen offers this as a substitute.

The substitute was read as follows:

In line 19 of section 1b as shown on the journal insert "signed and" after "be".

Mr. SMITH, of Hamilton: If it saves time I will accept that amendment in lieu of mine.

Mr. READ: I offer an amendment:

Strike out all of section 1e, beginning with line 96 and ending with line 101 inclusive.

Mr. LAMPSON: I move to lay that amendment on the table.

The PRESIDENT PRO TEM: Does the member from Summit yield to the motion?

Mr. READ: No.

The PRESIDENT PRO TEM: Then the member has five minutes.

Mr. READ: Mr. President and Gentlemen of the Convention: The amendment I have offered proposes to strike out the section from the initiative and referendum proposal which reads as follows:

The powers defined herein as the "initiative" and the "referendum" shall never be used to enact a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

In requesting the Convention to eliminate that section I am only asking you to remove the barrier which prevents this body of constitution framers from recognizing the unlimited and sovereign power of the people in government.

If the American citizen is a sovereign he has a right to express his will at the polls upon any measure he wishes to approve or reject. In other words, the principle of the initiative and referendum, from its very

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nature and purpose, inevitably implies that in the enactment of governmental or economic laws, there can be none in the whole category of statutes or parts thereof upon which the will of the people shall not be supreme. We have claimed for it undeniable right to be used everywhere, by anyone, rich or poor, for any purpose, sectional or state wide, firmly relying on the justice and wisdom of the popular verdict.

Now, when we come to crystallize it into practical form what do we find in that provision? A denial of its essential features, a limitation of its application. That is what an exception to the use of the initiative and referendum means. If direct legislation is a practical means of having government by the people, then there should be perfect freedom to use it on every question affecting the welfare of man.

In the concrete case before us there is an inhibition against its use for ascertaining the popular judgment on a certain phase of tax problems. It is not because the inhibition applies to a taxation question that I object to it. I would deplore it just as much if the ban were placed on bond issues, on good roads, on the liquor traffic, or on any question which might come up for popular decision.

The only correct conception of a true initiative and referendum proposal is that it must have universal and uniform application to all questions alike, and that any and all persons with remedies to propose, whatever be their merits or demerits, if there is a sufficient demand for a popular verdict thereon, they should be considered and disposed of by the electorate.

Take away from direct or indirect legislation its unlimited and its unqualified use to the needs and desires of man and you destroy its fundamental principle. Restrict it in application and you repudiate its crowning virtue. Deny its right to be used on one economic question and you grant the right to deny its use on others, or on all questions, and thus undermine the whole principle. These are the reasons why that restrictive and prohibitory section should be stricken out. It is irrelevant and repugnant to the doctrine of popular government.

There is an old maxim which says: "We need not fear error so long as reason is left free to combat it."

No agency ever devised by man affords a more candid exercise of sincere individual opinion than the referendum. And if error stands no show of success with truth in a free, fair contest, why should any one fear that an economic fraud might be foisted on the people by such means? Calm your perturbed spirit; there is no such peril pending. Under the referendum, right alone will conquer, intelligence reign and justice prevail.

I do not accuse those delegates of sinister motives who succeed in placing this handicap on the referendum. I do not challenge their honesty nor their sincerity. I believe they were prompted by an honest desire to checkmate a supposed contemplated movement to get the single tax by that means. I do not believe they realize how vitally they were affecting the efficiency of the initiative and referendum by their action. And again, I do not believe they realize how very remote is the possibility of getting single tax by that means. You can never fasten anything on the people by their own consent that they do not want. And they do not want the single tax

now and maybe never will. But whether they ever shall or shall not want it, we have no moral or constitutional right to say they shall not have the opportunity of securing it for themselves if they ever should want it.

Another argument used by some of those favoring the inhibition in the proposal was that if the people were assured that the single tax would not be voted upon under the referendum the initiative and referendum proposal would be adopted at the constitutional election and otherwise it would fail to meet approval at the polls. What is our duty in this matter, our obligation as constitution framers? To circumscribe and weaken our propositions merely to catch votes, or to perform our work with fidelity and courage regardless of consequences?

Having enlisted in the cause and pledged our honor, will we falter and surrender without giving battle? The citizens of Ohio expect us to "hew to the line, let the chips fall where they may." They expect us to have the courage of our convictions, to be true to ourselves and trust in them.

This imaginary fear of a single-tax blight is ridiculous in the extreme. Do we underestimate the judgment, the intelligence and the common sense of the average Ohio citizen that we fear he would deliberately put his neck into the yoke of bondage on the one hand, while on the other he asks for a fair and just provision in our constitution for the referendum? Do you not think he wants an opportunity of expressing himself against certain propositions as well as for others? To view the voter from any other standpoint is to deny his independence of thought and freedom of the ballot. What does experience teach on this point? When Oregon adopted a direct legislation amendment to her constitution ten years ago by a vote of over ten to one there were many more singletaxers in Oregon in proportion to the population of the state than there are in Ohio at the present time. What has been the result? After ten years of voting, on nearly one hundred propositions, about one-third of them being adopted, a single-tax measure was placed before the people once, and what was the result? Why, it was voted down at the polls by a decisive majority. There being less of the single-tax sentiment in our state comparatively than in Oregon, do you think there is any danger from this source in Ohio? No, no, my friends, there is no ground for alarm; simply be candid and honest and the referendum itself will be your safeguard. It is the only safeguard you can give the people and it is the only safeguard they want; but they want it in its purity and fullness and in its unqualified use.

You have heard and read individual protests against the introduction of foreign matter and incoherent ideas into the initiative and referendum proposal. Now let me quote some brief comment from newspapers which appeared shortly after said proposal had passed second reading in this Convention. A part of the comment editorially of the Ohio State Journal was as follows:

It does not seem illogical to adopt a plan directly appealing to the people and then declare there are two subjects the will of the people shall not control. In other words, the Convention, which affects so much devotion to the popular will, declares that on two questions the popular will is

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no good—that its own opinion is wiser and safer than that of the people.

We make no objection to these exceptions, for it is the duty of a constitutional convention to place restrictions on the popular will. Its duty is to say to the majority—"you must behave yourself; you must not tramp on the rights of the few." And yet, these two exceptions come so close to legislative control that it looks very inconsistent for a body in love with the people to deny them the exercise of their judgment upon these subjects.

Another editorial about the same time appeared in the Cleveland Plain Dealer under the caption of "Limiting the Initiative." After a few introductory words it said:

Opponents of the initiative and referendum are taking the wholly unsound position that these legislative devices should be circumscribed in such a way as to prevent their use to secure certain proscribed statute alterations. Had this unexpected argument not been forced to the front it is probable that the direct legislation mandate voted by the people last fall would have been written into the constitution before this.

The machinery of direct legislation was devised to give the people better facilities to secure the kind of laws and constitutional amendments they desire. It is merely a measure of popular rule, designed to facilitate majority control.

What these opponents of the initiative suggest, then, is that the people of Ohio shall be permitted the laws they want so long as they do not seek laws covering a few forbidden subjects. That reads like popular rule with a string tied to it. It is proposed to trust the majority—if. Direct legislation should not be arbitrarily limited in any such way.

Delegates cannot safely play horse with any popular issue. In regard to this particular branch of its endeavor, the duty of the Convention is as plain as its ultimate intention. Nothing, certainly, is gained by senseless controversy.

Such is the trend of thought expressed by other leading papers over the state, and such is the opinion of fair-minded men generally. What will we think of ourselves in after years by giving our sanction to such an incongruity in this proposal? Our constituents expect a comprehensive frank declaration of this principle; nothing more, nothing less. We are in honor pledged to give them a definite, consistent, coherent and effective direct-legislation provision. Shall we keep faith with them?

Down with the idea that the people have so little confidence in themselves and are so fearful of their future fate that they want this Convention to insure them against self-destruction, or that they would have us blunt the instrument of progress we hand them lest they harm themselves therewith.

Fellow delegates, I appeal to you in the name of fairness and popular rights to lay aside all fear of chicanery in the free use of the referendum. There can be no wiles successfully practiced under it and no frauds perpetrated by it. It is a veritable citadel of liberty founded

on the integrity and sovereignty of American citizenship.

Its chief virtue rests in its full guardianship of all legislative propositions. Question this unlimited right and you manifest distrust in self-government.

We are on the crest of an advancing wave, a popular uprising, that demands honesty of action. The temper of the times has placed the stamp of condemnation on all tricks and on all delusive movements as well as on all big schemes of plunder. In these days of trial, of readjustment and testing of men, if there is one thing Ohio demands of us more than another, it is that we be frank, fearless and honorable in all our conclusions. Why should we hesitate or shy at an imaginary lion in the way? Was there ever a noble purpose attained by this halting and turning aside?

Tell me, fellow delegates, is there one among you who regards his honor so lightly as to place his plighted faith on the bargain counter? Then, whatever we do, let us do it so well that no flaw can be found therein. In all events let us have the courage and firmness to rise above any possible breach of trust.

Better never to have raised the banner of pure democracy than to permit it to be marred and struck down in our hands.

Better never to have waged battle in the cause of human rights than to compromise the principle upon which those rights are founded.

Mr. LAMPSON: I move that the amendment be tabled.

The motion to table was carried.

Mr. PECK: I move the previous question on the proposal.

The main question was ordered.

Mr. KING: This is in awful shape to pass. There should be some provision in here as to when it takes effect.

The PRESIDENT PRO TEM: The question is "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 85, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Hoffman,	Peters,
Baum,	Holtz,	Pettit,
Beatty, Morrow,	Hoskins,	Pierce,
Beyer,	Hursh,	Price,
Bowdle,	Johnson, Madison,	Read,
Brown, Highland,	Johnson, Williams,	Rockel,
Brown, Pike,	Kehoe,	Roehm,
Cassidy,	Keller,	Rorick,
Cordes,	King,	Shaffer,
Crites,	Knight,	Shaw,
Crosser,	Kramer,	Smith, Geauga,
Davio,	Kunkel,	Smith, Hamilton,
Donahey,	Lambert,	Solether,
Doty,	Lampson,	Stalter,
Dunn,	Leete,	Stamm,
Dwyer,	Leslie,	Stevens,
Earnhart,	Longstreth,	Stewart,
Elson,	Ludey,	Stilwell,
Fackler,	Malin,	Tannehill,
Farrell,	Marshall,	Tetlow,
FitzSimons,	Mauck,	Thomas,
Fluke,	McClelland,	Ulmer,
Fox,	Miller, Crawford,	Wagner,
Hahn,	Miller, Fairfield,	Walker,
Halenkamp,	Moore,	Watson,
Harbarger,	Okey,	Wise,
Harris, Hamilton,	Partington,	Woods,
Harter, Huron,	Peck,	Mr. President.
Henderson,		

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Those who voted in the negative are:

Brattain,	Dunlap,	Miller, Ottawa,
Cody,	Halfhill,	Nye,
Collett,	Harris, Ashtabula,	Riley,
Colton,	Jones,	Taggart.
Cunningham,	Kerr,	

The roll call was verified.

So the proposal passed as follows:

Proposal No. 2—Mr. Crosser, to submit an amendment to article II, section I, of the constitution.—Initiative and referendum.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal shall be submitted to the electors to amend article II, section I of the constitution as follows:

ARTICLE II.

SEC. 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

SEC. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the constitution proposed by initiative petition to be submitted directly to the electors."

SEC. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If

said proposed law shall be passed by the general assembly either as petitioned for or in an amended form it shall be subject to the referendum. If said proposed law shall not be passed, or if it shall be passed in an amended form, or if no action be taken thereon, within four months from the time it is received by the general assembly, the same shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which petition must be signed and filed with the secretary of state within ninety days after such proposed law shall have been rejected by the general assembly or after the expiration of such term of four months in the event no action has been taken thereon or after the law as passed by the general assembly shall have been filed by the governor in the office of such secretary. Such proposed law shall be submitted in the form demanded by such supplementary petition which shall be either in the form as first petitioned for or after there shall have been incorporated therein any amendment or amendments thereto introduced in the general assembly. In the event that a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect, as herein provided, in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors.

All such initiative petitions, last above described, shall have printed across the top thereof: "Law proposed by initiative petition." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in Section 1a and Section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

SEC. 1c. The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their

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approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law, appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

SEC. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

SEC. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

SEC. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

SEC. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the

constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the

Initiative and Referendum— Invitation for Convention to Visit Cincinnati.

electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it enacted by the people of the state of Ohio," and of all constitutional amendments: "Be it resolved by the people of the state of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. HALFHILL: I want to make an explanation more in sorrow than in anger of my vote. I wanted to vote for the indirect initiative somewhat along this line and with proper percentages, but after the sixth attempt and at the eleventh hour not to have had this printed and laid before us so that we could understand it, was wrong. I think there was ample time to have this report printed so that we could examine it and I voted against it because I did not have that opportunity.

Mr. PECK: I voted for this proposal because I think it is the right thing and the best form of the initiative and referendum I have ever seen. Now I want to ask the Convention to give me answer to the invitation of the Business Men's Club for the Convention to come there, and fix the time. I suggest that the Convention can go down Saturday afternoon and take dinner easily with the club that evening and they will be delighted to see us though the notice is a little delayed. I would like to have an answer so that they could make proper arrangements.

Mr. ANDERSON: I move that the invitation be ac-

cepted and that we leave here on the two o'clock train Saturday afternoon.

The PRESIDENT: The president would like to state that he has been informed that one railroad is willing to provide the best Pullman equipment and a special train to go and return at the pleasure of the Convention and that at no extra cost.

Mr. DOTY: I move that we strike out the word "extra". Would it not be well for us to have the roll call and let those indicate who will go?

Mr. PECK: It would be desirable to know how many will accept.

Mr. STILWELL: I am not accustomed to riding in Pullman's and I would like to know the actual cost.

Mr. ANDERSON: It is necessary, of course, as you can easily understand that those who invite us should know the number that are coming, and if we have only a few we ought not to go. We ought not to go if we cannot make a good showing. I move that this Convention when it adjourns Saturday afternoon adjourn to meet that evening in Cincinnati.

Mr. HALFHILL: I would like to impress upon you in a very few words how very gracious this invitation is from the people of Cincinnati. I know somewhat of their hospitality. I attended law school there and have had many pleasant professional engagements there and this club extending the invitation is composed of some of the very best men in the state of Ohio. It is a very gracious invitation, and I wish that we might go as a convention and hold a session there even though it might be somewhat of disadvantage.

The PRESIDENT: If the Convention meets there in regular session the fare will be paid out of the Convention fund.

Mr. CUNNINGHAM: I asked one of the Hamilton county delegation if he really expected us to go there and he said that he didn't know, that if we were fools we would.

Mr. FOX: Many of us could not go. I would not like to see delegates go and have me stay in the rear. I wish they would arrange for some future time.

Mr. DOTY: I am in favor of going to Cincinnati. I always have a good time when I go there, but I am opposed to this Convention going to Cincinnati and taking the money out of the treasury to pay our expenses. If we are going to accept this very gracious invitation, we ought to accept it because we want to go and not because the state is going to pay for it.

Mr. MARSHALL: I am in hearty sympathy with the gentleman from Cuyahoga and I suggest that we finish our work.

Mr. DOTY: I move that we accept the invitation to go to Cincinnati to visit the Business Men's Club and to take dinner with them on Saturday evening.

Mr. ANDERSON: I had already made that motion.

Mr. DOTY: That is so.

The motion was lost.

Mr. KING: I move that the committee on Arrangement and Phraseology be instructed to amend Proposal No. 340 by providing that Proposal No. 2 shall take effect on September 25, 1912.

The motion was lost.

Mr. DOTY: I move that the committee on Arrangement and Phraseology, after it has amended Proposal

Printing of Additional Copies of Proposal No. 2—Petitions and Memorials.

No. 2 and concluded its report upon the proposed amendment, have enough copies printed to allow the secretary to send twenty-five copies to each member by mail and five hundred additional copies.

Mr. PARTINGTON: The time is coming when we shall have the whole constitution printed.

Mr. DOTY: The time is coming when all the resolutions will be put in, but some of the members have suggested that they would like to have this proposal reprinted just as it is, and I make the motion to carry that out.

Mr. PARTINGTON: I do not see the necessity for that.

Mr. DOTY: If there is objection I shall not insist.

Mr. HALFHILL: Why do you say that the proposal should be referred to the committee on Phraseology?

Mr. DOTY: The Convention has already done that to every proposal that has been amended.

Mr. HALFHILL: Proposal No. 2—do you refer to that?

Mr. DOTY: Yes.

Mr. HALFHILL: It was referred to the committee on Phraseology.

Mr. DOTY: And they have not reported on it.

Mr. HALFHILL: Was this reading tonight the second reading or the third reading of the proposal or the final reading, and if so, why was it done before the committee on Phraseology has reported?

Mr. DOTY: The committee on Phraseology had it after second reading and it was accepted by the Convention and it was amended and passed on third reading, and turned back to the committee on Phraseology just as was done with every other proposal.

Mr. HALFHILL: What I cannot get through my head is why, when this report of the subcommittee came in and we considered that, the thing was not printed and sent to the committee on Phraseology and returned to the Convention to be amended and passed.

Mr. DOTY: Personally, I do not care to go into that, but if there is any objection to my motion I will withdraw it. If you don't want it vote it down.

Mr. HALFHILL: I want to get this thing straight. It is most unusual. I supposed the committee on Phraseology had this to pass on and bring it back to the Convention.

Mr. DOTY: We did.

Mr. HALFHILL: Then it was passed on, and no chance given to amend it.

Mr. DOTY: Yes, there was chance to amend it and there is chance to amend it in the grand resolution.

Mr. HALFHILL: This was the third reading tonight?

Mr. DOTY: Yes; the proposal had its third reading.

Mr. HARRIS, of Hamilton: What we did tonight was not unusual. We simply amended Proposal No. 2.

Mr. WOODS: I think, gentlemen of the Convention, we ought to have some of these proposals printed. This is so changed that we cannot get exactly what it is unless we have it printed. Let us have some of these printed so that the people can know what we have done.

The motion of the delegate from Cuyahoga [Mr. Doty] was carried.

Mr. PECK: In view of the fact that only fifty-three members of the Convention have expressed their willingness to accept the invitation to go to Cincinnati, I think it probably better that the Convention should send its regrets to the members of the Business Men's Club, saying that the condition of business is such that the Convention cannot find opportunity to accept their invitation, and I move that the secretary be directed accordingly.

The motion was carried.

Mr. READ: I would like to call up Proposal No. 331 and move to instruct the committee on Phraseology to make a change by inserting the word "four" in lieu of the word "one". The effect of that is to give the superintendent of public works a term of four years instead of one.

Mr. DOTY: Well, if that is it, I move to lay it on the table.

The motion was carried.

Mr. ANDERSON: I move that ten thousand copies of the finished work of this Convention be finished in such manner that the constitution of 1851 will be on one side and on the other side the work that we have done.

Mr. DOTY: That will cost more money than it is worth. I suggest that this matter of printing copies for future use can be decided Friday.

PETITIONS AND MEMORIALS.

Mr. Bigelow presented the memorials of the Rev. W. H. Sauder, of Ravenna; of the Rev. Clarence A. Gibson, of Camden; of the Rev. W. J. Venen, of Youngstown; of Ira M. Rickett, of Troy; of M. J. Walters and other citizens of Chagrin Falls; of H. A. Reaster and other citizens of Defiance; of M. C. Kinker and other citizens of Toledo; protesting against the passage of Proposals Nos. 65 and 321; which were referred to the committee on Education.

Mr. Bigelow presented the petition of the city council of Cleveland requesting the Constitutional Convention to designate the day known as Good Friday and the day set aside for general elections throughout the state of Ohio, as legal holidays; which was referred to the committee on Miscellaneous Subjects.

Mr. Bigelow presented the memorials of F. T. Moreland, of Portsmouth; of C. A. Loehmann, of Cincinnati; of O. K. Hewes, of Medina; of Wm. J. Seelye, of Wooster; of F. C. Bond, of Cleveland; of Howard M. Holmes, of Cleveland; of Frank W. Mariner and many other citizens of Ohio asking for the adoption of Ohio Federation of Labor amendments to the initiative and referendum proposal; which were referred to the committee on Initiative and Referendum.

Mr. Stilwell presented the remonstrance of F. Burgdorff, of Euclid Heights, protesting against the passage of Proposal No. 170—Mr. Worthington; which was referred to the committee on Taxation.

Mr. HOSKINS: I move that the Convention adjourn until Friday morning at nine o'clock.

The motion was carried and the Convention adjourned accordingly.

SEVENTY-NINTH DAY

MORNING SESSION.

FRIDAY, May 31, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Knox county, the Rev. Dr. McClelland.

The journal of yesterday was read and approved.

Mr. Johnson, of Williams rose to a question of privilege, and asked that his name be recorded on Proposal No. 329, by Mr. Knight. His name being called, Mr. Johnson, of Williams, voted "no."

Mr. Winn rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Winn voted "aye."

Mr. Stokes rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Staokes voted "aye."

Mr. Campbell rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Campbell voted "no."

Mr. Eby rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Eby voted "aye."

Mr. PIERCE: I offer a resolution.

The resolution was read as follows:

Resolution No. 132:

Resolved, That in the consideration of business this day, and for the remainder of the session, that Rules 39 and 94 shall be interpreted and held to mean that it is not in order to amend any proposal which has been adopted on third reading except as to form, or form of submission or to correct errors.

Mr. PIERCE: Rule 39 reads:

RULE 39. After the report of any committee upon a proposal, said proposal shall be read a second time and considered by the Convention. After favorable action by the Convention, said proposal shall be referred to the standing committee on Arrangement and Phraseology and shall thereafter be read a third time in full, for final action.

Rule 94 reads:

RULE 94. Any proposal may be amended until the final vote is taken after third reading thereof. When a proposal is on its second or third reading any number of amendments may be made; but pending a motion to amend one part of the proposal, it shall not be in order to amend any other part of the proposal, unless the second amendment is necessary to a proper construction of the first. One amendment shall not prevent another in any other part of the proposal.

Now I think it is necessary to have this matter settled and I feel that the Convention has threshed all of

these matters out on two readings and have gone over it fully. We have adopted forty-two proposals, and I believe it should be the sense of this Convention that those proposals should remain as adopted without further amendment. If we expect to get through this week and adjourn, it is necessary to take this course of procedure. There have been quite a number of suggestions made by members of the Convention that we change certain proposals, and a number of such suggestions have been made to me. If this Convention is foolish enough to enter upon a discussion of these matters we will be here two or three weeks longer. I hope it will be the sense of the Convention that the resolution be passed as now proposed.

Mr. HALFHILL: I hope that this resolution will not prevail for two or three very manifest reasons. The committee on Arrangement and Phraseology labored during the whole of the recess and all yesterday endeavoring to get everything in perfect form. With all the care it exercised there is every possibility that some mistake will be discovered and must be rectified before the end of this session.

Mr. PIERCE: Will you allow me—

Mr. HALFHILL: When I get through.

Mr. PIERCE: I want to correct you.

Mr. HALFHILL: Well, wait until I get through and you can say what you want. Further than that, the greatest question in this Convention has not yet been properly determined. Upon the subject of taxation there is a strong desire among many that there be inserted in the proposal an alternative for the uniform tax system. The member from Highland, I think, has an amendment which ought to be considered by the Convention. I desire to offer the question of the alternative proposition which is identical in every part of the proposal with the proposal that has been adopted by this Convention, save and except that in section 2 it inserts the right of classification of property, so that all propositions in this proposal that the majority has adopted will be covered in my substitute in the identical words, and the only difference will be the insertion in section 2 providing for classification instead of the uniform rule.

Now, gentlemen of the Convention, a thing is never settled until it is settled right. It is never settled in a case like this until the people of Ohio have an opportunity to vote fairly and squarely upon this question, and I want you to consider the responsibility that you are under. You know well enough if you throttle this question in this Convention within twelve months there will be a constitutional amendment proposed to the people. Of course you know that, and do you realize that if this proposal that you have here should be adopted in the lengthy form you have drawn it under the existing rule of the present constitution, it would cost \$250,000 to submit it? A proposal of that nature which was submitted in 1889 with two other amendments cost the state almost \$100,000, and it was but a small paragraph of organic law. Here we have the opportunity of presenting and submitting it to the people at this time without

Resolution Relative to Amendments to Proposals After Third Reading.

one penny of additional expense. Let them, the people, determine for themselves what the form of taxation shall be in Ohio. It is not time now to make any argument on this question either for or against these theories, and that is not what I rise for, but when these amendments are presented the Convention can be assured that so far as the argument of theories is concerned it is at an end. We have threshed that out. It will not take us fifteen minutes in the Convention to again present this amendment. Then let the two propositions go to the people, because "in the last analysis," with apologies to Brother Jones, the people will do the fair thing. I trust that this resolution will not prevail.

Mr. PECK: How many times has this same proposition been rejected by this Convention?

Mr. HALFHILL: I suppose twice or three times.

Mr. PECK: What is your reason for believing that they will accept it now?

Mr. HALFHILL: I have faith to believe that when the uniform rule has been framed as it has been, when they have taken out of it the one per cent tax limit as they have taken it out, when they have considered that action, when they consider the criticism made on this Convention as a body for not fairly submitting these two theories of taxation to the voters, that they will at the last moment rescind that action and do fairly by the people of the state of Ohio.

Mr. PECK: Do you not think that those of us here who have supported other losing propositions believe just as strongly in our propositions as you do in that? Every one of them can be brought up if you bring up this.

Mr. HALFHILL: I do not believe there is a proposition championed by any member in this Convention that compares in importance with the question of taxation.

Mr. PECK: Everybody's proposal is the most important.

Mr. HALFHILL: Taxation is conceded to be the most important matter before the Convention by everybody who knows enough to look at the world outside, other than through a key hole.

Mr. KING: I was for the proposition that has been voted down as often as I could get a chance to be for it, but I raise the question here and now that this Convention has no authority under the rules it has adopted, unless it shall repeal them, to amend any proposal that has passed its third reading. Those things, so far as this Convention has power, have gone into the fundamental law of the state. We are at an end of every proposal that has passed its third reading. I deny the power of the Convention to amend it by a word. They have provided here as plainly as the English language can be written the course that every proposal shall take. We have followed that course and completed the proposals, and we cannot begin our work and do it over again.

Mr. DOTY: Will you yield for a question? The member made a statement that he didn't believe the Convention had power to make any amendments. You do not include anything from the committee on Arrangement and Phraseology as to form?

Mr. KING: How did the committee get this referred back to them?

Mr. DOTY: By the Convention.

Mr. KING: Did they repeal the rule or amend the rule, or was there a suspension of the rules?

Mr. DOTY: I wish to state that the Convention by a simple motion which it had the power to pass, in my judgment, referred all proposals after their third readings to the committee on Arrangement and Phraseology, and the committee on Arrangement and Phraseology has been sitting up and working on them.

Mr. KING: I heard you do it and I voted for the resolution. But under Rule 84 and subsequent Rules 94 and 95 there was absolutely no authority for that reference to the committee on Arrangement and Phraseology again. If these are submitted under a so-called fourth reading you do not know what questions of law will meet them hereafter or what will be their fate.

Mr. LAMPSON: I think the gentleman is wholly right in his argument that there was a resolution adopted here unanimously referring all these proposals to the committee on Arrangement and Phraseology, and so far as that was concerned it waived the rule because the point of order was not made at the time. If it had been made, I concede under the rules it would have been sustained. So far as the report of the committee on Arrangement and Phraseology is concerned, the rules have been made and it can make its report.

Mr. KING: You do not claim that the committee on Arrangement and Phraseology has authority to do anything more than to make the proposal read right?

Mr. LAMPSON: They report back with amendments as to form, but nothing as to substance. If this rule is adopted, no further amendment except as to form or a form of submission or correcting an error can be adopted, and if the rules were simply interpreted as Judge King suggests even that might not be done, but that certainly ought to be done and that is an additional reason for the adoption of the resolution of the gentleman from Butler. Now Rule 94 provides that any proposal may be amended until the final vote is taken after third reading thereof. When a proposal is on its second or third reading any number of amendments may be made. So the rule merely contemplates that after third reading amendment shall cease. But the Convention unanimously adopted the motion of the gentleman from Ashtabula [Mr. HARRIS] to refer back to the committee on Arrangement and Phraseology all of the proposals, together with those that were slightly amended the other day, and we, therefore, waived this rule so far as the committee on Arrangement and Phraseology is concerned, but the committee on Arrangement and Phraseology has not jurisdiction to report out anything except as to form. So when its report comes in it will be in order to go under Rule 94 and no amendment as to substance is in order. I think the resolution of the gentleman from Butler should be adopted so that we can make the necessary corrections as to form of submission or as to any error in transcribing that may appear after the final reading. I hope the resolution will be adopted.

Mr. HALFHILL: I ask the yeas and nays on that motion.

The yeas and nays were taken, and resulted—yeas 72, nays 27, as follows:

Resolution Relative to Amendments to Proposals After Third Reading—Reports of Standing Committees.

Those who voted in the affirmative are:

Anderson,	Harbarger,	Moore,
Baum,	Harter, Huron,	Okey,
Beatty, Morrow,	Henderson,	Partington,
Beyer,	Holtz,	Peck,
Brattain,	Hursh,	Peters,
Brown, Highland,	Johnson, Williams,	Pettit,
Brown, Lucas,	Jones,	Pierce,
Brown, Pike,	Kehoe,	Shaw,
Cassidy,	Keller,	Smith, Hamilton,
Cody,	Kilpatrick,	Solesher,
Collett,	King,	Stamm,
Colton,	Kramer,	Stevens,
Crites,	Kunkel,	Stewart,
Crosser,	Lambert,	Stilwell,
Cunningham,	Lampson,	Tallman,
Dunn,	Leete,	Tannehill,
Dwyer,	Longstreth,	Tetlow,
Earnhart,	Ludey,	Thomas,
Eby,	Marshall,	Ulmer,
Fess,	Mauck,	Wagner,
FitzSimons,	McClelland,	Watson,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Harris, Ashtabula,	Miller, Ottawa,	Woods.

Those who voted in the negative are:

Antrim,	Hahn,	Nye,
Bowdle,	Halenkamp,	Read,
Campbell,	Halfhill,	Riley,
Cordes,	Hoffman,	Rockel,
Donahey,	Hoskins,	Roehm,
Doty,	Kerr,	Rorick,
Dunlap,	Knight,	Smith, Geauga,
Evans,	Malin,	Stokes,
Fackler,	Matthews,	Taggart.

So the resolution was adopted.

Mr. LAMPSON: The gentleman from Wood [Mr. BEATTY] has gone away and will not be back. He is a member of the committee on Submission and Address to the People. It is desired that his place be filled because there is certain work that that committee has to do in arranging an address to the people and so forth that requires men who will give attention to it, and I move that Mr. Cassidy be named on that committee.

Mr. DOTY: I second the motion. We want some one on the committee to do the work for us.

The motion was carried.

Mr. READ: A question of privilege.

The PRESIDENT: State the question.

Mr. READ: I can state the question by explaining.

The PRESIDENT: I would like to have a suggestion as to what it is.

Mr. READ: There has been an injustice done me on a certain report with regard to an amendment that I proposed the other evening, and I want to get that impression corrected. It is a matter of personal privilege. I desire the privilege of the floor to explain the injustice that has been done me and I claim my right to ask the indulgence of the Convention for one minute.

The PRESIDENT: The member asks the indulgence of the Convention for one minute.

Mr. READ: It may be two minutes. I have been cut off a good many times already and I want to be heard now.

The PRESIDENT: There are forty roll calls to be taken and I hope that you will not consume unnecessary time.

Mr. READ: I read in yesterday morning's issue of the Ohio State Journal the following:

Delegate A. Ross Read, who is one of the singletaxers, tried to have the single-tax inhibition taken out of the proposal, but he was turned down overwhelmingly.

That along with the context implies that I introduced that amendment on account of the single tax, which is absolutely incorrect, and I do not want that impression to go out. Again I read in this morning's issue of the same paper the following editorial:

As every observing person knows, the Con-Con. was packed for the single tax; not directly for that, but for the initiative and referendum, which was to have been the instrumentality used for the adoption of the land value tax.

The PRESIDENT: The president will rule that that is not a question of personal privilege.

Mr. READ: I wish to say to this Convention that that is absolutely false so far as I am concerned and I want it strictly understood that I offered that amendment for the sole purpose of having a correct initiative and referendum and for no other purpose—

The PRESIDENT: The time is up.

Mr. READ: And I am opposed to anything in that proposal which denies the principle of the initiative and referendum no matter what it may refer to.

The PRESIDENT: The time is up.

Mr. READ: That is the only reason I offered the amendment.

The PRESIDENT: The time is up. Will the member take his seat?

Mr. READ: I am done.

Mr. PECK: I would like to have unanimous consent to make a motion which will take but a moment. Judge Dwyer has written a brief intended for use as a speech. It is a very splendid condensation of the authorities on the subject of the ordinance of 1787. He was shut off from opportunity to deliver it by the previous question which was suddenly called at the end of Judge Norris' speech. I move that Judge Dwyer be given the opportunity to print his speech as if delivered.

The motion was carried.

[Judge Dwyer's address immediately follows the address delivered by Judge Norris, to which reference is made, and will be found in the proceedings of the Convention of the seventy-third day, May 22.—THE EDITOR.]

REPORTS OF STANDING COMMITTEES.

Mr. COLTON: I offer a report.

The report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposal No. 340—Mr. Taggart, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended: Strike out title and insert: "Schedule to amendments."

Between lines 3 and 4 insert subhead: "SCHEDULE."

Reports of Standing Committees—Schedule—Report of Committee on Arrangement and Phraseology.

In line 4 strike out "That" and change first "the" to "The".

In line 4 strike out "or any of the same".

In line 4 insert "and submitted" after "passed".

In line 6 strike out "in" and insert: "by the schedule attached to".

In line 6 strike out "the".

In line 6 strike out "and" and change "all" in line 7 to "All".

In line 7 after first "force" insert a comma.

In lines 8 and 9 strike out "at the time this amendment takes effect" and insert: "on the first day of January, 1913".

The report was agreed to. The proposal was ordered to be engrossed.

Mr. Colton moved that the proposal be read the third time at once.

The motion was carried.

Proposal No. 340—Mr. Taggart, was read the third time.

Mr. Lampson here assumed the chair as president pro tem.

Mr. KNIGHT: Is this to be submitted and voted on as a separate amendment?

Mr. DOTY: Yes.

Mr. KNIGHT: What will be the effect if this fails?

Mr. DOTY: A large number of the proposals have a separate schedule. If they are passed they will go into effect and if any fail they will not.

Mr. SMITH, of Hamilton: There is no time fixed as to the initiative and referendum.

Mr. DOTY: We have that.

The PRESIDENT PRO TEM: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 103, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Mauck,
Antrim,	Hahn,	McClelland,
Baum,	Halenkamp,	Miller, Crawford,
Beatty, Morrow,	Halfhill,	Miller, Fairfield,
Beyer,	Harbarger,	Miller, Ottawa,
Bowdle,	Harris, Hamilton,	Moore,
Brattain,	Harter, Huron,	Nye,
Brown, Highland,	Henderson,	Okey,
Brown, Lucas,	Hoffman,	Partington,
Brown, Pike,	Holtz,	Peck,
Campbell,	Hoskins,	Peters,
Cassidy,	Hursh,	Pettit,
Cody,	Johnson, Madison,	Pierce,
Collett,	Johnson, Williams,	Read,
Colton,	Jones,	Riley,
Cordes,	Kehoe,	Rockel,
Crites,	Keller,	Roehm,
Crosser,	Kerr,	Rorick,
Cunningham,	Kilpatrick,	Shaffer,
Davio,	King,	Shaw,
Donahy,	Knight,	Smith, Geauga,
Doty,	Kramer,	Smith, Hamilton,
Dunlap,	Kunkel,	Solether,
Dunn,	Lambert,	Stamm,
Dwyer,	Lampson,	Stevens,
Earnhart,	Leete,	Stewart,
Eby,	Leslie,	Stilwell,
Evans,	Longstreth,	Stokes,
Fackler,	Ludey,	Taggart,
Fess,	Malin,	Tallman,
FitzSimons,	Marshall,	Tannehill,
Fluke,	Matthews,	Tetlow,

Thomas,
Ulmer,
Wagner,

Watson,
Winn,

Wise,
Woods.

So the proposal passed as follows:

Proposal No. 340—Mr. Taggart:

SCHEDULE TO AMENDMENTS.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SCHEDULE.

The several amendments passed and submitted by this Convention when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized by law.

Mr. DOTY: I desire to submit a report from the committee on Arrangement and Phraseology and I would like to submit the report in a peculiar way. We have our report so framed that the amendments proposed are set forth in the report itself for each separate proposal. I would like to read the report and explain it as I go along and I will answer such questions as I can.

The introductory clause of the report was read as follows:

The standing committee on Arrangement and Phraseology, to which was referred Proposals Nos. 2, 5, 7, 15, 24, 34, 51, 54, 62, 64, 72, 91, 93, 96, 100, 118, 122, 134, 151, 163, 166, 169, 170, 184, 209, 212, 236, 240, 241, 242, 249, 252, 261, 272, 304, 309, 322, 329, 331, 333 and 334, having had the same under consideration, reports said proposals back with the following amendments and recommends their passage when so amended:

Mr. DOTY: This gives in numerical order all of the proposals that were referred to that committee except Proposal No. 340, which has only been referred a very short time. You will find them in numerical order in the yellow book and the first proposal is Proposal No. 2. I will state that this proposal for the first part of the report is according to the line numbers in the book; as to the others, we will have to tell you where they come in.

The amendments to Proposal No. 2 were read as follows:

In line 32 insert a comma after "provided".

In line 36 insert comma after "assembly".

In line 37 insert a comma after "form".

In line 38 strike out "said proposed law" and insert "it".

In line 39 after "action" insert "shall".

In line 39 strike out second comma.

In line 41 strike out "the same" and insert "it".

In line 43 insert a comma after "election".

In line 46 insert "supplementary" after "which".

In line 47 change "such" to "the".

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In line 49 insert a comma after "months".

In line 49 strike out "in the event" and insert "if".

In line 50 insert a comma after "thereon".

In line 52 strike out "such secretary" and insert "the secretary of state".

Strike out all of line 52 after the period and all of lines 53, 54, 55 and 56 and insert: The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as [first] petitioned for or with any amendment or amendments which may have been incorporated therein by either branch, or by both branches, of the general assembly.

In line 57 strike out "In the event that" and insert "If".

In line 59 strike out both commas.

In line 71 change both capitals "S" to lower case "s".

In line 67 change semi-colon to period.

No paragraph between lines 67 and 68.

In line 91 strike out "comma".

At the end of proposal add:

SCHEDULE.

The foregoing amendment, if adopted by the electors shall take effect [mentioning a date].

Mr. DOTY: That is all on that proposal.

Mr. RILEY: Allow me to inquire how you fixed that date.

Mr. DOTY: It is fixed tentatively to get a schedule in here for the consideration of the Convention.

Mr. RILEY: Why is it necessary to make this take effect at a time different from that of almost all of the other proposals? I do not see the object.

Mr. DOTY: If the member from Cuyahoga [Mr. CROSSER] will step up and take care of his own matter I will be obliged to him.

Mr. RILEY: My point is that the committee on Arrangement and Phraseology has assumed to dictate. It should have been left blank.

Mr. DOTY: That is satisfactory. It was only fixed that way to get it before us.

The PRESIDENT: There is no objection and the schedule will be left blank. The question is upon agreeing to that part of the report that the committee has made which has just been read.

Mr. KNIGHT: Does this mean final action if we agree?

The PRESIDENT: There are amendments as to form, or correcting errors that are in here, and we will have opportunity also to correct errors after this.

Mr. KNIGHT: Was not the word "first" in there? Ought it not be "shall be either as first petitioned for"?

Mr. DOTY: I think so and if there is no objection I will incorporate that. I think that is a mistake in copying.

Mr. THOMAS: I noticed that some language has been incorporated in there which makes it a good deal different from the original proposition.

Mr. CROSSER: I was on the subcommittee which prepared this so-called compromise proposal. The proposal as now reported to the Convention is entirely dif-

ferent from that which the committee appointed on Wednesday agreed to and I for one am not satisfied with it.

The PRESIDENT: I don't see the difference.

Mr. CROSSER: Here is the difference: In the proposal reported to the Convention—of which I was not particularly fond—it was stated that an additional petition containing three per cent of the voters be submitted after the general assembly had passed an amended form and that would require to be submitted to the voters, either the original proposition by three per cent petition or that proposition as amended by any amendment offered in the general assembly. This must be incorporated.

Mr. DOTY: The member is very much mistaken. He may have meant to do what he says, but he did not do it. All we did was to make this thing do exactly what this language here attempted.

Mr. SMITH, of Hamilton: If Mr. Cassidy is here I would like him to give us his idea.

Mr. DOTY: Let us get the idea from the language. I don't object to Mr. Cassidy, but I would rather get the idea from the language.

Mr. THOMAS: Why not use the word "introduced" instead of "incorporated?" The word "introduced" as used there is absolutely meaningless. Frankly, the idea that I got from that was that the word "introduced" was absolutely useless and I didn't see where it possibly could be correct.

Mr. BIGELOW: That word "introduced" was taken out of the Wisconsin amendment. We did not want to be limited to amendments that the general assembly might adopt.

Mr. DOTY: The word "incorporated" is there.

Mr. BIGELOW: The word "incorporated" ought not to be there.

Mr. DOTY: That may be, but it is there.

Mr. BIGELOW: The word "introduced" was in the report.

Mr. DOTY: So was the word "incorporated."

Mr. BIGELOW: No.

Mr. DOTY: I say yes. There is the bill with it to work on. Wherever it came from, it is there. Now you gentlemen can get an idea of what the committee on Phraseology was up against.

A vote being taken, the report of the committee on Arrangement and Phraseology, as far as read, was agreed to.

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 252, by Mr. Weybrecht. His name being called, Mr. Fess voted "aye".

Mr. Fess rose to a question of privilege and asked that his vote be recorded on Proposal No. 304, by Mr. Halfhill. His name being called, Mr. Fess voted "aye."

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 249, by Mr. Tannehill. His name being called, Mr. Fess voted "aye".

Mr. Fess rose to a question of privilege and asked that his vote be recorded on Proposal No. 329, by Mr. Knight. His name being called, Mr. Fess voted "aye".

Mr. Fess rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Fess voted "aye."

Mr. Norris rose to a question of privilege and asked

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that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Norris voted "no".

Mr. Kilpatrick rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Kilpatrick voted "aye".

Mr. Evans rose to a question of privilege, and asked that his vote be recorded on Proposal No. 2, by Mr. Crosser. His name being called, Mr. Evans voted "aye."

The PRESIDENT PRO TEM: The question is on the adoption of the final proposal. There is a blank to be filled, but that cannot be filled until the committee on Submission makes its report.

Mr. WINN: My notion is that this proposal should take effect as all others, January 1, 1913. I am just as earnest about that as anybody else. I want it to be workable and I do not want it to come into disrepute any quicker than necessary. This provides that it shall take effect October 1, 1912. I know there is an element now waiting, like a race horse champing on the bit, to start the fight, and before the people come to know what the initiative and referendum are the legislature will be deluged with laws. This will bring the measure into disrepute. But if we have cooling-off time and then act upon it intelligently, in my mind it is just as safe a method of enacting laws as any other, but we must not do it in this way. I do not know whether it is in order to move to strike out or not.

The PRESIDENT PRO TEM: The chair will hold that, being part of the form of submission, it is in order to move to strike out.

Mr. WINN: Then I move that we strike from the report of the committee "at the end of the proposal add" and the further word "schedule" and the further words "the foregoing amendment if adopted by the electors shall take effect."

The PRESIDENT PRO TEM: The form of the motion should be to strike out the word "schedule" and all thereafter.

Mr. STILWELL: I hope this amendment will not prevail. I believe that the principle should be incorporated into the law and should become operative at the earliest possible moment. We shall not have another session of the general assembly until two years from the coming January, and it will be almost three years before it is possible to have a vote upon any initiated legislation. I move that the amendment be laid on the table.

Mr. WINN: And on that I demand the yeas and nays.

The yeas and nays were taken and resulted—yeas 58, nays 50, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Kilpatrick,
Beyer,	Farrell,	Kunkel,
Bowdle,	FitzSimons,	Lambert,
Brown, Lucas,	Fluke,	Leete,
Cassidy,	Hahn,	Leslie,
Cordes,	Halenkamp,	Malin,
Crosser,	Harbarger,	Marshall,
Davio,	Harris, Hamilton,	Miller, Fairfield,
DeFrees,	Harter, Huron,	Moore,
Donahay,	Henderson,	Okey,
Doty,	Hoffman,	Peck,
Dunn,	Hoskins,	Pierce,
Earnhart,	Hursh,	Read,
Evans,	Johnson, Williams,	Roehm,

Shaffer,
Smith, Geauga,
Smith, Hamilton,
Solether,
Stamm,
Stilwell

Stokes,
Tallman,
Tannehill,
Tetlow,
Thomas,

Ulmer,
Watson,
Wise,
Woods,
Mr. President.

Those who voted in the negative are:

Antrim,
Baum,
Beatty, Morrow,
Brattain,
Brown, Highland,
Brown, Pike,
Campbell,
Cody,
Collett,
Colton,
Crites,
Cunningham,
Dunlap,
Dwyer,
Eby,
Fess,
Fox,

Halfhill,
Harris, Ashtabula,
Holtz,
Johnson, Madison,
Jones,
Kehoe,
Keller,
Kerr,
King,
Knight,
Kramer,
Lampson,
Longstreth,
Ludey,
Matthews,
McClelland,
Miller, Crawford,

Miller, Ottawa,
Norris,
Nye,
Partington,
Peters,
Pettit,
Price,
Riley,
Rockel,
Rorick,
Shaw,
Stevens,
Stewart,
Taggart,
Wagner,
Winn.

So the motion to table was carried.

Mr. THOMAS: Is there any final date set in that proposal?

The PRESIDENT PRO TEM: No.

Mr. THOMAS: I move that the date be filled in with October 1, 1912.

The motion was carried.

The PRESIDENT PRO TEM: The secretary will call the roll upon the final passage of this proposal.

The yeas and nays were taken, and resulted—yeas 82, nays 18, as follows:

Those who voted in the affirmative are:

Anderson,
Baum,
Beatty, Morrow,
Beyer,
Bowdle,
Brown, Highland,
Brown, Pike,
Cassidy,
Cordes,
Crites,
Crosser,
Davio,
DeFrees,
Doty,
Dunn,
Dwyer,
Earnhart,
Evans,
Fackler,
Farrell,
Fess,
FitzSimons,
Fluke,
Hahn,
Halenkamp,
Harbarger,
Harter, Huron,
Henderson,

Hoffman,
Hoskins,
Hursh,
Johnson, Madison,
Johnson, Williams,
Kehoe,
Keller,
Kilpatrick,
King,
Knight,
Kramer,
Kunkel,
Lambert,
Lampson,
Leete,
Leslie,
Longstreth,
Ludey,
Malin,
Marshall,
Matthews,
McClelland,
Miller, Crawford,
Miller, Fairfield,
Moore,
Okey,
Partington,

Peck,
Peters,
Pettit,
Pierce,
Read,
Rockel,
Roehm,
Shaffer,
Smith, Geauga,
Smith, Hamilton,
Solether,
Stamm,
Stevens,
Stewart,
Stilwell,
Stokes,
Tallman,
Tannehill,
Tetlow,
Thomas,
Ulmer,
Wagner,
Watson,
Winn,
Wise,
Woods,
Mr. President.

Those who voted in the negative are:

Antrim,
Brattain,
Campbell,
Cody,
Collett,
Colton,

Cunningham,
Dunlap,
Eby,
Halfhill,
Jones,
Kerr,

Miller, Ottawa,
Norris,
Nye,
Riley,
Rorick,
Taggart.

So the proposal finally passed.

Report of Committee on Arrangement and Phraseology.

Mr. DOTY: The next is Proposal No. 5. The amendments are as follows:

In line 8 strike out second comma.

In line 10 strike out "No. 2" and insert period after "Schedule."

In line 11 strike out all after "further" and all of line 12 and up to "be" and insert: "That if the amendment to article V, section 1, to the constitution.—Woman's Suffrage,".

In line 13 change "proposal" to "amendment".

The foregoing amendments were agreed to.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of the proposal.

The yeas and nays were taken, and resulted—yeas 91, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Nye,
Antrim,	Harter, Huron,	Okey,
Baum,	Henderson,	Partington,
Beatty, Morrow,	Hoffman,	Peck,
Bowdle,	Hoskins,	Peters,
Brattain,	Hursh,	Pettit,
Brown, Highland,	Johnson, Madison,	Pierce,
Brown, Pike,	Johnson, Williams,	Read,
Campbell,	Jones,	Riley,
Cassidy,	Kehoe,	Rockel,
Cody,	Keller,	Roehm,
Colton,	Kerr,	Rorick,
Crosser,	Kilpatrick,	Shaffer,
Cunningham,	King,	Shaw,
DeFrees,	Knight,	Smith, Hamilton,
Donahey,	Kramer,	Solether,
Doty,	Kunkel,	Stevens,
Dunlap,	Lambert,	Stewart,
Dunn,	Lampson,	Stilwell,
Dwyer,	Leete,	Stokes,
Earnhart,	Leslie,	Taggart,
Farrell,	Ludey,	Tallman,
Fess,	Malin,	Tannehill,
FitzSimons,	Marshall,	Tetlow,
Fluke,	Matthews,	Thomas,
Fox,	McClelland,	Ulmer,
Hahn,	Miller, Crawford,	Wagner,
Halenkamp,	Miller, Fairfield,	Watson,
Halfhill,	Miller, Ottawa,	Winn,
Harbarger,	Moore,	Wise,
Harris, Ashtabula,		

Mr. Collett voted in the negative.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 7 and there is no change.

The PRESIDENT PRO TEM: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 99, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Cordes,	FitzSimons,
Antrim,	Crites,	Fluke,
Baum,	Crosser,	Fox,
Beatty, Morrow,	Cunningham,	Halfhill,
Beyer,	DeFrees,	Harbarger,
Bowdle,	Donahey,	Harris, Hamilton,
Brattain,	Doty,	Harter, Huron,
Brown, Highland,	Dunlap,	Henderson,
Brown, Lucas,	Dunn,	Hoffman,
Brown, Pike,	Dwyer,	Holtz,
Campbell,	Earnhart,	Hoskins,
Cassidy,	Eby,	Hursh,
Cody,	Evans,	Johnson, Madison,
Collett,	Farrell,	Johnson, Williams,
Colton,	Fess,	Jones,

Kehoe,	Miller, Fairfield,	Smith, Hamilton,
Keller,	Miller, Ottawa,	Solether,
Kerr,	Moore,	Stamm,
King,	Norris,	Stevens,
Knight,	Nye,	Stewart,
Kunkel,	Okey,	Stilwell,
Lambert,	Partington,	Stokes,
Lampson,	Peck,	Taggart,
Leete,	Peters,	Tallman,
Leslie,	Pettit,	Tannehill,
Longstreth,	Pierce,	Tetlow,
Ludey,	Riley,	Thomas,
Malin,	Rockel,	Ulmer,
Marshall,	Roehm,	Wagner,
Matthews,	Rorick,	Watson,
Mauck,	Shaffer,	Winn,
McClelland,	Shaw,	Wise,
Miller, Crawford,	Smith, Geauga,	Woods.

Mr. Davio and Mr. Halenkamp voted in the negative.

So the proposal finally passed.

Mr. DOTY: I would like to make a statement before the next roll call. Those of you who can multiply forty-two by ten will find that it will take us about seven hours to call the rolls and that is what is ahead of you if you are going to get up and insist on having your names called after the roll has been once called. If it is a matter of getting the necessary sixty votes, all right; but if we don't need the votes why delay the roll call?

The next is Proposal No. 15—Mr. Riley, to which there is no amendment.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of this proposal.

The yeas and nays were taken, and resulted—yeas 85, nays 10, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Moore,
Antrim,	Harter, Huron,	Okey,
Baum,	Henderson,	Partington,
Beatty, Morrow,	Hoffman,	Peck,
Beyer,	Hoskins,	Peters,
Bowdle,	Hursh,	Pettit,
Brown, Highland,	Johnson, Madison,	Pierce,
Brown, Pike,	Johnson, Williams,	Riley,
Cody,	Jones,	Rockel,
Collett,	Kehoe,	Roehm,
Colton,	Kilpatrick,	Rorick,
Cordes,	King,	Shaffer,
Crites,	Knight,	Shaw,
Cunningham,	Kramer,	Smith, Geauga,
Davio,	Kunkel,	Stamm,
Dunlap,	Lambert,	Stevens,
Dunn,	Lampson,	Stewart,
Dwyer,	Leete,	Stilwell,
Earnhart,	Leslie,	Stokes,
Eby,	Longstreth,	Taggart,
Evans,	Ludey,	Tannehill,
Fess,	Marshall,	Tetlow,
FitzSimons,	Matthews,	Ulmer,
Fluke,	Mauck,	Wagner,
Fox,	McClelland,	Watson,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, Fairfield,	Wise,
Harbarger,	Miller, Ottawa,	Woods.
Harris, Ashtabula,		

Those who voted in the negative are:

Brattain,	Malin,	Price,
Campbell,	Norris,	Tallman,
Halfhill,	Nye,	Thomas.
Kerr,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 24, to which there is no amendment.

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The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of this proposal.

The yeas and nays were taken, and resulted—yeas 92, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Okey,
Antrim,	Halenkamp,	Peck,
Baum,	Halfhill,	Peters,
Beatty, Morrow,	Harbarger,	Pettit,
Beyer,	Harter, Huron,	Pierce,
Brattain,	Henderson,	Price,
Brown, Highland,	Holtz,	Read,
Brown, Lucas,	Hursh,	Riley,
Brown, Pike,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Roehm,
Cody,	Kehoe,	Rorick,
Collett,	Kerr,	Shaffer,
Colton,	Kilpatrick,	Shaw,
Cordes,	King,	Smith, Geauga,
Crites,	Knight,	Smith, Hamilton,
Crosser,	Kramer,	Solether,
Davio,	Kunkel,	Stamm,
Donahey,	Lampson,	Stevens,
Doty,	Leete,	Stewart,
Dunlap,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Tannehill,
Earnhart,	Malin,	Tetlow,
Eby,	Marshall,	Thomas,
Evans,	Matthews,	Ulmer,
Fackler,	Mauck,	Wagner,
Farrell,	McClelland,	Watson,
Fess,	Miller, Ottawa,	Winn,
FitzSimons,	Moore,	Wise,
Fluke,	Norris,	Woods,
Fox,	Nye,	

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 34, with some amendments:

In line 17 change semi-colon to a period and strike out lines 18, 19, 20 and 21.

Strike out lines 11 and 12 and all of line 13 up to "Nothing" and insert:

"by persons under sentence to any penal institution or reformatory without the state of Ohio, and such goods made within the state of Ohio excepting those disposed of to the state or any political sub-division thereof or to any public institution owned, managed or controlled by the state or any political sub-division thereof, shall not be sold within this state unless the same are conspicuously marked "prison made."

In line 7 after "reformatory" insert the following: "while under sentence thereto," and in line 8 strike out, "while under sentence thereto."

The amendments were agreed to.

The PRESIDENT PRO TEM: The question is on the final passage of the proposal.

The yeas and nays were taken, and resulted—yeas 76, nays 22, as follows:

Those who voted in the affirmative are:

Anderson,	DeFrees,	Farrell,
Baum,	Donahey,	Fess,
Beyer,	Doty,	FitzSimons,
Brown, Highland,	Dunlap,	Fluke,
Brown, Lucas,	Dunn,	Hahn,
Brown, Pike,	Dwyer,	Halenkamp,
Cody,	Earnhart,	Halfhill,
Cordes,	Eby,	Harbarger,
Davio,	Evans,	Harris, Hamilton,

Harter, Huron,	Longstreth,	Smith, Geauga,
Henderson,	Ludey,	Smith, Hamilton,
Hoffman,	Malin,	Stamm,
Hoskins,	Marshall,	Stevens,
Hursh,	Matthews,	Stewart,
Johnson, Madison,	Miller, Crawford,	Stilwell,
Jones,	Miller, Fairfield,	Stokes,
Kehoe,	Moore,	Tallman,
Keller,	Okey,	Tannehill,
Kerr,	Pierce,	Tetlow,
Kilpatrick,	Price,	Thomas,
King,	Riley,	Ulmer,
Kunkel,	Rockel,	Watson,
Lambert,	Roehm,	Winn,
Lampson,	Shaffer,	Wise,
Leete,	Shaw,	Woods,
Leslie,		

Those who voted in the negative are:

Antrim,	Harris, Ashtabula,	Nye,
Brattain,	Holtz,	Partington,
Campbell,	Johnson, Williams,	Pettit,
Collett,	Kramer,	Rorick,
Colton,	Mauck,	Solether,
Crites,	McClelland,	Taggart,
Cunningham,	Miller, Ottawa,	Wagner,
Fox,		

So the proposal finally passed.

The PRESIDENT PRO TEM: The next proposal is No. 51.

Mr. DOTY: There are no amendments.

The PRESIDENT PRO TEM: The question is on the final passage of the proposal.

The yeas and nays were taken, and resulted—yeas 90, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peck,
Antrim,	Henderson,	Peters,
Baum,	Hoffman,	Pettit,
Beatty, Morrow,	Holtz,	Pierce,
Beyer,	Hoskins,	Price,
Bowdle,	Hursh,	Read,
Brown, Highland,	Johnson, Madison,	Riley,
Brown, Lucas,	Johnson, Williams,	Rockel,
Campbell,	Jones,	Roehm,
Cody,	Keller,	Rorick,
Collett,	Kerr,	Shaffer,
Colton,	Kilpatrick,	Shaw,
Cordes,	King,	Smith, Geauga,
Crites,	Kramer,	Smith, Hamilton,
Davio,	Kunkel,	Stamm,
DeFrees,	Lambert,	Stevens,
Donahey,	Lampson,	Stewart,
Doty,	Leete,	Stilwell,
Dunlap,	Longstreth,	Stokes,
Dunn,	Ludey,	Taggart,
Dwyer,	Malin,	Tallman,
Earnhart,	Marshall,	Tannehill,
Eby,	Matthews,	Tetlow,
Fess,	Mauck,	Thomas,
Fluke,	McClelland,	Ulmer,
Fox,	Miller, Crawford,	Wagner,
Hahn,	Miller, Fairfield,	Watson,
Halenkamp,	Miller, Ottawa,	Winn,
Harbarger,	Nye,	Wise,
Harris, Hamilton,	Okey,	Woods,

Those who voted in the negative are: Brattain, Evans, Halfhill, Harris, of Ashtabula.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 54. There is a slight change in the title. In the title change "reform" to "change".

The amendment was agreed to.

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The PRESIDENT PRO TEM: The question is on the final passage of the proposal.

The yeas and nays were taken, and resulted—yeas 86, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Okey,
Antrim,	Harter Huron,	Peck,
Baum,	Henderson,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beyer,	Holtz,	Pierce,
Bowdle,	Hoskins,	Read,
Brown, Highland,	Hursh,	Rockel,
Brown, Lucas,	Johnson, Madison,	Roehm,
Collett,	Johnson, Williams,	Rorick,
Colton,	Jones,	Shaffer,
Cordes,	Kehoe,	Shaw,
Crites,	Keller,	Smith, Geauga,
Cunningham,	Kilpatrick,	Smith, Hamilton,
Donahey,	King,	Stamm,
Dunlap,	Knight,	Stevens,
Dunn,	Kramer,	Stewart,
Dwyer,	Kunkel,	Stilwell,
Eby,	Lambert,	Stokes,
Evans,	Lampson,	Taggart,
Farrell,	Leete,	Tallman,
Fess,	Leslie,	Tannehill,
FitzSimons,	Longstreth,	Tetlow,
Fluke,	Ludey,	Thomas,
Fox,	Matthews,	Ulmer,
Hahn,	Mauck,	Wagner,
Halenkamp,	McClelland,	Watson,
Halfhill,	Miller, Crawford,	Winn,
Harbarger,	Miller, Ottawa,	Woods.
Harris, Ashtabula,	Moore,	

Those who voted in the negative are: Brattain, Brown, of Pike, Campbell, Earnhart, Kerr, Nye.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 62 and there is no change.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of that proposal.

The yeas and nays were taken, and resulted—yeas 63, nays 31, as follows:

Those who voted in the affirmative are:

Baum,	Halfhill,	Miller, Ottawa,
Beatty, Morrow,	Harbarger,	Moore,
Beyer,	Harris, Hamilton,	Nye,
Bowdle,	Harter, Huron,	Peck,
Brown, Lucas,	Hoffman,	Pettit,
Campbell,	Holtz,	Pierce,
Cody,	Hoskins,	Price,
Cordes,	Hursh,	Shaffer,
Crites,	Jones,	Smith, Geauga,
Davio,	Keller,	Stamm,
Doty,	Kilpatrick,	Stevens,
Dunlap,	Knight,	Stewart,
Dunn,	Kramer,	Stilwell,
Dwyer,	Kunkel,	Stokes,
Earnhart,	Lambert,	Tannehill,
Eby,	Leete,	Tetlow,
Farrell,	Malin,	Thomas,
FitzSimons,	Marshall,	Ulmer,
Fluke,	Matthews,	Wagner,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, Fairfield,	Wise.

Those who voted in the negative are:

Brattain,	Fox,	King,
Brown, Highland,	Harris, Ashtabula,	Lampson,
Collett,	Henderson,	Longstreth,
Colton,	Johnson, Madison,	Mauck,
Cunningham,	Johnson, Williams,	Ludey,
Donahey,	Kehoe,	McClelland,
Evans,	Kerr,	Norris,

Okey,	Rorick,	Tallman,
Partington,	Shaw,	Watson,
Riley,	Smith, Hamilton,	Woods.
Roehm,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 64, Mr. Stokes, no change.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of that proposal.

The yeas and nays were taken, and resulted—yeas 87, nays 1, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Nye,
Baum,	Harter, Huron,	Partington,
Beatty, Morrow,	Henderson,	Peters,
Beyer,	Hoffman,	Pettit,
Brattain,	Holtz,	Pierce,
Brown, Highland,	Hoskins,	Price,
Brown, Lucas,	Hursh,	Read,
Campbell,	Johnson, Madison,	Riley,
Cody,	Johnson, Williams,	Rockel,
Collett,	Kehoe,	Roehm,
Colton,	Kerr,	Shaffer,
Crites,	Kilpatrick,	Shaw,
Cunningham,	King,	Smith, Geauga,
Davio,	Knight,	Smith, Hamilton,
Donahey,	Kramer,	Stamm,
Doty,	Kunkel,	Stevens,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Longstreth,	Tallman,
Eby,	Ludey,	Tannehill,
Farrell,	Malin,	Tetlow,
Fess,	Marshall,	Ulmer,
FitzSimons,	Matthews,	Wagner,
Fox,	McClelland,	Watson,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, Fairfield,	Wise,
Halfhill,	Miller, Ottawa,	Woods,
Harbarger,	Moore,	Mr. President.

Mr. Brown, of Pike, voted in the negative.

So the proposal finally passed.

Mr. DOTY: Next is Proposal No. 72 and there are no amendments.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of that proposal.

The yeas and nays were taken, and resulted—yeas 95, nays none, as follows:

Those who voted in the affirmative are:

Antrim,	FitzSimons,	Lampson,
Baum,	Fox,	Leete,
Beatty, Morrow,	Hahn,	Leslie,
Beyer,	Halenkamp,	Longstreth,
Brattain,	Halfhill,	Ludey,
Brown, Highland,	Harbarger,	Malin,
Brown, Lucas,	Harris, Ashtabula,	Marshall,
Brown, Pike,	Harris, Hamilton,	Matthews,
Campbell,	Harter, Huron,	Mauck,
Cody,	Henderson,	McClelland,
Collett,	Hoffman,	Miller, Crawford,
Colton,	Holtz,	Miller, Fairfield,
Cordes,	Hoskins,	Miller Ottawa,
Crites,	Hursh,	Norris,
Cunningham,	Johnson, Madison,	Nye,
Donahey,	Johnson, Williams,	Okey,
Doty,	Jones,	Partington,
Dunlap,	Kehoe,	Peters,
Dunn,	Keller,	Pettit,
Dwyer,	Kerr,	Read,
Earnhart,	Kilpatrick,	Redington,
Eby,	King,	Riley,
Farrell,	Kunkel,	Rockel,
Fess,	Lambert,	Roehm,

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Rorick,	Stewart,	Ulmer,
Shaffer,	Stilwell,	Wagner,
Shaw,	Stokes,	Watson,
Smith, Geauga,	Taggart,	Winn,
Smith, Hamilton,	Tallman,	Wise,
Solether,	Tannehill,	Woods,
Stamm,	Tetlow,	Mr. President.
Stevens,	Thomas,	

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 91 with no change.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of that proposal.

The question being, "Shall Proposal No. 91 finally pass?"

The yeas and nays were taken, and resulted—yeas 63, nays 25, as follows:

Those who voted in the affirmative are:

Antrim,	Harbarger,	Read,
Baum,	Harris, Hamilton,	Rockel,
Reatty, Morrow,	Henderson,	Rorick,
Beyer,	Hursh,	Shaffer,
Brown, Highland,	Jones,	Shaw,
Brown, Lucas,	Kehoe,	Smith, Geauga,
Campbell,	Kilpatrick,	Smith, Hamilton,
Cody,	Lambert,	Solether,
Colton,	Lampson,	Stevens,
Crites,	Leete,	Stewart,
Cunningham,	Longstreth,	Stokes,
DeFrees,	Malin,	Taggart,
Dunn,	Matthews,	Tannehill,
Dwyer,	Miller, Fairfield,	Tetlow,
Eby,	Miller, Ottawa,	Thomas,
Farrell,	Moore,	Wagner,
Fess,	Nye,	Watson,
FitzSimons,	Peck,	Winn,
Hahn,	Peters,	Wise,
Halenkamp,	Pettit,	Woods,
Halfhill,	Pierce,	Mr. President.

Those who voted in the negative are:

Bowdle,	Johnson, Williams,	Mauck,
Brattain,	Keller,	McClelland,
Brown, Pike,	Kerr,	Norris,
Collett,	King,	Partington,
Cordes,	Knight,	Riley,
Donahey,	Kunkel,	Roehm,
Dunlap,	Ludey,	Stamm,
Fox,	Marshall,	Tallman.
Hoffman,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 93 and the change is simply in line 14, "after the word banking insert a comma."

The amendment was agreed to.

The PRESIDENT PRO TEM: The question is now on the final passage of the proposal and the secretary will call the roll.

The question being, "Shall Proposal No. 93 finally pass?"

The yeas and nays were taken, and resulted—yeas 75, nays 19, as follows:

Those who voted in the affirmative are:

Anderson,	Donahey,	Fox,
Antrim,	Dunn,	Hahn,
Beatty, Morrow,	Dwyer,	Halenkamp,
Beyer,	Earnhart,	Harbarger,
Bowdle,	Eby,	Harris, Ashtabula,
Brown, Highland,	Evans,	Harris, Hamilton,
Brown, Lucas,	Farrell,	Harter, Huron,
Campbell,	Fess,	Hoffman,
Cunningham,	FitzSimons,	Holtz,
Davio,	Fluke,	Hursh,

Johnson, Williams,	McClelland,	Stevens,
Kehoe,	Miller, Fairfield,	Stewart,
Kerr,	Miller, Ottawa,	Stilwell,
Kilpatrick,	Moore,	Stokes,
King,	Nye,	Taggart,
Knight,	Okey,	Tallman,
Kramer,	Peters,	Tannehill,
Kunkel,	Pettit,	Tetlow,
Lambert,	Redington,	Thomas,
Lampson,	Rockel,	Ulmer,
Leete,	Roehm,	Wagner,
Ludey,	Shaw,	Watson,
Malin,	Smith, Geauga,	Winn,
Marshall,	Smith, Hamilton,	Wise,
Mauck,	Stamm,	Woods.

Those who voted in the negative are:

Baum,	Henderson,	Norris,
Brattain,	Johnson, Madison,	Partington,
Cody,	Jones,	Peck,
Collett,	Keller,	Pierce,
Crites,	Longstreth,	Riley,
Dunlap,	Miller, Crawford,	Rorick.
Halfhill,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 96, to which there are some amendments but only as to the schedule, which will not appear in your bill book:

In line 11 strike out "No. 5" and insert a period after "Schedule".

Strike out line 12 and "Convention" in line 13 and insert: "Resolved further, If the foregoing amendment".

In line 13 strike out "of the state".

The amendments were agreed to.

The PRESIDENT PRO TEM: The secretary will call the roll on the final passage of the proposal.

The yeas and nays were taken, and resulted—yeas 79, nays 11, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peters,
Antrim,	Henderson,	Pettit,
Baum,	Hoffman,	Pierce,
Beatty, Morrow,	Holtz,	Redington,
Beyer,	Hoskins,	Riley,
Bowdle,	Hursh,	Rockel,
Brown, Lucas,	Johnson, Madison,	Rorick,
Campbell,	Johnson, Williams,	Shaffer,
Colton,	Jones,	Shaw,
Cordes,	Kehoe,	Smith, Geauga,
Crites,	Kilpatrick,	Smith, Hamilton,
Cunningham,	King,	Solether,
Davio,	Knight,	Stamm,
DeFrees,	Kramer,	Stevens,
Donahey,	Lambert,	Stewart,
Dunn,	Lampson,	Stilwell,
Dwyer,	Leete,	Stokes,
Earnhart,	Longstreth,	Taggart,
Evans,	Ludey,	Tallman,
Fess,	Marshall,	Tannehill,
FitzSimons,	Mauck,	Tetlow,
Fluke,	Miller, Crawford,	Thomas,
Hahn,	Miller, Fairfield,	Wagner,
Halenkamp,	Miller, Ottawa,	Winn,
Harbarger,	Moore,	Wise,
Harris, Ashtabula,	Nye,	Woods,
Harris, Hamilton,		

Those who voted in the negative are:

Brattain,	Dunlap,	Malin,
Brown, Highland,	Fox,	Okey,
Brown, Pike,	Halfhill,	Watson.
Collett,	Kerr,	

So the proposal finally passed.

Report of Committee on Arrangement and Phraseology.

Mr. DOTY: The next is Proposal No. 100. There are some amendments:

In line 12 strike out "No. 1" and add period after "Schedule."

In line 13 change semi-colon and insert comma and change "that" to "That".

Strike out all after "that" and all of line 14 up to "be" and insert: "if the amendment to article IV, section 1, 2 and 6".

In line 16 change "proposal" to "amendment".

The PRESIDENT PRO TEM: The question is upon agreeing to the amendments reported by the committee.

Mr. HOSKINS: This is Proposal No. 100 and it seems to be different from what I thought it was. I would like to hear some explanation.

The SECRETARY: That change was put in on the third reading and the committee on Phraseology did not make any change in that.

The amendments were agreed to.

The question being "Shall Proposal No. 100 finally pass?"

The yeas and nays were taken, and resulted — yeas 93, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Partington,
Antrim,	Harbarger,	Peck,
Baum,	Harris, Ashtabula,	Peters,
Beatty, Morrow,	Harris, Hamilton,	Pettit,
Beyer,	Harter, Huron,	Pierce,
Brattain,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Brown, Lucas,	Holtz,	Riley,
Brown, Pike,	Hoskins,	Rockel,
Campbell,	Hursh,	Roehm,
Collett,	Johnson, Williams,	Rorick,
Colton,	Jones,	Shaffer,
Cordes,	Kehoe,	Shaw,
Crites,	Kerr,	Smith, Geauga,
Crosser,	Kilpatrick,	Smith, Hamilton,
Cunningham,	King,	Solether,
DeFrees,	Knight,	Stamm,
Donahey,	Kramer,	Stevens,
Doty,	Kunkel,	Stewart,
Dunlap,	Lampson,	Stilwell,
Dunn,	Leete,	Stokes,
Dwyer,	Longstreth,	Taggart,
Earnhart,	Ludey,	Tallman,
Eby,	Malin,	Tannehill,
Fackler,	Marshall,	Tetlow,
Fess,	Mauck,	Ulmer,
FitzSimons,	McClelland,	Wagner,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Winn,
Hahn,	Nye,	Wise,
Halenkamp,	Okey,	Woods.

Mr. Davio and Mr. Evans voted in the negative.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 118 and we have the following amendment:

In title strike out all after dash and insert: "To extend state bond limit to fifty million dollars for inter-county wagon roads."

The amendment was agreed to.

The question being "Shall proposal No. 118 finally pass?"

The yeas and nays were taken, and resulted — yeas 78, nays 21, as follows:

Those who voted in the affirmative are:

Antrim,	Harris, Ashtabula,	Peck,
Beatty, Morrow,	Harris, Hamilton,	Peters,
Beyer,	Harter, Huron,	Pettit,
Bowdle,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Brown, Lucas,	Holtz,	Riley,
Brown, Pike,	Johnson, Madison,	Rockel,
Campbell,	Kerr,	Roehm,
Collett,	Kilpatrick,	Rorick,
Colton,	King,	Shaffer,
Crites,	Knight,	Shaw,
Crosser,	Kramer,	Smith, Geauga,
Cunningham,	Lambert,	Stamm,
Davio,	Lampson,	Stevens,
Doty,	Leete,	Stewart,
Dunlap,	Longstreth,	Stilwell,
Dunn,	Ludey,	Stokes,
Dwyer,	Malin,	Taggart,
Earnhart,	Marshall,	Tallman,
Eby,	Matthews,	Tannehill,
Farrell,	McClelland,	Tetlow,
Fess,	Miller, Crawford,	Thomas,
FitzSimons,	Miller, Fairfield,	Ulmer,
Fox,	Miller, Ottawa,	Watson,
Hahn,	Nye,	Winn,
Halfhill,	Okey,	Wise.

Those who voted in the negative are:

Baum,	Harbarger,	Mauck,
Brattain,	Hoskins,	Moore,
DeFrees,	Hursh,	Norris,
Donahey,	Johnson, Williams,	Partington,
Evans,	Jones,	Pierce,
Fluke,	Kehoe,	Solether,
Halenkamp,	Kunkel,	Woods.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 122 and there is no change.

The question being "Shall Proposal No. 122 finally pass?"

The yeas and nays were taken, and resulted — yeas 87, nays 8, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Okey,
Antrim,	Harbarger,	Peck,
Baum,	Harris, Hamilton,	Pettit,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beyer,	Henderson,	Price,
Bowdle,	Hoffman,	Redington,
Brown, Highland,	Hoskins,	Riley,
Brown, Lucas,	Hursh,	Rockel,
Cody,	Jones,	Roehm,
Colton,	Kehoe,	Rorick,
Cordes,	Kerr,	Shaffer,
Crites,	Kilpatrick,	Shaw,
Crosser,	King,	Smith, Geauga,
Davio,	Kramer,	Smith, Hamilton,
DeFrees,	Kunkel,	Stamm,
Doty,	Lambert,	Stevens,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Longstreth,	Stokes,
Earnhart,	Ludey,	Taggart,
Eby,	Malin,	Tallman,
Evans,	Marshall,	Tetlow,
Farrell,	Matthews,	Thomas,
Fess,	McClelland,	Ulmer,
FitzSimons,	Miller, Fairfield,	Wagner,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Winn,
Hahn,	Norris,	Wise,
Halenkamp,	Nye,	Woods.

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Those who voted in the negative are:

Brattain,	Collett,	Johnson, Williams,
Brown, Pike,	Harris, Ashtabula,	Solether.
Campbell,	Holtz,	

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 134 and there is no change.

The question being "Shall Proposal No. 134 finally pass?"

The yeas and nays were taken, and resulted — yeas 88, nays 9, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Moore,
Antrim,	Harris, Ashtabula,	Okey,
Baum,	Harris, Hamilton,	Peck,
Beyer,	Harter, Huron,	Pierce,
Bowdle,	Henderson,	Read,
Brown, Highland,	Hoffman,	Redington,
Brown, Lucas,	Hoskins,	Riley,
Cody,	Hursh,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Rorick,
Crites,	Jones,	Shaffer,
Crosser,	Kehoe,	Shaw,
Davio,	Kerr,	Smith, Geauga,
DeFrees,	Kilpatrick,	Smith, Hamilton,
Donahey,	King,	Stamm,
Doty,	Kramer,	Stevens,
Dunlap,	Kunkel,	Stewart,
Dunn,	Lambert,	Stilwell,
Dwyer,	Lampson,	Stokes,
Earnhart,	Leete,	Tallman,
Eby,	Longstreth,	Tannehill,
Evans,	Ludey,	Tetlow,
Farrell,	Malin,	Thomas,
Fess,	Marshall,	Ulmer,
FitzSimons,	Matthews,	Watson,
Fluke,	Mauck,	Winn,
Fox,	McClelland,	Wise,
Hahn,	Miller, Crawford,	Woods,
Halenkamp,	Miller, Ottawa,	Mr. President.
Halfhill,		

Those who voted in the negative are:

Beatty, Morrow,	Cunningham,	Nye,
Brattain,	Holtz,	Pettit,
Campbell,	Norris,	Solether.

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 151 and there are no amendments.

The president resumed the chair.

The question being "Shall Proposal No. 151 finally pass?"

The yeas and nays were taken, and resulted — yeas 88, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	DeFrees,	Harris, Ashtabula,
Antrim,	Donahey,	Harris, Hamilton,
Baum,	Doty,	Harter, Huron,
Beatty, Morrow,	Dunlap,	Henderson,
Beyer,	Dwyer,	Hoffman,
Bowdle,	Earnhart,	Holtz,
Brattain,	Eby,	Hoskins,
Brown, Highland,	Evans,	Hursh,
Brown, Lucas,	Farrell,	Johnson, Williams,
Brown, Pike,	Fess,	Jones,
Campbell,	FitzSimons,	Kehoe,
Collett,	Fluke,	Keller,
Colton,	Fox,	Kerr,
Cordes,	Hahn,	King,
Crites,	Halenkamp,	Knight,
Crosser,	Halfhill,	Kramer,
Davio,	Harbarger,	Kunkel,

Lambert,	Nye,	Smith, Geauga,
Lampson,	Okey,	Smith, Hamilton,
Leete,	Partington,	Stamm,
Longstreth,	Peck,	Stilwell,
Ludey,	Pierce,	Stokes,
Malin,	Redington,	Tallman,
Marshall,	Riley,	Tetlow,
McClelland,	Rockel,	Thomas,
Miller, Crawford,	Roehm,	Ulmer,
Miller, Ottawa,	Rorick,	Winn,
Moore,	Shaffer,	Wise,
Norris,	Shaw,	Woods,
		Mr. President.

Those who voted in the negative are:

Cunningham,	Pettit,	Stewart,
Dunn,	Read,	Tannehill,
Kilpatrick,	Solether,	Wagner,
Miller, Fairfield,	Stevens,	Watson.
Peters,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 163 and there are no amendments.

Mr. KNIGHT: The committee should have reported back the word "of" in line 7 after the word "boards", "Members of boards of, or to positions in." I offer the following amendment:

The amendment was read as follows:

In line 7 after the word "boards" and before the comma insert the word "of".

In line 8 insert a comma after the word "in".

The amendment was agreed to.

The question being "Shall Proposal No. 163 finally pass?"

The yeas and nays were taken, and resulted — yeas 97, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Nye,
Antrim,	Harter, Huron,	Okey,
Baum,	Henderson,	Partington,
Beatty, Morrow,	Hoffman,	Peters,
Beyer,	Holtz,	Pettit,
Brattain,	Hoskins,	Pierce,
Brown, Highland,	Hursh,	Read,
Brown, Lucas,	Johnson, Williams,	Redington,
Campbell,	Jones,	Riley,
Collett,	Keller,	Rockel,
Colton,	Kerr,	Roehm,
Crites,	Kilpatrick,	Rorick,
Crosser,	King,	Shaffer,
Cunningham,	Knight,	Shaw,
DeFrees,	Kramer,	Smith, Geauga,
Donahey,	Kunkel,	Smith, Hamilton,
Doty,	Lambert,	Solether,
Dunlap,	Lampson,	Stevens,
Dunn,	Leete,	Stewart,
Dwyer,	Leslie,	Stilwell,
Earnhart,	Longstreth,	Stokes,
Elson,	Ludey,	Taggart,
Evans,	Malin,	Tannehill,
Farrell,	Marshall,	Tetlow,
Fess,	Matthews,	Thomas,
FitzSimons,	Mauck,	Ulmer,
Fluke,	McClelland,	Wagner,
Fox,	Miller, Crawford,	Watson,
Hahn,	Miller, Fairfield,	Winn,
Halenkamp,	Miller, Ottawa,	Wise,
Halfhill,	Moore,	Woods,
Harbarger,	Norris,	Mr. President.
Harris, Ashtabula,		

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 166 and there are no amendments.

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The question being "Shall Proposal No. 166 finally pass?"

The yeas and nays were taken, and resulted—yeas 99, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Partington,
Antrim,	Harter, Huron,	Peck,
Baum,	Henderson,	Peters,
Beyer,	Hoffman,	Pettit,
Bowdle,	Holtz,	Pierce,
Brown, Highland,	Hoskins,	Read,
Brown, Lucas,	Hursh,	Redington,
Campbell,	Johnson, Madison,	Riley,
Cody,	Johnson, Williams,	Rockel,
Collett,	Jones,	Roehm,
Colton,	Kehoe,	Rorick,
Cordes,	Keller,	Shaffer,
Crites,	Kerr,	Shaw,
Crosser,	Kilpatrick,	Smith, Geauga,
Cunningham,	Knight,	Smith, Hamilton,
Davio,	Kramer,	Solether,
DeFrees,	Kunkel,	Stamm,
Donahey,	Lambert,	Stevens,
Dunlap,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Longstreth,	Stokes,
Earnhart,	Ludey,	Taggart,
Eby,	Malin,	Tallman,
Evans,	Marshall,	Tannehill,
Farrell,	Matthews,	Tetlow,
Fess,	Mauck,	Thomas,
FitzSimons,	McClelland,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Nye,	Woods,
Harbarger,	Okey,	Mr. President.

Mr. Brattain voted in the negative.

So the proposal finally passed.

Mr. DOTY: Proposal No. 169, no amendments.

Proposal No. 169 was next considered.

The question being "Shall Proposal No. 169 finally pass?"

The yeas and nays were taken, and resulted—yeas 84, nays 17, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Nye,
Antrim,	Harris, Ashtabula,	Peck,
Baum,	Harris, Hamilton,	Peters,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beyer,	Henderson,	Read,
Bowdle,	Hoffman,	Redington,
Brown, Highland,	Holtz,	Rockel,
Brown, Lucas,	Hoskins,	Roehm,
Campbell,	Hursh,	Rorick,
Cody,	Johnson, Madison,	Shaffer,
Colton,	Johnson, Williams,	Shaw,
Cordes,	Jones,	Smith, Geauga,
Crites,	Kehoe,	Smith, Hamilton,
Crosser,	Kerr,	Solether,
Cunningham,	Kilpatrick,	Stamm,
Dunlap,	King,	Stevens,
Dunn,	Knight,	Stewart,
Dwyer,	Kramer,	Stilwell,
Earnhart,	Lambert,	Stokes,
Eby,	Leete,	Taggart,
Evans,	Longstreth,	Tallman,
Farrell,	Matthews,	Tannehill,
Fess,	Mauck,	Tetlow,
FitzSimons,	McClelland,	Thomas,
Fox,	Miller, Crawford,	Ulmer,
Hahn,	Miller, Fairfield,	Wagner,
Halenkamp,	Miller, Ottawa,	Winn,
Halfhill,	Moore,	Mr. President.

Those who voted in the negative are:

Brattain,	Ludey,	Pettit,
Brown, Pike,	Malin,	Riley,
Davio,	Marshall,	Watson,
Donahey,	Norris,	Wise,
Fluke,	Okey,	Woods.
Keller,	Partington,	

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 170 and there are amendments to that:

In line 34 strike out "(50)".

In line 42 strike out "the".

In lines 42 and 43 change "collection" to "collecting".

In line 43 strike out "of".

In line 44 insert "to" before "provide".

The amendments were agreed to.

The question being "Shall Proposal No. 170 finally pass?"

The yeas and nays were taken, and resulted—yeas 73, nays 32, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Miller, Ottawa,
Baum,	Harter, Huron,	Moore,
Beatty, Morrow,	Henderson,	Norris,
Beyer,	Holtz,	Okey,
Brown, Highland,	Hursh,	Partington,
Brown, Lucas,	Johnson, Madison,	Peters,
Brown, Pike,	Jones,	Pettit,
Cody,	Kehoe,	Pierce,
Collett,	Keller,	Price,
Colton,	Kerr,	Rockel,
Crites,	Kilpatrick,	Roehm,
Crosser,	King,	Shaw,
Cunningham,	Kramer,	Smith, Geauga,
DeFrees,	Kunkel,	Solether,
Donahey,	Lambert,	Stewart,
Dunlap,	Lampson,	Stokes,
Dunn,	Leete,	Tannehill,
Dwyer,	Longstreth,	Tetlow,
Earnhart,	Ludey,	Thomas,
Eby,	Marshall,	Wagner,
Farnsworth,	Mauck,	Watson,
Fess,	McClelland,	Winn,
Fluke,	Miller, Crawford,	Wise,
Fox,	Miller, Fairfield,	Woods.
Harbarger,		

Those who voted in the negative are:

Antrim,	Halfhill,	Redington,
Bowdle,	Harris, Hamilton,	Riley,
Brattain,	Hoffman,	Rorick,
Campbell,	Hoskins,	Shaffer,
Cordes,	Johnson, Williams,	Smith, Hamilton,
Davio,	Knight,	Stamm,
Doty,	Malin,	Stevens,
Evans,	Matthews,	Stilwell,
FitzSimons,	Nye,	Ulmer,
Hahn,	Peck,	Mr. President.
Halenkamp,	Read,	

So the proposal finally passed.

Mr. DOTY: The next is Proposal No. 184 and there are no amendments.

The question being "Shall Proposal No. 184 finally pass?"

The yeas and nays were taken, and resulted—yeas 93, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Beatty, Morrow,	Brown, Highland,
Antrim,	Beyer,	Brown, Lucas,
Baum,	Bowdle,	Brown, Pike,

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Cody,	Holtz,	Peters,
Colton,	Hoskins,	Pettit,
Cordes,	Hursh,	Pierce,
Crites,	Johnson, Madison,	Read,
Crosser,	Jones,	Redington,
Davio,	Kehoe,	Riley,
DeFrees,	Keller,	Rockel,
Donahey,	Kerr,	Roehm,
Doty,	Kilpatrick,	Rorick,
Dunlap,	King,	Shaw,
Dunn,	Knight,	Smith, Geauga,
Dwyer,	Kramer,	Smith, Hamilton,
Earnhart,	Kunkel,	Solether,
Eby,	Lambert,	Stamm,
Farrell,	Lampson,	Stevens,
Fess,	Leete,	Stewart,
FitzSimons,	Longstreth,	Stilwell,
Fluke,	Ludey,	Stokes,
Fox,	Malin,	Taggart,
Hahn,	Marshall,	Tetlow,
Halenkamp,	Matthews,	Thomas,
Halfhill,	Miller, Crawford,	Ulmer,
Harbarger,	Miller, Fairfield,	Wagner,
Harris, Ashtabula,	Miller, Ottawa,	Watson,
Harris, Hamilton,	Moore,	Winn,
Harter, Huron,	Okey,	Wise,
Henderson,	Partington,	Woods,
Hoffman,	Peck,	Mr. President.

Those who voted in the negative are:

Brattain,	Evans,	Norris,
Campbell,	Johnson, Williams,	Nye.

So the proposal finally passed.

On motion of Mr. Stokes the Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

1:30 o'clock p. m.

The Convention met pursuant to recess and was called to order by the president.

Proposal No. 209 was then considered.

The question being "Shall Proposal No. 209 finally pass?"

The yeas and nays were taken, and resulted—yeas 78, nays 2, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Pierce,
Antrim,	Harris, Ashtabula,	Redington,
Baum,	Harris, Hamilton,	Riley,
Beatty, Morrow,	Harter, Huron,	Rockel,
Beyer,	Hoffman,	Roehm,
Bowdle,	Hoskins,	Rorick,
Brown, Highland,	Hursh,	Shaffer,
Brown, Lucas,	Johnson, Madison,	Smith, Geauga,
Campbell,	Johnson, Williams,	Smith, Hamilton,
Colton,	Jones,	Stalter,
Cordes,	Kerr,	Stamm,
Crites,	Kilpatrick,	Stevens,
Crosser,	King,	Stilwell,
Davio,	Knight,	Stokes,
Donahey,	Kramer,	Taggart,
Dunlap,	Kunkel,	Tallman,
Dunn,	Lambert,	Tannehill,
Dwyer,	Lampson,	Tetlow,
Earnhart,	Ludey,	Thomas,
Farrell,	Malin,	Ulmer,
Fess,	Miller, Crawford,	Wagner,
FitzSimons,	Moore,	Watson,
Fluke,	Nye,	Winn,
Fox,	Okey,	Wise,
Hahn,	Peck,	Woods,
Halenkamp,	Pettit,	Mr. President.
Halfhill,		

Mr. McClelland and Mr. Miller, of Ottawa, voted in the negative.

So the proposal finally passed.

Proposal No. 212 was then considered.

The question being "Shall Proposal No. 212 finally pass?"

The yeas and nays were taken, and resulted—yeas 88, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Hoffman,	Pettit,
Antrim,	Hoskins,	Pierce,
Baum,	Hursh,	Price,
Beatty, Morrow,	Johnson, Madison,	Read,
Beyer,	Johnson, Williams,	Redington,
Brown, Highland,	Jones,	Riley,
Brown, Lucas,	Kehoe,	Rockel,
Brown, Pike,	Keller,	Roehm,
Campbell,	Kerr,	Rorick,
Cody,	Kilpatrick,	Shaffer,
Collett,	King,	Smith, Geauga,
Colton,	Knight,	Smith, Hamilton,
Cordes,	Kramer,	Stalter,
Crosser,	Kunkel,	Stamm,
Cunningham,	Lambert,	Stevens,
Donahey,	Lampson,	Stewart,
Doty,	Leete,	Stilwell,
Dunlap,	Longstreth,	Stokes,
Dunn,	Ludey,	Taggart,
Earnhart,	Malin,	Tallman,
Fess,	Mauck,	Tannehill,
FitzSimons,	McClelland,	Tetlow,
Fox,	Miller, Crawford,	Thomas,
Hahn,	Miller, Ottawa,	Ulmer,
Halenkamp,	Moore,	Wagner,
Halfhill,	Nye,	Watson,
Harbarger,	Okey,	Winn,
Harris, Ashtabula,	Partington,	Wise,
Harter, Huron,	Peck,	Mr. President.
Henderson,		

Mr. Woods voted in the negative.

So the proposal finally passed.

Proposal No. 236 was then considered.

The question being "Shall Proposal No. 236 finally pass?"

The yeas and nays were taken, and resulted—yeas 98, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Matthews,
Antrim,	Halenkamp,	Mauck,
Baum,	Halfhill,	McClelland,
Beatty, Morrow,	Harbarger,	Miller, Crawford,
Beyer,	Harris, Ashtabula,	Miller, Fairfield,
Bowdle,	Harris, Hamilton,	Miller, Ottawa,
Brattain,	Harter, Huron,	Moore,
Brown, Highland,	Hoffman,	Norris,
Brown, Lucas,	Holtz,	Nye,
Brown, Pike,	Hursh,	Okey,
Campbell,	Johnson, Madison,	Partington,
Cody,	Johnson, Williams,	Peck,
Collett,	Jones,	Peters,
Colton,	Kehoe,	Pettit,
Cordes,	Keller,	Pierce,
Crites,	Kerr,	Price,
Crosser,	Kilpatrick,	Read,
Cunningham,	King,	Redington,
Donahey,	Kramer,	Riley,
Doty,	Kunkel,	Rockel,
Dunlap,	Lambert,	Roehm,
Dunn,	Lampson,	Rorick,
Earnhart,	Leete,	Shaffer,
Farrell,	Leslie,	Smith, Geauga,
Fess,	Longstreth,	Smith, Hamilton,
FitzSimons,	Ludey,	Stalter,
Fluke,	Malin,	Stamm,
Fox,	Marshall,	Stevens,

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Stewart,	Tannehill,	Winn,
Stilwell,	Tetlow,	Wise,
Stokes,	Thomas,	Woods,
Taggart,	Ulmer,	Mr. President.
Tallman,	Watson,	

So the proposal finally passed.

Proposal No. 240 was then considered.

The question being "Shall Proposal No. 240 finally pass?"

The yeas and nays were taken, and resulted—yeas 80, nays 18, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beyer,	Hoffman,	Price,
Bowdle,	Hursh,	Read,
Brown, Highland,	Johnson, Madison,	Rockel,
Brown, Lucas,	Johnson, Williams,	Roehm,
Cody,	Jones,	Shaffer,
Colton,	Kehoe,	Smith, Geauga,
Cordes,	Keller,	Stalter,
Crosser,	Kerr,	Stamm,
Davio,	Kilpatrick,	Stevens,
DeFrees,	King,	Stewart,
Donahey,	Kunkel,	Stilwell,
Doty,	Lampson,	Stokes,
Dunn,	Leete,	Taggart,
Dwyer,	Longstreth,	Tallman,
Earnhart,	Ludey,	Tannehill,
Farrell,	Marshall,	Tetlow,
Fess,	Matthews,	Thomas,
FitzSimons,	Mauck,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Nye,	Woods,
Harbarger,	Okey,	Mr. President.
Harris, Ashtabula,	Peck,	

Those who voted in the negative are:

Antrim,	Crites,	Norris,
Beatty, Morrow,	Cunningham,	Partington,
Brattain,	Dunlap,	Redington,
Brown, Pike,	Holtz,	Riley,
Campbell,	Kramer,	Rorick,
Collett,	Malin,	Smith, Hamilton.

So the proposal finally passed.

Proposal No. 241 was then considered.

The question being "Shall Proposal No. 241 finally pass?"

The yeas and nays were taken, and resulted—yeas 96, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Dunn,	Kerr,
Antrim,	Earnhart,	Kilpatrick,
Baum,	Fess,	King,
Beatty, Morrow,	FitzSimons,	Knight,
Beyer,	Fluke,	Kramer,
Bowdle,	Fox,	Kunkel,
Brattain,	Hahn,	Leete,
Brown, Highland,	Halenkamp,	Leslie,
Brown, Lucas,	Halfhill,	Longstreth,
Brown, Pike,	Harbarger,	Ludey,
Campbell,	Harris, Ashtabula,	Malin,
Cody,	Harris, Hamilton,	Marshall,
Collett,	Harter, Huron,	Matthews,
Colton,	Hoffman,	Mauck,
Cordes,	Holtz,	McClelland,
Crites,	Hoskins,	Miller, Crawford,
Crosser,	Hursh,	Miller, Fairfield,
Cunningham,	Johnson, Madison,	Miller, Ottawa,
DeFrees,	Johnson, Williams,	Moore,
Donahey,	Jones,	Norris,
Dunlap,	Kehoe,	Nye,

Okey,	Rorick,	Taggart,
Partington,	Shaffer,	Tallman,
Peck,	Smith, Geauga,	Tetlow,
Peters,	Smith, Hamilton,	Thomas,
Pettit,	Solether,	Ulmer,
Pierce,	Stalter,	Wagner,
Price,	Stamm,	Watson,
Redington,	Stevens,	Winn,
Riley,	Stewart,	Wise,
Rockel,	Stilwell,	Woods,
Roehm,	Stokes,	Mr. President

So the proposal finally passed.

Proposal No. 242 was then considered.

The question being "Shall Proposal No. 242 finally pass?"

The yeas and nays were taken, and resulted—yeas 94, nays 5, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Partington,
Antrim,	Harter, Huron,	Peck,
Baum,	Harter, Stark,	Peters,
Beatty, Morrow,	Hoffman,	Pierce,
Beyer,	Holtz,	Price,
Bowdle,	Hursh,	Read,
Brown, Highland,	Johnson, Madison,	Redington,
Brown, Lucas,	Johnson, Williams,	Riley,
Campbell,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Colton,	Keller,	Rorick,
Cordes,	Kilpatrick,	Shaffer,
Crites,	Knight,	Smith, Geauga,
Crosser,	Kramer,	Smith, Hamilton,
Cunningham,	Kunkel,	Solether,
Davio,	Lambert,	Stalter,
DeFrees,	Lampson,	Stamm,
Donahey,	Leete,	Stevens,
Doty,	Leslie,	Stewart,
Dunlap,	Longstreth,	Stilwell,
Dunn,	Ludey,	Stokes,
Dwyer,	Marshall,	Tallman,
Earnhart,	Matthews,	Tannehill,
Farrell,	Mauck,	Tetlow,
Fess,	McClelland,	Thomas,
FitzSimons,	Miller, Crawford,	Ulmer,
Fluke,	Miller, Fairfield,	Watson,
Fox,	Miller, Ottawa,	Winn,
Hahn,	Moore,	Wise,
Halenkamp,	Nye,	Woods,
Halfhill,	Okey,	Mr. President.
Harris, Ashtabula,		

Those who voted in the negative are: Bowdle, Brown, of Pike, Collett, Harbarger, Norris.

So the proposal finally passed.

Proposal No. 249 was then considered.

The question being "Shall Proposal No. 249 finally pass?"

The yeas and nays were taken, and resulted—yeas 74, nays 24, as follows:

Those who voted in the affirmative are:

Anderson,	Earnhart,	Kehoe,
Antrim,	Fess,	Kilpatrick,
Baum,	FitzSimons,	Knight,
Beatty, Morrow,	Fluke,	Kramer,
Beyer,	Fox,	Kunkel,
Bowdle,	Hahn,	Lambert,
Brown, Lucas,	Halenkamp,	Lampson,
Colton,	Halfhill,	Leete,
Cordes,	Harbarger,	Leslie,
Crites,	Harris, Hamilton,	Longstreth,
Crosser,	Harter, Huron,	Marshall,
Davio,	Hoffman,	McClelland,
Donahey,	Holtz,	Miller, Crawford,
Doty,	Hoskins,	Miller, Fairfield,
Dunn,	Hursh,	Moore,
Dwyer,	Jones,	Okey,

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Peters,	Stamm,	Ulmer,
Pettit,	Stevens,	Wagner,
Pierce,	Stewart,	Walker,
Redington,	Stilwell,	Watson,
Roehm,	Stokes,	Winn,
Shaffer,	Tarrant,	Wise,
Smith, Geauga,	Tannehill,	Woods,
Smith, Hamilton,	Tetlow,	Mr. President.
Solether,	Thomas,	

Those who voted in the negative are:

Brattain,	Keller,	Nye,
Campbell,	King,	Partington,
Cody,	Ludey,	Peck,
Collett,	Malin,	Price,
Cunningham,	Matthews,	Riley,
Dunlap,	Mauck,	Rockel,
Johnson, Madison,	Miller, Ottawa,	Rorick,
Johnson, Williams,	Norris,	Tallman.

So the proposal finally passed.

Proposal No. 252 was then considered.

The question being "Shall Proposal No. 252 finally pass?"

The yeas and nays were taken, and resulted—yeas 88, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Partington,
Baum,	Harter, Stark,	Peck,
Beatty, Morrow,	Hoffman,	Peters,
Beyer,	Holtz,	Pettit,
Bowdle,	Hoskins,	Pierce,
Brown, Lucas,	Johnson, Madison,	Price,
Brown, Pike,	Johnson, Williams,	Redington,
Campbell,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Cordes,	Keller,	Rorick,
Crites,	Kilpatrick,	Shaffer,
Crosser,	Knight,	Smith, Geauga,
DeFrees,	Kunkel,	Smith, Hamilton,
Donahay,	Lambert,	Stalter,
Dunn,	Lampson,	Stamm,
Dwyer,	Leete,	Stewart,
Earnhart,	Leslie,	Stokes,
Eby,	Longstreth,	Taggart,
Farnsworth,	Ludey,	Tallman,
Farrell,	Malin,	Tannehill,
Fess,	Marshall,	Tetlow,
FitzSimons,	Matthews,	Thomas,
Fluke,	Mauck,	Ulmer,
Fox,	McClelland,	Wagner,
Hahn,	Miller, Fairfield,	Walker,
Halenkamp,	Miller, Ottawa,	Watson,
Halfhill,	Norris,	Winn,
Harbarger,	Nye,	Wise,
Harris, Ashtabula,	Okey,	Mr. President.
Harris, Hamilton,		

Those who voted in the negative are: Antrim, Brattain, Brown, of Highland, Dunlap, Stevens, Woods.

So the proposal finally passed.

Proposal No. 261 was then considered.

The question being "Shall Proposal No. 261 finally pass?"

The yeas and nays were taken, and resulted—yeas 104, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Campbell,	DeFrees,
Antrim,	Cody,	Doty,
Baum,	Collett,	Dunlap,
Beatty, Morrow,	Colton,	Dunn,
Beyer,	Cordes,	Dwyer,
Brattain,	Crites,	Earnhart,
Brown, Highland,	Crosser,	Evans,
Brown, Lucas,	Cunningham,	Farnsworth,
Brown, Pike,	Davio,	Farrell,

Fess,	Kunkel,	Riley,
FitzSimons,	Lambert,	Rockel,
Fluke,	Lampson,	Roehm,
Fox,	Leete,	Rorick,
Hahn,	Leslie,	Shaffer,
Halenkamp,	Longstreth,	Smith, Geauga,
Halfhill,	Ludey,	Smith, Hamilton,
Harbarger,	Marshall,	Solether,
Harris, Ashtabula,	Matthews,	Stalter,
Harris, Hamilton,	Mauck,	Stamm,
Harter, Huron,	McClelland,	Stevens,
Harter, Stark,	Miller, Crawford,	Stewart,
Hoffman,	Miller, Fairfield,	Stilwell,
Holtz,	Miller, Ottawa,	Stokes,
Hoskins,	Moore,	Taggart,
Hursh,	Norris,	Tallman,
Johnson, Madison,	Nye,	Tannehill,
Johnson, Williams,	Okey,	Tetlow,
Jones,	Partington,	Thomas,
Kehoe,	Peck,	Ulmer,
Keller,	Peters,	Walker,
Kerr,	Pettit,	Watson,
Kilpatrick,	Pierce,	Winn,
King,	Price,	Wise,
Knight,	Read,	Mr. President.
Kramer,	Redington,	

So the proposal finally passed.

Proposal No. 272 was then considered.

The following amendments to Proposal No. 272 were read.

In line 10 strike out the words "The general assembly shall by general laws," and in lieu thereof insert, "General laws shall be passed to".

In lines 11 and 12 strike out the words "and it may also pass additional laws" and in lieu thereof insert, "and additional laws may also be passed".

In line 106 strike out the words "The general assembly shall have authority" and in lieu thereof insert, "Laws may be passed".

After line 115 insert:

SCHEDULE.

Resolved further, That if the foregoing amendment to the constitution be adopted by the electors and becomes a part of the constitution, it shall take effect on November 15, 1912.

The foregoing amendments were agreed to.

The question being "Shall Proposal No. 272 finally pass?"

The yeas and nays were taken, and resulted—yeas 95, nays 8, as follows:

Those who voted in the affirmative are:

Anderson,	Farrell,	Kerr,
Antrim,	Fess,	Kilpatrick,
Baum,	FitzSimons,	King,
Beatty, Morrow,	Fluke,	Knight,
Beyer,	Fox,	Kramer,
Bowdle,	Hahn,	Kunkel,
Brown, Highland,	Halenkamp,	Lambert,
Brown, Lucas,	Halfhill,	Lampson,
Brown, Pike,	Harbarger,	Leete,
Colton,	Harris, Ashtabula,	Leslie,
Cordes,	Harter, Huron,	Longstreth,
Crites,	Harter, Stark,	Ludey,
Crosser,	Hoffman,	Malin,
Davio,	Holtz,	Marshall,
DeFrees,	Hoskins,	Mauck,
Doty,	Hursh,	McClelland,
Dunn,	Johnson, Madison,	Miller, Crawford,
Dwyer,	Johnson, Williams,	Miller, Ottawa,
Earnhart,	Jones,	Moore,
Elson,	Kehoe,	Nye,
Farnsworth,	Keller,	Okey,

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Partington,	Rorick,	Tetlow,
Peck,	Shaffer,	Thomas,
Peters,	Smith, Geauga,	Ulmer,
Pettit,	Smith, Hamilton,	Wagner,
Pierce,	Stalter,	Walker,
Price,	Stamm,	Watson,
Read,	Stevens,	Winn,
Redington,	Stilwell,	Wise,
Riley,	Stokes,	Woods,
Rockel,	Tallman,	Mr. President.
Roehm,	Tannehill,	

Those who voted in the negative are:

Brattain,	Dunlap,	Solether,
Campbell,	Matthews,	Stewart.
Cunningham,	Norris,	

So the proposal finally passed:

Proposal No. 304 was then considered.

The following amendments to Proposal No. 304 were read:

- Eliminate the paragraph in lines 19 and 20.
- In line 21 strike out comma.
- In line 24 change "offices" to "officers".
- In line 26 insert a comma after "pleas".
- In line 28 strike out comma.
- Strike out all of line 41 after the period and all of lines 42, 43 and 44.
- At the end of the proposal add:

SCHEDULE.

Resolved further, If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and subdivision thereof, until one resident judge of the court of common pleas is elected and qualified therein.

The foregoing amendments were agreed to.

The question being "Shall Proposal No. 304 finally pass?"

The yeas and nays were taken, and resulted—yeas 88, nays 9, as follows:

Those who voted in the affirmative are:

Anderson,	Fess,	Lampson,
Antrim,	FitzSimons,	Leslie,
Baum,	Fluke,	Longstreth,
Beatty, Morrow,	Hahn,	Ludey,
Beyer,	Halenkamp,	Marshall,
Bowdle,	Halfhill,	Mauck,
Brattain,	Harbarger,	McClelland,
Brown, Highland,	Harris, Hamilton,	Miller, Crawford,
Brown, Lucas,	Harter, Huron,	Miller, Fairfield,
Brown, Pike,	Hoffman,	Moore,
Campbell,	Holtz,	Norris,
Collett,	Hoskins,	Nye,
Colton,	Johnson, Madison,	Okey,
Cordes,	Jones,	Partington,
Crites,	Kehoe,	Peck,
Crosser,	Keller,	Peters,
Cunningham,	Kerr,	Pettit,
Davio,	Kilpatrick,	Pierce,
Donahey,	King,	Read,
Dunlap,	Knight,	Redington,
Dwyer,	Kramer,	Roehm,
Earnhart,	Kunkel,	Rockel,
Farnsworth,	Lambert,	Shaffer,

Shaw,	Stokes,	Walker,
Smith, Geauga,	Taggart,	Watson,
Smith, Hamilton,	Tannehill,	Winn,
Stalter,	Thomas,	Wise,
Stamm,	Ulmer,	Woods,
Stevens,	Wagner,	Mr. President.
Stilwell,		

Those who voted in the negative are:

Doty,	Hursh,	Miller, Ottawa,
Elson,	Johnson, Williams,	Riley,
Harris, Ashtabula,	Leete,	Stewart,

So the proposal finally passed.

Proposal No. 309 was then considered.

The question being "Shall Proposal No. 309 finally pass?"

The yeas and nays were taken, and resulted—yeas 98, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Hoffman,	Peck,
Antrim,	Holtz,	Peters,
Baum,	Hoskins,	Pettit,
Beatty, Morrow,	Hursh,	Pierce,
Bowdle,	Johnson, Madison,	Read,
Brattain,	Johnson, Williams,	Redington,
Brown, Highland,	Jones,	Riley,
Brown, Lucas,	Kehoe,	Rockel,
Brown, Pike,	Keller,	Roehm,
Campbell,	Kerr,	Rorick,
Cody,	Kilpatrick,	Shaffer,
Collett,	King,	Smith, Geauga,
Colton,	Knight,	Smith, Hamilton,
Cordes,	Kramer,	Solether,
Crites,	Kunkel,	Stalter,
Crosser,	Lambert,	Stamm,
Cunningham,	Lampson,	Stewart,
Davio,	Leete,	Stilwell,
Dunlap,	Leslie,	Stokes,
Dwyer,	Longstreth,	Taggart,
Earnhart,	Ludey,	Tallman,
Evans,	Marshall,	Tannehill,
Farnsworth,	Matthews,	Tetlow,
Farrell,	Mauck,	Thomas,
Fess,	McClelland,	Ulmer,
FitzSimons,	Miller, Crawford,	Wagner,
Fluke,	Miller, Fairfield,	Walker,
Hahn,	Miller, Ottawa,	Watson,
Halfhill,	Moore,	Winn,
Harbarger,	Norris,	Wise,
Harris, Ashtabula,	Nye,	Woods,
Harter, Huron,	Okey,	Mr. President.
Harter, Stark,	Partington,	

So the proposal finally passed.

Proposal No. 322 was then considered.

The question being "Shall Proposal No. 322 finally pass?"

The yeas and nays were taken, and resulted—yeas 83, nays 11, as follows:

Those who voted in the affirmative are:

Anderson,	Dunn,	Jones,
Antrim,	Dwyer,	Kehoe,
Baum,	Earnhart,	Keller,
Beatty, Morrow,	Evans,	Kilpatrick,
Beyer,	Farnsworth,	King,
Bowdle,	Farrell,	Knight,
Brown, Highland,	FitzSimons,	Kramer,
Brown, Lucas,	Fox,	Kunkel,
Collett,	Hahn,	Lambert,
Colton,	Halenkamp,	Lampson,
Crites,	Harbarger,	Leete,
Crosser,	Harter, Huron,	Leslie,
Davio,	Harter, Stark,	Longstreth,
DeFrees,	Hoffman,	Marshall,
Donahey,	Hursh,	Mauck,
Dunlap,	Johnson, Williams,	McClelland,

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Miller, Crawford,	Roehm,	Tallman,
Miller, Fairfield,	Rorick,	Tannehill,
Miller, Ottawa,	Shaffer,	Thomas,
Moore,	Smith, Geauga,	Ulmer,
Okey,	Smith, Hamilton,	Wagner,
Partington,	Solether,	Walker,
Peck,	Stamm,	Watson,
Peters,	Stevens,	Winn,
Pettit,	Stewart,	Wise,
Price,	Stilwell,	Woods,
Riley,	Stokes,	Mr. President.
Rockel,	Taggart,	

Those who voted in the negative are:

Brattain,	Holtz,	Nye,
Campbell,	Hoskins,	Pierce,
Fluke,	Johnson, Madison,	Stalter,
Halfhill,	Matthews,	

So the proposal finally passed.

Proposal No. 329 was then considered.

The question being "Shall Proposal No. 329 finally pass?"

The yeas and nays were taken, and resulted—yeas 87, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Peck,
Antrim,	Harris, Ashtabula,	Peters,
Baum,	Harris, Hamilton,	Pettit,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beyer,	Harter, Stark,	Price,
Bowdle,	Hoffman,	Redington,
Brown, Lucas,	Holtz,	Riley,
Campbell,	Hoskins,	Rockel,
Cody,	Hursh,	Roehm,
Colton,	Johnson, Madison,	Rorick,
Cordes,	Kerr,	Shaffer,
Crites,	Kilpatrick,	Shaw,
Crosser,	King,	Smith, Geauga,
Cunningham,	Knight,	Smith, Hamilton,
Davio,	Kramer,	Solether,
Donahey,	Lambert,	Stamm,
Doty,	Lampson,	Stevens,
Dunn,	Leete,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Ludey,	Taggart,
Evans,	Marshall,	Tallman,
Farrell,	Matthews,	Tannehill,
Fess,	Mauck,	Thomas,
FitzSimons,	McClelland,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Ottawa,	Walker,
Hahn,	Moore,	Watson,
Halenkamp,	Nye,	Winn,
Halfhill,	Okey,	Wise,
		Woods,
		Mr. President.

Those who voted in the negative are:

Brattain,	Farnsworth,	Malin,
Brown, Highland,	Johnson, Williams,	Miller, Fairfield,
Brown, Pike,	Keller,	Stalter,
Collett,	Kunkel,	Stewart,
Dunlap,	Longstreth,	

So the proposal finally passed.

Proposal No. 331 was then considered.

The following amendments to Proposal No. 331 were read:

In line 7 strike out all after the word "year," and insert:

"with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law."

Before line 8 insert subhead: SCHEDULE.

The amendments were agreed to.

The question being "Shall Proposal No. 331 finally pass?"

The yeas and nays were taken, and resulted—yeas 99, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Partington,
Baum,	Hoffman,	Peck,
Beatty, Morrow,	Holtz,	Peters,
Beyer,	Hoskins,	Pettit,
Bowdle,	Hursh,	Pierce,
Brattain,	Johnson, Madison,	Price,
Brown, Lucas,	Johnson, Williams,	Redington,
Brown, Pike,	Jones,	Riley,
Cody,	Kehoe,	Rockel,
Collett,	Keller,	Roehm,
Colton,	Kerr,	Rorick,
Cordes,	Kilpatrick,	Shaffer,
Crites,	King,	Shaw,
Crosser,	Knight,	Smith, Geauga,
Cunningham,	Kramer,	Smith, Hamilton,
Donahey,	Kunkel,	Solether,
Doty,	Lambert,	Stalter,
Dunlap,	Lampson,	Stamm,
Dunn,	Leete,	Stevens,
Dwyer,	Longstreth,	Stewart,
Earnhart,	Ludey,	Stilwell,
Evans,	Marriott,	Stokes,
Farnsworth,	Marshall,	Taggart,
Farrell,	Matthews,	Tannehill,
Fess,	Mauck,	Thomas,
FitzSimons,	McClelland,	Ulmer,
Fluke,	Miller, Crawford,	Wagner,
Fox,	Miller, Fairfield,	Walker,
Hahn,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Winn,
Halfhill,	Norris,	Wise,
Harbarger,	Nye,	Woods,
Harris, Ashtabula,	Okey,	Mr. President.

So the proposal finally passed.

Proposal No. 333 was then considered.

The question being "Shall Proposal No. 333 finally pass?"

The yeas and nays were taken, and resulted—yeas 71, nays 27, as follows:

Those who voted in the affirmative are:

Anderson,	Halenkamp,	Peters,
Antrim,	Halfhill,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beatty, Morrow,	Harter, Stark,	Read,
Beyer,	Hoffman,	Redington,
Brown, Highland,	Johnson, Williams,	Rockel,
Brown, Lucas,	Jones,	Roehm,
Colton,	Kehoe,	Rorick,
Cordes,	Kilpatrick,	Shaffer,
Crites,	King,	Smith, Geauga,
Crosser,	Lambert,	Smith, Hamilton,
Davio,	Lampson,	Stamm,
DeFrees,	Leete,	Stevens,
Donahey,	Leslie,	Stewart,
Doty,	Longstreth,	Stilwell,
Dunlap,	Marshall,	Stokes,
Dunn,	Matthews,	Tannehill,
Dwyer,	Mauck,	Tetlow,
Farnsworth,	Miller, Crawford,	Ulmer,
Farrell,	Miller, Fairfield,	Watson,
Fess,	Miller, Ottawa,	Winn,
FitzSimons,	Moore,	Wise,
Fox,	Okey,	Woods,
Hahn,	Peck,	

Those who voted in the negative are:

Brattain,	Cody,	Earnhart,
Brown, Pike,	Collett,	Fluke,
Campbell,	Cunningham,	Harbarger,

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Harris, Ashtabula,	Malin,	Riley,
Holtz,	Marriott,	Shaw,
Johnson, Madison,	McClelland,	Taggart,
Kerr,	Nye,	Tallman,
Kramer,	Partington,	Wagner,
Ludey,	Price,	Walker,

So the proposal finally passed.

Proposal No. 334 was then considered.

The question being "Shall Proposal No. 334 finally pass?"

The yeas and nays were taken, and resulted—yeas 71, nays 28, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Redington,
Antrim,	Harris, Hamilton,	Riley,
Baum,	Harter, Huron,	Rockel,
Beyer,	Harter, Stark,	Roehm,
Brown, Highland,	Hoffman,	Rorick,
Brown, Lucas,	Hursh,	Shaffer,
Campbell,	Johnson, Williams,	Shaw,
Cody,	Jones,	Smith, Geauga,
Colton,	Kehoe,	Smith, Hamilton,
Cordes,	Kerr,	Soletcher,
Crites,	Kilpatrick,	Stamm,
Crosser,	King,	Stevens,
Cunningham,	Lampson,	Stewart,
Donahey,	Leslie,	Stilwell,
Doty,	Marshall,	Stokes,
Dwyer,	Matthews,	Taggart,
Farnsworth,	Mauck,	Tannehill,
Farrell,	McClelland,	Tetlow,
Fess,	Miller, Ottawa,	Thomas,
FitzSimons,	Moore,	Ulmer,
Fox,	Peck,	Winn,
Hahn,	Pierce,	Wise,
Halenkamp,	Price,	Woods,
Halfhill,	Read,	

Those who voted in the negative are:

Beatty, Morrow,	Keller,	Nye,
Brattain,	Kramer,	Okey,
Collett,	Kunkel,	Partington,
Dunlap,	Lambert,	Peters,
Dunn,	Leete,	Pettit,
Earnhart,	Malin,	Tallman,
Fluke,	Marriott,	Wagner,
Harris, Ashtabula,	Miller, Fairfield,	Walker,
Holtz,	Norris,	Watson,
Johnson, Madison,		

So the proposal finally passed.

Proposal No. 340 was then considered.

The question being "Shall Proposal No. 340 finally pass?"

The yeas and nays were taken, and resulted—yeas 98, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Dunn,	Hursh,
Antrim,	Dwyer,	Johnson, Madison,
Baum,	Earnhart,	Johnson, Williams,
Beyer,	Farnsworth,	Jones,
Brattain,	Farrell,	Kehoe,
Brown, Highland,	Fess,	Keller,
Brown, Lucas,	FitzSimons,	Kerr,
Campbell,	Fluke,	Kilpatrick,
Collett,	Fox,	King,
Colton,	Hahn,	Knight,
Cordes,	Halfhill,	Kramer,
Crites,	Harbarger,	Kunkel,
Crosser,	Harris, Ashtabula,	Lampson,
Cunningham,	Harris, Hamilton,	Leete,
Davio,	Harter, Huron,	Leslie,
Donahey,	Hoffman,	Longstreth,
Doty,	Holtz,	Ludey,
Dunlap,	Hoskins,	Marriott,

Marshall,	Pierce,	Stilwell,
Matthews,	Price,	Stokes,
Mauck,	Read,	Taggart,
McClelland,	Riley,	Tallman,
Miller, Crawford,	Rockel,	Tannehill,
Miller, Fairfield,	Roehm,	Tetlow,
Miller, Ottawa,	Rorick,	Thomas,
Moore,	Shaffer,	Ulmer,
Norris,	Shaw,	Wagner,
Nye,	Smith, Geauga,	Walker,
Okey,	Smith, Hamilton,	Watson,
Partington,	Soletcher,	Winn,
Peck,	Stamm,	Wise,
Peters,	Stevens,	Woods,
Pettit,	Stewart,	

So the proposal finally passed.

Mr. DOTY: I desire to introduce a resolution and it is rather a lengthy one. I shall ask that further consideration of it be postponed and that in the meantime it be printed.

The resolution was presented as follows:

Resolution No. 133:

Resolved, by the Constitutional Convention of the state of Ohio, That the amendments proposed to the constitution and adopted by this Convention, as hereinafter set forth, shall be submitted to the electors for adoption or rejection on the third day of September, A. D. 1912, and that the president and secretary of this Convention be, and they are hereby, directed to certify the same to the secretary of state for submission to the electors according to law.

ARTICLE II.

SEC. I. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

SEC. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the fil-

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ing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the constitution proposed by initiative petition to be submitted directly to the electors."

SEC. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors.

All such initiative petitions, last above described, shall have printed across the top thereof, in the case of proposed laws: "Law proposed by initiative petition first to be submitted to the general assembly". Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If con-

flicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

SEC. 1c. The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law, appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

SEC. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

SEC. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or

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may be applied to improvements thereon or to personal property.

SEC. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

SEC. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county.

A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state; as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

ARTICLE V.

SEC. 1. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he resides, such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

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SCHEDULE.

Resolved further, That if the amendment to article V, section 1, of the constitution—Woman's Suffrage, be adopted by the electors and become a part of the constitution, then the foregoing amendment, if adopted, shall be of no effect.

ARTICLE III.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

ARTICLE I.

SEC. 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

ARTICLE II.

SEC. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employ-

ment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employees and employers; but no right of action shall be taken away from any employee when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rate of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

ARTICLE II.

SEC. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit in or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the state of Ohio, and such goods made within the state of Ohio, excepting those disposed of to the state or any political subdivision thereof or to any public institution owned, managed or controlled by the state or any political subdivision thereof, shall not be sold within this state unless the same are conspicuously marked "prison made". Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political subdivision thereof, or for or to any public institution owned or managed and controlled by the state or any political subdivision thereof.

ARTICLE VIII.

SEC. 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association; provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

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ARTICLE I.

SEC. 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

ARTICLE I.

SEC. 9. All persons shall be bailable by sufficient sureties, except those charged with murder in the first degree, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime. Until otherwise provided by law, persons convicted of crimes heretofore punishable by death shall be punished by imprisonment in the penitentiary during life.

ARTICLE II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

ARTICLE XIII.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

ARTICLE V.

SEC. 1. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he or she resides such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

ARTICLE XIII.

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank", "banker", or "banking", or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

ARTICLE VI.

SEC. 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such powers as may be provided by law.

SCHEDULE.

Resolved further, That if the foregoing amendment be adopted by the electors it shall take effect and become a part of the constitution on the second Monday of July, 1913.

ARTICLE IV.

SEC. 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law. Their term of office shall be four years and their powers and duties shall be regulated by law; provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise, jurisdiction in such township.

SCHEDULE.

Resolved further, That if the amendment to article IV, sections 1, 2 and 6, be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing amendment, if adopted, shall be of no effect.

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ARTICLE VIII.

SEC. 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever; provided, however, that laws may be passed to contract debts and authorize issues of bonds to an amount which in the aggregate of all issues shall not exceed fifty million dollars for the purpose of constructing, rebuilding, improving and repairing a system of inter-county wagon roads throughout the state. Not to exceed ten million dollars of such bonds shall be issued in any one year, and there shall be levied and collected annually by taxation an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their redemption at maturity, and laws shall be passed to provide for the maintenance of said roads. Such wagon roads shall be determined under general laws and the cost of constructing, rebuilding, improving, repairing and maintaining the same shall be paid by the state. The provisions of this section shall not be limited or controlled by section 6, of article XII.

ARTICLE II.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

ARTICLE IV.

SEC. 21. Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating proceedings in contempt, and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in such controversies shall, upon demand, be granted a trial by a jury as in criminal cases.

ARTICLE XV.

SEC. 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five

hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local subdivision while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word "saloon" as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

Resolved further, That at said election a ballot shall be in the following form:

INTOXICATING LIQUORS.

	For License to traffic in intoxicating liquors.
	Against License to traffic in intoxicating liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License" if he desires to vote in favor of the article above mentioned and opposite the words "Against License," within the blank space if he desires to vote against said article. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

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If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV of the constitution, and the present section 9 of said article, also known as section 18 of the schedule shall be repealed.

ARTICLE XV.

SEC. 4. No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector: provided that women who are citizens may be appointed, as notaries public, or as member of boards of, or to positions in, those departments and institutions established by the state or any political sub-division thereof involving the interests or care of women or children or both.

ARTICLE II.

SEC. 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

ARTICLE XV.

SEC. 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

ARTICLE XII.

SEC. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SEC. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

SEC. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

SEC. 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

SEC. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

SEC. 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

ARTICLE IV.

SEC. 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as

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may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold session shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the pro-

visions hereof, and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and precedendo, and appellate jurisdiction in the trial of chancery cases, and to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed, is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county, to hold court.

ARTICLE II.

SEC. 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract, or otherwise.

ARTICLE II.

SEC. 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he

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shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

ARTICLE II.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

ARTICLE I.

SEC. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

ARTICLE II.

SEC. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

ARTICLE V.

SEC. 2. All elections shall be either by ballot or by mechanical device, or by both, preserving the secrecy of the vote. Laws may be enacted to regulate the preparation of the ballot and to determine the application of such mechanical device.

ARTICLE V.

SEC. 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

ARTICLE I.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

ARTICLE XV.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

ARTICLE XVIII.

Municipal Corporations.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until

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it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special elec-

tion to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

SEC. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality not be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SEC. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all

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the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SEC. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SEC. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

SCHEDULE.

Resolved further, That if the foregoing amendment to the constitution be adopted by the electors and become a part of the constitution it shall take effect on November 15, 1912.

ARTICLE IV.

SEC. 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein.

SEC. 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years,

and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per cent. of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined.

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years.

SEC. 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

SCHEDULE.

Resolved further, If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and subdivision thereof, until one resident judge of the court of common pleas is elected and qualified therein.

ARTICLE XVI.

SEC. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such

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election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SEC. 3. At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, after, or amend the constitution", shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

ARTICLE II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

ARTICLE VI.

SEC. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds; provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

ARTICLE VIII.

SEC. 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

Resolved further, That section 13 of article VIII is hereby repealed.

ARTICLE XV.

SEC. 11. Laws may be passed regulating and limiting the use of property on or near public ways and grounds for erecting bill-boards thereon and for the public display of posters, pictures and other forms of advertising.

ARTICLE II.

SEC. 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof; and for settling and determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

SCHEDULE.

The several amendments passed and submitted by this Convention when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized by law.

Mr. DOTY: I move that further consideration of the resolution be postponed until 8 o'clock p. m. and that it be made a special order for that hour.

The motion was carried.

Mr. DOTY: I offer a resolution.

The resolution was read as follows:

Resolution No. 134:

Resolved, Section 1. That when this Convention adjourns on Saturday, June 1, 1912, it be to meet at 2 o'clock in the afternoon of Monday, August 26, 1912, unless a meeting of the Convention shall be called in the meantime; the written demand of any ten members of the Convention filed with the secretary of the Convention shall constitute a call for any such meeting, and the sec-

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retary shall notify each member of the Convention by mail of such call, provided that the time for convening the Convention for such called meeting, shall be not less than five days from the time when the notice therefor shall have been filed; and that such meeting shall be held in the city of Columbus, Ohio.

SECTION 2. The president and secretary shall continue to keep their present office rooms and shall have general charge of the issuing of such pamphlets and documents and the preparation and placing of such advertising matter, as the Convention shall authorize; the indexing, proof reading and publication of the journal of the Convention; the editing, proofreading, indexing and publication of the debates of the Convention. For this work the following employes of the Convention are hereby continued at their present compensation: Ira I. Morrison, Ella M. Scriven, Julia Kersting, Katharine Kellar, George Cartwright, for such length of time, not longer than August 26, 1912, as the president and secretary may find their services necessary; and in addition and at the same compensation and for the same time, E. S. Nichols, expert proofreader, is hereby employed, to assist in the editorial and proofreading work upon the debates of this Convention; the services of J. B. Lewis and H. S. Brown, bill clerks, are hereby authorized during the month of June, for the purpose of sorting, filing and forwarding the documents of this Convention to the delegates and to the public and such other documents as may be authorized by the Convention; and their services may be continued by the president and secretary after the month of June for any distribution of documents that may be authorized by the Convention; the services of Carl A. Mutschler, clerk of the historian and reference librarian, are continued for the month of June at his present compensation; the services of the postmaster are hereby continued up to June 16, 1912, at his present compensation.

SECTION 3. The services of the sergeant-at-arms, J. C. Sherlock, and of the custodian, Fred Blankner, are hereby continued for the period of ten days after this date, and they are hereby instructed to procure boxes and all necessary material for packing and shipping documents of the delegates; they are hereby authorized to retain from the present force, the necessary help required not to exceed five persons; they shall receive for such service the same per diem as is now being paid them by this Convention; the president of the Convention is hereby authorized and instructed to sign vouchers therefor and for necessary material and express charges.

SECTION 4. Ten days after June 1, 1912, the sergeant-at-arms of this Convention shall turn over the hall and committee rooms to the proper custodians thereof; except such rooms as may be required by the president and secretary for the work authorized by this Convention, which rooms are hereby retained until August 26, 1912.

SECTION 5. The bill clerk is hereby directed to

cause to be filed one complete set of documents, proposals, reports and printed matter, except the daily journal, with the state librarian for preservation in the state library. The secretary of this Convention is hereby directed to deposit with the state librarian one complete printed journal and printed debates, after publication.

SECTION 6. The secretary of this Convention shall attest one printed copy of the journal of this Convention and file the same with the secretary of state as the official record of this Convention. He shall file with any certificate of proposed amendments, engrossed copies of the proposals as finally passed by the Convention and each engrossed copy shall be certified to by the secretary of the Convention, showing the date of final action.

SECTION 7. The services and compensation of all employes of the Convention, not provided for in this resolution, shall cease June 1, 1912.

Mr. DOTY: I move that the rules be suspended and that the resolution be considered at this time.

Mr. WOODS: I don't like to consider this proposition until I can have a copy of it and know more about it, about what it is. There are some things in there that I for one will never stand for. I would like to have a copy of that before we vote on it.

Mr. DOTY: I have no objection to letting it lie over.

The PRESIDENT: The question before the Convention is to suspend the rules.

Mr. DOTY: I said that if there was any objection I would not make the motion and there seems to be objection.

Mr. LAMPSON: I move that further consideration be postponed until 8:05 o'clock this afternoon and that in the meantime it be printed.

The motion was carried.

Mr. MILLER, of Fairfield: I offer a resolution.

The resolution was read as follows:

Resolution No. 135:

Resolved, That the secretary of this Convention is hereby authorized and directed to secure for the state a copyright of the Proceedings and Debates of this Convention as published in final form.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. HARRIS, of Ashtabula: I wish to make a report from the committee on Claims.

The report was read as follows:

The standing committee on Claims Against the Convention, to which was referred Resolution No. 129—Mr. Lampson, having had the same under consideration, reports it back and recommends its adoption.

Resolution No. 129 was read as follows:

WHEREAS, The contract of the official reporter was not made with any idea of night sessions other than Monday nights and

WHEREAS, The Convention has held and intends to hold other night sessions; therefore

Additional Pay for Official Reporter and Certain Stenographers.

Be it resolved, That the official reporter be and is hereby allowed the additional sum of thirty dollars for each night session other than Monday nights.

Mr. HARRIS, of Ashtabula: From the reading of the resolution it is clear that the additional compensation for night sessions is involved and a few words of explanation are not out of order. Rule 41 as contained in the red book is the one upon which bids were asked for doing the stenographic reporting work of the Convention. That rule provides the hours to which the Convention shall stand adjourned from day to day shall be seven o'clock on Monday, one o'clock p. m. on Tuesday, Wednesday and Thursday and ten o'clock a. m. on Friday. Unless otherwise ordered no additional sessions shall be held. It was clearly shown in the committee that Mr. Walker understood at the time that he was asked to bid that the sessions would be four daily sessions and no night sessions except on Monday evening; that he especially asked if there were to be any other night sessions; that his attention was called to that rule and his bid was made accordingly. When we started holding night sessions other than those on Monday, Mr. Walker very promptly informed the chairman of the committee on Claims that that was not in his contract and was in excess of what his duties were supposed to be and that he should expect additional compensation for it. It was clearly shown to the committee that he had a right to suppose that his bid covered only the four days and, except on Monday, no evening sessions. As every one knows, the holding of these sessions has entailed an immense amount of additional work upon the reporter and the committee was clearly of the opinion that the additional compensation as asked should be allowed.

Mr. KRAMER: How many of those night sessions are there?

Mr. HARRIS, of Ashtabula: I think seven or eight up to the present.

Mr. KRAMER: Might we not have the contract read?

Mr. HARRIS, of Ashtabula: It was clearly shown that the contract did not cover the night sessions, and as everyone knows, that the evening sessions have involved more than a half day's work, and all that Mr. Walker is asking for night sessions is the equivalent of one-half a day. I am informed now that there are ten additional night sessions.

The PRESIDENT: The question is on agreeing to the committee's report.

The report was agreed to.

The PRESIDENT: The question now is, "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 89, nays 9, as follows:

Those who voted in the affirmative are:

Anderson,	Cody,	Dunlap,
Antrim,	Collett,	Dunn,
Beatty, Morrow,	Colton,	Earnhart,
Beyer,	Cordes,	Evans,
Bowdle,	Crites,	Farnsworth,
Brattain,	Crosser,	Farrell,
Brown, Highland,	Cunningham,	Fess,
Brown, Pike,	Donahey,	FitzSimons,
Campbell,	Doty,	Fluke,

Fox,	Leslie,	Redington,
Hahn,	Longstreth,	Riley,
Halenkamp,	Ludey,	Rockel,
Halfhill,	Marriott,	Roehm,
Harris, Ashtabula,	Marshall,	Shaffer,
Harris, Hamilton,	Matthews,	Shaw,
Harter, Stark,	Mauck,	Smith, Geauga,
Henderson,	Miller, Crawford,	Smith, Hamilton,
Hoffman,	Miller, Fairfield,	Stalter,
Holtz,	Miller, Ottawa,	Stamm,
Hoskins,	Moore,	Stevens,
Hursh,	Norris,	Stewart,
Johnson, Williams,	Nye,	Stilwell,
Jones,	Okey,	Stokes,
Kehoe,	Partington,	Tallman,
Keller,	Peck,	Tannehill,
Kerr,	Peters,	Ulmer,
Kilpatrick,	Pettit,	Walker,
King,	Pierce,	Wise,
Knight,	Price,	Woods,
Lampson,	Read,	

Those who voted in the negative are:

Baum,	Johnson, Madison,	Wagner,
DeFrees,	Kramer,	Watson,
Harbarger,	Soletier,	Winn.

So the resolution was adopted.

Mr. Antrim submitted the following report:

The standing committee on Claims Against the Convention, to which was referred Resolution No. 100—Mr. Antrim, having had the same under consideration, reports it back with the following amendments, and recommends its adoption when so amended:

In line 6 strike out "\$75.00" and in lieu thereof insert "\$37.50".

In line 9 strike out "\$75.00" and in lieu thereof insert "\$37.50".

Mr. ANTRIM: This represents extra compensation for the stenographic service in the Convention prior to the time that Mr. Walker, our expert stenographer, was employed. Two of the most expert of the young ladies were selected and they did this work for two weeks and they rendered bills for extra compensation for \$75 or \$5 a day each. The committee on Claims has cut that in two and allowed them \$37.50. I certainly feel that we should be liberal enough to allow these young ladies \$37.50 for what they did.

Mr. WINN: I quite agree with the gentleman that after having made a contract with a person to report our debates at a given amount per day and then having given that person a gratuity of \$30 per day extra for quite a number of days we should at least vote \$5 to these young ladies.

Mr. HARRIS, of Ashtabula: I object to the statement of the gentleman calling the compensation allowed Mr. Walker for night sessions a gratuity. If it were a gratuity the committee would not have reported it favorably. The committee on Claims did not regard it as a gratuity at all. They regarded it in the light of compensation for services not embraced in his contract. And this is not the time to make objection to a claim that has already been allowed.

Mr. WINN: Perhaps my objection should have been made at another time. I voted against the resolution because I regarded it as a gratuity. The person who has received this extra compensation has a written contract with this Convention by which he agreed to

Additional Pay for Certain Stenographers—Pay for Group Picture of Convention—Relative to Illness of Mr. Worthington.

report the debates and proceedings for \$60 per day. When that contract was reduced to writing and when it was subscribed to by the contracting party it became binding at the rate stipulated in the contract.

The PRESIDENT: Is the member discussing the question under consideration?

Mr. HALFHILL: I don't think he is and I don't think he thinks he is.

Mr. WINN: I withdraw the statement then if necessary.

Mr. HALFHILL: I quite agree with the Claims committee and I think the amount allowed to Mr. Walker for night sessions was not a gratuity, but a well-earned added compensation. I am in favor now of paying the amount here recommended to these young women who did that work too.

Mr. KRAMER: It seems to me that we should have had the contract with Mr. Walker read. It looks to me as though we are spending money as if we had an unlimited amount. Here there is a resolution to allow the sergeant-at-arms with five helpers ten days to send junk. It will cost about \$600 and it isn't worth \$6. You can just see where we are running to. I don't want to find fault with Mr. Walker, but we ought to have had that contract read and it seems to me that these young women were regularly employed and put in the time they were regularly paid for to attend to their duties. I am not favor, simply because we have \$10,000 left, to spend it anywhere and to anybody.

Mr. LAMPSON: I do not know whether the delegates know what their services were or not. There were two young women employed at the desk here to take down the proceedings and make a stenographic report when the Convention first met. The first days of that work, before Mr. Walker was employed, were done by these women. It was work they were not hired to do, and as a delegate I was personally responsible for getting at least one of them to come up here and do that work on the first day.

Mr. THOMAS: Is that in addition to the \$5 a day that they have received regularly?

Mr. LAMPSON: Yes, but that \$5 a day is for the ordinary stenographer. We have several of those out there and that is not compensation for expert work such as these women were required to do.

Mr. WOODS: I am not a miser and I believe in paying what is justly owing. I believe that those two ladies that did that work are entitled to the money and I believe that we ought to pay it. When we get up against some of these other propositions that call for an expenditure that we ought not to make, then I am for cutting those out, but let us not go the other way and not pay a thing that we really owe.

The report of the committee was agreed to.

The PRESIDENT: The roll will be called on the adoption of the resolution.

The yeas and nays were taken, and resulted—yeas 95, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Brattain,	Collett,
Antrim,	Brown, Highland,	Colton,
Beatty, Morrow,	Brown, Pike,	Crites,
Beyer,	Campbell,	Cunningham,
Bowdle,	Cody,	Davio,

DeFrees,	Kehoe,	Pettit,
Donahey,	Keller,	Pierce,
Doty,	Kerr,	Price,
Dunlap,	Kilpatrick,	Read,
Dunn,	King,	Redington,
Dwyer,	Knight,	Riley,
Earnhart,	Kramer,	Rockel,
Farnsworth,	Kunkel,	Roehm,
Farrell,	Lambert,	Shaffer,
Fess,	Lampson,	Shaw,
FitzSimons,	Leete,	Smith, Geauga,
Fluke,	Leslie,	Smith, Hamilton,
Fox,	Longstreth,	Stalter,
Hahn,	Ludey,	Stamm,
Halenkamp,	Malin,	Stevens,
Halfhill,	Marshall,	Stewart,
Harbarger,	Matthews,	Stilwell,
Harris, Ashtabula,	McClelland,	Stokes,
Harris, Hamilton,	Miller, Fairfield,	Taggart,
Harter, Stark,	Miller, Ottawa,	Tallman,
Henderson,	Moore,	Tetlow,
Hoffman,	Norris,	Thomas,
Holtz,	Nye,	Watson,
Hoskins,	Okey,	Winn,
Hursh,	Partington,	Wise,
Johnson, Williams,	Peck,	Woods.
Jones,	Peters,	

Those who voted in the negative are: Johnson, of Madison, Mauck, Solether, Walker.

So the resolution was adopted.

Mr. PETERS: I offer a resolution.

The resolution was read as follows:

Resolution No. 136:

Resolved, That the sum of two hundred and ninety-three dollars (\$293.00) be paid to the Baker Art Gallery for the large framed group picture of the Convention, the same to hang permanently in the state house.

On motion of Mr. Peters the resolution was referred to the committee on Claims against the Convention.

Mr. Dwyer offered the following resolution:

Resolution No. 137:

Resolved, As the sense of this Convention, that expression is hereby given to our sincere regret at the severe and long-continued illness of our esteemed fellow member, Judge Worthington, by reason of which he has been prevented from aiding us in our work in which he took an earnest and active interest, and we have been deprived of his valuable aid and counsel.

In this connection, it affords us pleasure to bear testimony to his gentlemanly courtesy, painstaking application to his work and scholarly presentation on the floor of the Convention of every proposal with which he was connected during the time he was able to be with us.

It is therefore our earnest hope and prayer that our friend and co-laborer, Judge Worthington, will soon be restored to full health and usefulness, for which nature, education and experience has qualified him.

Further, it is hereby provided that the copy of the constitution, when ready for the signatures of delegates, shall be taken to the home of Judge Worthington by the sergeant-at-arms of this Convention, for him to affix his signature thereto.

Relative to Illness of Mr. Worthington—Distribution of Printed Copies of Proceedings and Debates.

By unanimous consent the rules were suspended and the resolution was considered at once.

Mr. Doty moved to amend Resolution No. 137 as follows:

At the end of the resolution add the following:

"The president is hereby authorized to sign a voucher for the expenses of the sergeant-at-arms in carrying out the provisions of this resolution."

Mr. NYE: It seems to me it is unwise to send a paper that we have all signed to Cincinnati, or to take it away from the office where it belongs. With the other part of the resolution I am entirely in accord, but to take this instrument, which is our most important official instrument, to Cincinnati for one person to sign is wrong. I suggest that there be a resolution providing the Judge Worthington sign it hereafter, when he gets able to come to the office of the secretary of state.

Mr. LAMPSON: I suppose the sergeant-at-arms could take just one page upon which the signatures will be attached, have Judge Worthington attach his signature to that page and bring it back and attach it to the other pages of the manuscript. That is probably the way it will be done.

Mr. NYE: That is entirely different from the resolution.

The amendment was agreed to.

The PRESIDENT: The question is, "Shall the resolution be adopted?"

The yeas and nays were taken and resulted—yeas 117, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Nye,
Antrim,	Harbarger,	Okey,
Baum,	Harris, Ashtabula,	Partington,
Beatty, Morrow,	Harris, Hamilton,	Peck,
Beyer,	Harter, Huron,	Peters,
Bowdle,	Harter, Stark,	Pettit,
Brattain,	Henderson,	Pierce,
Brown, Highland,	Hoffman,	Price,
Brown, Lucas,	Holtz,	Read,
Brown, Pike,	Hoskins,	Redington,
Campbell,	Hursh,	Riley,
Cassidy,	Johnson, Madison,	Rockel,
Cody,	Johnson, Williams,	Roehm,
Collett,	Jones,	Rorick,
Colton,	Kehoe,	Shaffer,
Cordes,	Keller,	Shaw,
Crites,	Kerr,	Smith, Geauga,
Crosser,	Kilpatrick,	Smith, Hamilton,
Cunningham,	King,	Solether,
Davio,	Knight,	Stalter,
DeFrees,	Kramer,	Stamm,
Donahey,	Kunkel,	Stevens,
Doty,	Lambert,	Stewart,
Dunlap,	Lampson,	Stilwell,
Dunn,	Leete,	Stokes,
Dwyer,	Leslie,	Taggart,
Earnhart,	Longstreth,	Tallman,
Eby,	Ludey,	Tannehill,
Elson,	Malin,	Tetlow,
Evans,	Marriott,	Thomas,
Fackler,	Marshall,	Ulmer,
Farnsworth,	Matthews,	Wagner,
Farrell,	Mauck,	Walker,
Fess,	McClelland,	Watson,
FitzSimons,	Miller, Crawford,	Weybrecht,
Fluke,	Miller, Fairfield,	Winn,
Fox,	Miller, Ottawa,	Wise,
Hahn,	Moore,	Woods,
Halenkamp,	Norris,	Mr. President.

So the resolution was adopted.

Mr. DOTY: I move that a copy of the resolution and the roll call attached be forwarded by the secretary of the Convention to Judge Worthington.

The motion was carried.

Mr. WATSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 138:

Be it resolved, That the distribution of the printed debates of this Fourth Constitutional Convention of Ohio shall be as follows:

1. To each member of the Convention two complete sets of the Debates and index.
2. To the state library of each state in the Union one complete set.
3. To the secretary and official reporter two complete sets.
4. To each public library in the state, whether state, county or city, one complete set.
5. One copy to each accredited reporter for press.
6. One set to the library of each college and university in the state.

That all the remaining sets shall be turned over to the secretary of state and shall be placed on sale by him at \$4 per volume or \$12 per set of three volumes, the money from same to be covered into the state treasury.

All resolutions or orders of the Convention in conflict herewith are repealed, revoked and rescinded.

Mr. WATSON: I feel that there should be some steps taken in regard to this matter, and I move that the rules be suspended and that this resolution be placed on its passage.

The motion to suspend the rules was carried.

Mr. DOTY: I want to tell you what is going to happen if this resolution is carried out. There are one thousand and nine hundred sets left in the hands of the secretary of state to be sold at \$12. There will be about twenty-five sets sold or maybe fifty for \$12. There are about that many people in the state who would be willing to give that much for them. Next winter when the general assembly meets some wise member, probably from my county, will find out that those books are there and they will just pass one simple resolution dividing them up among them and they will distribute them and they will be distributed through them instead of through us. I am in favor of amending that by inserting fourteen instead of two. That will leave about two hundred sets in the hands of the secretary of state for sale, which I think is ample.

Mr. ANDERSON: I do not agree with the gentleman. In my opinion after the members of the coming legislature get hold of those books and find out what we have said about the legislature they would pass a resolution to suppress them.

Mr. DOTY: That is an additional reason why we should not leave it to them to distribute.

Mr. EVANS: I want to amend the resolution by including law libraries of the state and one complete set to each employee. Each law library ought to have a copy.

Mr. DOTY: Then I will move to amend by inserting law libraries of the state and that would include the law libraries of Cincinnati and Cleveland.

Distribution of Printed Copies of Proceedings and Debates—Schedule.

The PRESIDENT: The member from Scioto moves an amendment that each law library and each employe be included.

The amendment was agreed to.

Mr. HARRIS, of Hamilton: I think it would be a gracious thing to send one set to each law library and one set to the congressional library at Washington.

Mr. DOTY: The state libraries are provided for in the resolution and we have to send two to the congressional library to get a copyright.

Mr. HALFHILL: I hope that the amendment of the member from Cuyahoga will prevail. I know very well in my county there are places for at least fourteen of these sets, to say nothing of a whole lot of libraries in the county that would like to have them. We cannot do better for ourselves than to let the people have them instead of allowing the legislature to control it.

Mr. PECK: I hope the amendment will prevail, and the suggestion I want to make in this connection as a member is the act under which we are assembled directs among other things that we shall provide for the securing of a copyright on the debates in the name of the state.

Mr. DOTY: We have passed a resolution on that.

Mr. MILLER, of Fairfield: That was attended to an hour ago.

Mr. WINN: It has occurred to me that it would be appropriate for us to send one copy to the Ohio State Board of Commerce and I move that the member from Coshocton be specially appointed a committee of one to deliver that.

Mr. STOKES: I want to add to the amendment of the gentleman from Cuyahoga that they shall be for free distribution by the members.

Mr. DOTY: The members can be left to decide that.

Mr. STOKES: It would be nice to put it in there.

The amendment was agreed to and the resolution was adopted.

Mr. TAGGART: I move that the vote whereby Proposal No. 340 was passed be now reconsidered. The purpose of that is to add to it a little addenda to make certain that the sections of the article adopted by the Convention and ratified by the people will repeal the corresponding section of the constitution.

The motion to reconsider was carried.

Mr. FACKLER: I ask unanimous consent to introduce an amendment to Proposal No. 340.

The consent was given and the amendment was read as follows:

At the end of the proposal add: "All amendments to existing sections of articles of the constitution, passed and submitted by this Convention and adopted by the electors, shall be held to repeal the sections so amended."

Mr. FACKLER: There is a strong probability that this is unnecessary. You can amend in two ways, by substitution and by addition. Ordinarily with bills introduced in the general assembly, they amend them so that every amendment provides that section so and so of such an article shall be amended. Now it may follow that by the addition of these amendments and the addition of sections, we have adopted them with the understand-

ing that they shall take the place of the existing sections, so that that question might never be raised.

Mr. PECK: Suppose your amendment consists simply of an addition; you do not want to repeal the former part of the section?

Mr. FACKLER: No, sir.

Mr. PECK: This says all sections shall be repealed.

Mr. FACKLER: No, sir; we have no such language. There is not a single amendment where there is something added to a section already existing.

Mr. PECK: Take Mr. Mauck's blue sky proposal.

Mr. FACKLER: Wherever there has been an addition to a section the whole section has been repeated with the addition to it. It was so arranged.

Mr. PECK: I don't think there has been any uniform rule about that.

Mr. FACKLER: Section 1 of article I as we adopted it on second reading repeats part of section 1 in the old constitution and then adds something, but the proposal we adopted would repeal old section 1 and take the place of it. When we have adopted any proposal here which places an addenda to a section we have pursued the policy of repeating all of the section we desire to retain. Mr. Mauck's proposal would not be affected by this. That will be section 1 of article I.

Mr. PECK: I don't think the proposal would be affected by it, but I fear you are repealing the first part of the section.

Mr. FACKLER: No, sir; you can make a comparison. Mr. Mauck repeats the old part of section 1 and adds something.

Mr. PECK: I think there are others in the same fix.

Mr. FACKLER: I do not think there are any of that kind.

Mr. PECK: Why not add the words "in so far as they are inconsistent therewith"?

Mr. FACKLER: Because in certain places we have repealed something and haven't adopted anything.

Mr. PECK: I don't feel certain enough to urge the matter, but I rather think my idea about it should be adopted in some form. I move that the consideration of this be continued until tomorrow morning until we can investigate the bearings and that it be placed at the head of the calendar.

The PRESIDENT: We cannot defer matters of this sort until tomorrow.

Mr. DOTY: I move that the proposal pending be referred to the committee on Judiciary with instructions to report this evening.

Mr. PECK: I will accept that.

Mr. DOTY: I said the Judiciary committee—I mean the committee on Schedule. It will be almost ready to report. If this is going to get in we must know it so that we can take care of it in other places.

Mr. PECK: I think something of the kind ought to go in. I have been thinking for some time that there should be some general provision, because none of these amendments expressly repeal the portions of the constitution that they are intended to supersede.

The motion by Mr. Doty was agreed to.

Mr. THOMAS: I want to read a telegram that has been sent us from Cleveland:

Congratulatory Telegram to Convention—Printing of Constitution with Amendments—Table on which First Constitution was Signed.

Congratulations and thanks to the Cuyahoga delegation and all progressives of the Convention. It was a long, hard fight and a splendid victory for the initiative and referendum. Your children's children will be proud of you.

EDMUND VANCE COOKE.

Mr. FESS: Edmund Vance Cooke is one of the recent and best poets living. I would like to quote two of his favorite stanzas:

Did you tackle that trouble that came your way
With a resolute heart and cheerful?
Or hide your face from the light of day
With a craven soul and fearful?

O, a trouble's a ton or a trouble's an ounce,
Or a trouble's what you make it.
And it isn't the fact that you're hurt that counts,
But only, how did you take it?

Mr. ANDERSON: I move that the committee on Printing is hereby instructed to have printed the constitution of 1851 and the present amendments in such form that the original section and the present amendments will be in different type.

The object is that each one of us may have our complete work and the constitution of 1851 before our eyes, so that we can determine immediately the change. I am told that it will cost less than five cents per pamphlet.

Mr. DOTY: How many will we get?

Mr. ANDERSON: Ten to each one.

Mr. DOTY: The amount involved here is a very small amount, but we will have to call the roll on it. And it doesn't seem to me to be necessary at all. It seems to me to be an absolute waste of money.

Mr. ANDERSON: It seems to me that we ought to get this in simplified form so that anyone, be he a lawyer or not, can immediately make any explanation desired of any changes.

Mr. HOSKINS: I am half lawyer and I am half farmer and I think this is the proper thing to do. Mr. Doty may believe otherwise. He may be able to carry all these things in his mind, but I am not, and I don't think many others are.

Mr. MARRIOTT: Just a question: Is there anything in the resolution that makes it compulsory on a member to receive the pamphlets unless he wants them?

Mr. ANDERSON: I didn't mean it for the smart members. I meant it for the members of less intelligence, like myself.

Mr. WINN: There will be no committee on Printing. It seems to me that the secretary is the one that will have this in charge.

Mr. ANDERSON: I accept that suggestion and will substitute the secretary instead of the Printing committee.

The PRESIDENT: The motion now is that the secretary be directed to prepare what was suggested by the member from Mahoning and on that the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 81, nays 3, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Okey,
Antrim,	Harbarger,	Partington,
Baum,	Harris, Hamilton,	Peters,
Beatty, Morrow,	Harter, Stark,	Pettit,
Beyer,	Hoffman,	Pierce,
Brown, Highland,	Holtz,	Price,
Brown, Pike,	Hoskins,	Read,
Collett,	Johnson, Madison,	Riley,
Colton,	Johnson, Williams,	Rockel,
Cordes,	Jones,	Roehm,
Crites,	Kehoe,	Shaffer,
Cunningham,	Keller,	Shaw,
Davio,	Kerr,	Smith, Geauga,
DeFrees,	Knight,	Solether,
Donahey,	Kramer,	Stamm,
Dunlap,	Kunkel,	Stevens,
Dwyer,	Lambert,	Stewart,
Earnhart,	Longstreth,	Stilwell,
Fackler,	Ludey,	Tallman,
Farnsworth,	Marniott,	Tannehill,
Farrell,	Marshall,	Tetlow,
Fess,	Matthews,	Thomas,
FitzSimons,	McClelland,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Nye,	Wise.

Messrs. Brattain, Doty and Malin voted in the negative.

So the motion was carried.

Mr. KERR: I offer a resolution.

The resolution was read as follows:

Resolution No. 139:

WHEREAS, The table on which the first constitution of Ohio was signed is, by the courtesy of the commissioners of Ross county, now in possession of the state house custodian; therefore

Be it resolved, That the commissioners of Ross county be and are hereby requested to allow said table to remain in the state house, and that the secretary of this Convention be instructed to send said commissioners a copy of this resolution.

Mr. Knight moved to amend Resolution No. 139 as follows:

Strike out "the state house" and insert the following: "possession of the state of Ohio for preservation in the custody of the Ohio Archaeological and Historical Society."

Mr. KNIGHT: I favor the resolution in every way, but somebody should be given the custody of this table and the society I mention is the proper one. It has many other valuable relics of the state in its possession and I am suggesting that this be turned over to it.

Mr. WATSON: I rise to a point of order; the member from Hamilton county is smoking.

Mr. BROWN, of Highland: He has no "edge" on the member from Cuyahoga.

Mr. HARRIS, of Hamilton: As the Convention is in a good humor I would timidly inquire whether Mr. Doty is willing that this resolution should pass?

Mr. DOTY: This is the first time that the member from Hamilton county [Mr. HARRIS] has been at all timid.

The amendment was agreed to.

The resolution was adopted.

Resolution of Congratulation—Schedule.

On motion of Mr. Doty, the Convention recessed until 7:55 o'clock p. m.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. MILLER, of Crawford: I offer a resolution.

The resolution was read as follows:

Resolution No. 140:

WHEREAS, On February the 7th, 1912, there was born to the member from Fairfield county, and wife, Mr. and Mrs. Frank P. Miller, a fine baby boy;

Be it therefore resolved, That the Convention extend to the happy parents congratulations.

Be it further resolved, That whereas baby Francis Edwin Miller was a guest of the Convention at its first banquet, that an invitation is hereby extended to him to attend all future banquets of the Convention.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. Taggart submitted the following report:

The standing committee on Schedule, to which was referred Proposal No. 340—Mr. Taggart, and the amendment by Mr. Fackler, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

At the end of the proposal add:

"Any section of the present constitution inconsistent with any section of the amendments passed and submitted by this Convention and adopted by the electors, shall be held to be repealed."

The amendment was agreed to.

Mr. DOTY: Why say "held to be repealed". Why not say it "shall be thereby repealed?"

Mr. TAGGART: I think that is right—to strike out that "held" if you want to.

Mr. KNIGHT: That is one of the most delicate subjects we have to deal with. In one instance the supreme court has held that the constitution applies to municipal and public, and not only to municipal and public, but to private corporations. That is the first section or article XIII. There is another section which applies to municipal corporations, but the first one seems to be applicable to both private and public corporations. With the language just embodied and incorporated in this proposed amendment the status of that section seems doubtful. If it is a total repeal, it would seem to be knocked out of existence as affecting private corporations too. I am not prepared to submit an amendment, but I raise the question whether it is safe to adopt the proposal in this form.

Mr. TAGGART: The only question that can arise is as to the determination of whether or not any amendment which has been adopted by the Convention and will be adopted by the electors is inconsistent with these provisions of the constitution, and they are the only

provisions I know of wherein the question could arise. The committee was unable to determine whether we should anticipate and settle that question in advance. Its recommendation is simply a matter of precaution, and it seems desirable to some of the members of the Convention.

Mr. DOTY: I call attention to the special order for this hour, being Resolution No. 133.

The PRESIDENT: The gentleman from Cuyahoga calls attention to the special order of this hour. Now, is it understood that the amendment shall remain as worded?

Mr. TAGGART: I would not suggest any change.

Mr. PECK: It seems to me good enough.

The report of the committee was agreed to.

The PRESIDENT: The question is now on the adoption of the proposal.

Mr. SMITH, of Hamilton: I simply want to go a little slow on adopting the proposal. I do not think it is necessary. Any article submitted to the people must necessarily be held by any court to repeal any section of the constitution inconsistent with what the people adopt, but I want it clearly shown that we are not endangering that portion of our present constitution which we may not want to change. My own view and that of a number of gentlemen of the Convention is that such a schedule as this is not necessary. I still adhere to that view, but I yielded my ideas at the urgent request of some of the members.

Mr. DOTY: I, for one, am not only willing, but anxious to take the opinion of so painstaking a lawyer as Judge Taggart. I think, in view of his opinion, that we should lay the amendment on the table and pass the resolution.

Meantime, I want to call attention to the special order for this hour, which is Resolution No. 134.

Mr. PECK: I was one of those who was inclined to think that it would be desirable to stop this. I am not certain, because one cannot be certain about that until he has examined every single proposal with reference to the existing constitution, which would be a job of some length, but I do not see how this as worded could do any harm. It only provides that those things inconsistent with it shall be held to be repealed.

Mr. SMITH, of Hamilton: Does it not provide that any section or article shall be repealed?

Mr. PECK: No, sir; it says any portion, I think.

Mr. SMITH, of Hamilton: No; it says section or article.

Mr. PECK: Any portion that is inconsistent will be repealed. Any portion not inconsistent will not be repealed. This doctrine of repeal by implication, which you rely upon, has a good many things to it, and one of the primary rules with reference to it is that the court will not hold an article or law to be repealed by implication unless it is driven to it, unless there is no escape from it. If there is any possible way of reconciling the two, it will be done rather than say the former law is repealed. That is the last resort of the court. If the conflict is perfectly square and straight and there is no escape the repeal takes place, but if there is any escape, it is not repealed. If the two can by any possible language be construed so as to let them both stand, it is a rule that the court shall do so. Applying that here, I

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could not say that everything affected by what we have done is repealed, nor do I believe that anybody can, and for that reason I think it desirable that something like this shall be adopted; that the courts shall understand that what we have done here shall prevail over what existed before if there is anything like a conflict; that we shall not rely merely upon implication.

Mr. KNIGHT: This is really the same question raised by your colleague from Hamilton county. The amendment proposed here does not simply say any item or portion of the constitution held in conflict, but it says that if in any existing section there is found a conflict between what we are doing here and that existing section, the entire section is repealed.

Mr. KING: I don't think that is there. Please read it. I do not understand it that way.

Mr. KNIGHT: It repeals the entire section.

Mr. KING: When this amendment was first suggested I did not believe it was necessary. Assuming, of course, that the proposal upon the same shows that it is extended to a section or one or more sections or articles, and apparently takes the place of the one that is now in the constitution, if it is adopted, that would be a complete substitution and repeal of the original section of the constitution. That is true of most that have a title, but there are a few, you will remember, that are additional sections which absolutely refer to nothing in the present constitution. But take a proposal to submit an amendment to article IV, section 3, 7, 12 and 15 of the constitution, relating to judges of the court of common pleas. Then this proposal provides that sections 3, 7, 12 and 15 of article IV of the constitution are repealed. That would certainly repeal the present sections on the subject.

Mr. PECK: Are not some parts of those sections repeated?

Mr. KING: Yes; some words are. But the first section is almost entirely newly written. The seventh section and the third section provide that there shall be a probate court. That is all in the present constitution, but there was added to it a provision for the submission to the electors of any county, the question of combining that court with the common pleas court. Section 12 is a re-enactment. When it comes to Proposal No. 272, there is a difference. Proposal No. 272 is a proposal to add article XVIII to the constitution, entitled "Municipal Home Rule." Beginning with section 1 and running to section 14, all of it might be said to be absolutely new matter, and yet section 1 specifies how municipal corporations may be classified. Now, somewhere there should be a repeal of section 6 of article XIII, which relates to the same subject, and is the only section in the constitution of Ohio today that does particularly mention that. Of course, there is a provision in relation to all corporations which declares that no special act shall be passed conferring corporate powers and which the supreme court holds applies to municipal as well as private corporations. You cannot repeal that. But section 6 of article XIII relates to the organization of municipal corporations. That ought to be repealed. That is the only section not specially repealed that I know of. That still remains, and that ought to be referred to. I do not believe that, where these proposals enumerate the exact number of article and section as it is now, and pur-

ports to be an amendment to that section and covering the whole of said section and perhaps adding to it, it is necessary expressly to repeal it.

Mr. PECK: Take a section like this—I remember one—where a section is substituted on the same general subject, but in entirely different language, making entirely different provisions, containing no part of the original section, and where nothing is said about the repeal. Do you say that operates as a repeal when there is no necessary conflict between the two?

Mr. KING: I would like to see the case.

Mr. PECK: Perhaps I have one right here, section 7 of article V. No; this is absolutely new. I am mistaken in that. If the learned lawyers of this committee are satisfied to go on without this I do not propose to set my judgment up against theirs and insist upon it. I have always, however, practiced law upon the proposition that it is much better to avoid a possible difficulty by adding a few words in an instrument than to leave it open for doubt.

Mr. KING: If that is so, let me submit this: Ought not the repeal then to indicate expressly what is repealed rather than to leave it to construction?

Mr. PECK: Either way you leave it to construction; there is no doubt about that.

Mr. DOTY: Change the word "section" to "portion" in the proposal.

Mr. MARRIOTT: In view of the very great importance of this matter before the Convention, and the seeming indecision, I move that Proposal No. 340, with pending amendments, be referred back to the Schedule committee to report at the earliest possible moment.

Mr. PECK: I am inclined to insist upon my motion to substitute the word "portion" for "section".

Mr. TAGGART: Would not the word "provision" be better than "portion"?

Mr. PECK: That has been suggested by several, and I am not sure whether it would be better, but am willing that it be used. I will accept that.

The section as it would read in this amendment was read as follows:

Any provision of the present constitution inconsistent with any provision of the amendment passed and submitted by this Convention and adopted by the electors of the state shall be held to be repealed.

Mr. PECK: I move the adoption of that amendment.

Mr. KNIGHT: At the risk of violating all rules and knowing that I am not a lawyer, I still insist that this language does not cover the situation. At the time Proposal No. 272, the municipal home rule proposal, was reported to this Convention, it contained as the last section the specific statement that the adoption of this article would repeal section 6 of article XIII of the constitution. That was stricken out on second reading after a statement from several lawyers that if we repealed specifically that section it would leave the inference that all other parts of the constitution assigned to municipal corporations were in force.

Now, there are unquestionably upon the subject of municipal corporations two other clauses of the constitution which have been held by the supreme court to have an application. Yet those clauses do not apply to municipal

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corporations alone, but apply to other corporations. Therefore, we should not say that those sections or provisions shall be repealed, because you cannot take half of the meaning out of the words and leave the words themselves there. You cannot take the words out that apply to the private corporation. It seems to me that a phrase must be added here, not that the section is repealed, but that any conflicting provisions shall be held to be inoperative so far as conflicting, rather than striking out certain words.

Mr. KING: How would it do to provide that where provisions are not specially repealed, if there is a conflict between the amendments adopted here and the present constitution, the amendments so adopted shall prevail?

Mr. KNIGHT: That is a better way to put it. If the gentleman will put that in proper form, it will save the situation.

The PRESIDENT: The member will please reduce the amendment to writing.

Mr. TAGGART: I suggest the following, which may govern the contingencies: "Should any provision of the present constitution be inconsistent with the provisions of any amendment passed and submitted by this Convention and adopted by the electors the latter shall be held to control."

Mr. PETTIT: That is just what Judge Peck has been saying.

Mr. KING: That is all right. That seems to me to be the exact language that Judge Peck wanted.

Mr. PECK: I don't think that ought to be "shall be held to control." I think it should be "shall prevail."

Time was here given to reduce the various suggestions to writing.

Mr. COLTON: I have a matter that I would like to present, and I can do it while we are wasting this time. I would like to call the attention of the Convention to the grand resolution on your desk. Perhaps you will better understand what I want to call your attention to if you turn to the journal of May 24, page 25. I am doing this for the committee on Arrangement and Phraseology. You will notice that Proposal No. 96 begins "Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend," etc. Now, when that proposal came to the committee on Arrangement and Phraseology there came also from the Schedule committee a schedule to be attached to it. That schedule follows here. You notice how it begins, "Schedule No. 5." We have omitted those numbers in the grand resolution, because we do not need them. "That in the event the above proposal passed by the Convention," etc., beginning with "in the event," we change in all cases by prefixing "Resolved further that" to make it correspond with the "Resolved" with which each proposal begins. Now, if you will turn to the grand resolution on page 3—turn over about four pages—you will see how it looks in article V, on that page. You will notice in that the "Resolved by the Constitutional Convention of the state of Ohio" is dropped out. The "Resolved" with which the proposal was introduced is dropped out in our grand resolution, but the schedule following article V on this page begins still with "Resolved further", with the words which we inserted to make this correspond with the "re-

solved" with which the proposal begins. You will see that these words, "Resolved further" in this schedule have no relation to any other "Resolved," and do not belong there, and what I ask is an amendment to remove "Resolved further" from each schedule provision, so that the schedule will begin, "If the amendment to article—", etc. If you will turn to the last page of this grand resolution you will see that that begins not with "Resolved further," but with the simple statement. I ask unanimous consent to strike out the words "Resolved further" and "Resolved further that," wherever they appear, and begin the sentence following with a capital.

Consent was given.

Mr. KING: I offer an amendment to Proposal No. 340.

The amendment was read as follows:

Strike out the last sentence of the proposal and all amendments and insert the following:

"That if any provision of the amendments passed by this Convention and adopted by the electors, conflicts with any provision of the present constitution, the former shall prevail".

Mr. PECK: I accept that amendment.

Mr. FACKLER: I think that is defective. If we take a certain section of the constitution and make a change and part of the old constitution is left out and part left in, there might not be anything that conflicted with the old, and yet the intention was to take out that whole matter from the old.

Mr. SMITH, of Hamilton: I now offer an amendment.

The amendment was read as follows:

Strike out the last sentence of the proposal and all pending amendments and insert the following:

"Any provision of the amendments passed and submitted by this Convention and adopted by the electors inconsistent or in conflict with any provision of the present constitution shall be held to control".

Mr. PECK: That is the same as the other, except that the word "control" is used instead of "prevail".

Mr. SMITH, of Hamilton: There are conflicts that are going to come, and they will be decided by the supreme court. If there is any provision in these amendments which we submit and which are adopted and which seem to be inconsistent with the present constitution, the question is bound to be tested in the courts, and this amendment provides in case of conflict of that kind the court shall hold that the amendment we submit and adopt shall prevail.

Mr. PECK: How does that differ from Judge King's? I have no objection to it, but I cannot see the difference.

Mr. JONES: What is the gentleman offering?

Mr. SMITH, of Hamilton: You recall what Professor Knight said about section 1 of article XIII, which provides that the general assembly shall pass no special acts conferring corporate powers. We do not want to repeal that section or any portion of it, so far as it affects private corporations. but the courts have held it applie-

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to municipalities too, and we only want to repeal or control it in so far as it conflicts with the proposal of Mr. FitzSimons.

Mr. ANDERSON: I move that that subject be referred to a committee consisting of Mr. Fackler, Mr.

Peck Mr. Smith, of Hamilton, Judge King and Judge Taggart.

The motion was carried.

Mr. FACKLER: I have a report to submit.

The report was read as follows:

The standing committee on Submission and Address to the People to which was referred Resolution No. 118, Mr. Lampson, having had the same under consideration, reports it back with the following amendments, and recommends its adoption when so amended:

Strike out all after the word "Resolution" and in lieu thereof insert the following:

Resolved, That the several proposals duly passed by this Convention shall be submitted to the electors as separate amendments to the constitution at a special election to be held on the third day of September, 1912.

The several amendments shall be designated on the ballot by their proper article and section numbers and also by their approved descriptive titles and shall be printed on said ballot and consecutively numbered in the manner and form hereinafter set forth. The adoption of any amendment by its title shall have the effect of adopting the amendment in full as finally passed by the Convention.

Said special election shall be held pursuant to all provisions of law applicable thereto including special registration.

Ballots shall be marked in accordance with instructions printed thereon.

Challengers and witnesses shall be admitted to all polling places under such regulations as may be prescribed by the secretary of state.

Within ten days after said election the boards of deputy state supervisors of elections of the several counties shall forward by mail in duplicate sealed certified abstracts of the votes cast on the several amendments, one to the secretary of state and one to the auditor of state at Columbus. Within five days thereafter such abstracts shall be opened and canvassed by the said secretary of state and auditor of state in the presence of the governor who shall forthwith, by proclamation, declare the results of said election.

Each amendment on which the number of affirmative votes shall exceed the number of negative votes shall become a part of the constitution.

Form of Ballot.

OFFICIAL BALLOT.

SPECIAL ELECTION, TUESDAY, SEPTEMBER 3, 1912.

AMENDMENTS TO THE CONSTITUTION.

(First Column)

To vote *FOR* any amendments place a cross mark in the blank space to the left of the word "Yes" opposite the title of such amendment.

To vote *AGAINST* any amendment place a cross mark in the blank space to the left of the word "No" opposite the title of such amendment.



I		YES	ARTICLE I, SECTION 5. Reform in Civil Jury System.
		NO	

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2	YES	ARTICLE I, SECTION 9. Abolition of Capital Punishment.
	NO	
3	YES	ARTICLE I, SECTION 10. Depositions by State and Comment on Failure of Accused to testify in Criminal Cases.
	NO	
4	YES	ARTICLE I, SECTION 16. Suits against the State.
	NO	
5	YES	ARTICLE I, SECTION 19a. Damage for Wrongful Death.
	NO	
6	YES	ARTICLE II, SECTIONS 1 TO 19. Initiative and Referendum.
	NO	
7	YES	ARTICLE II, SECTION 8. Investigations by each House of General Assembly.
	NO	
8	YES	ARTICLE II, SECTION 16. Limiting Veto Power of Governor.
	NO	
9	YES	ARTICLE II, SECTION 33. Mechanics' and Builders' Liens.
	NO	
10	YES	ARTICLE II, SECTION 34. Welfare of Employees.
	NO	
11	YES	ARTICLE II, SECTION 35. Workmen's Compensation.
	NO	
12	YES	ARTICLE II, SECTION 36. Conservation of Natural Resources.
	NO	

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13		YES	ARTICLE II, SECTION 37. Eight Hour Day on Public Work.
		NO	
14		YES	ARTICLE II, SECTION 38. Removal of Officials.
		NO	
15		YES	ARTICLE II, SECTION 39. Regulating Expert Testimony in Criminal Trials.
		NO	
16		YES	ARTICLE II, SECTION 40. Registering and Warranting Land Titles.
		NO	
17		YES	ARTICLE II, SECTION 41. Abolishing Prison Contract Labor.
		NO	
18		YES	ARTICLE III, SECTION 8. Limiting Power of General Assembly in Extra Sessions.
		NO	
19		YES	ARTICLE IV, SECTIONS 1, 2 AND 6. Change in Judicial System.
		NO	
20		YES	ARTICLE IV, SECTIONS 3, 7, 12 AND 15. Judge of Court of Common Pleas for each County.
		NO	
21		YES	ARTICLE IV, SECTION 9. Abolition of Justices of the Peace in Certain Cities.
		NO	
22		YES	ARTICLE IV, SECTION 21. Contempt Proceedings and Injunctions.
		NO	
23		YES	ARTICLE V, SECTION 1. Woman's Suffrage.
		NO	

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24		YES	ARTICLE V, SECTION 1. Omitting word "White."
		NO	
25		YES	ARTICLE V, SECTION 2. Use of Voting Machines.
		NO	
26		YES	ARTICLE V, SECTION 7. Primary Elections.
		NO	
27		YES	ARTICLE VI, SECTION 3. Organization of Boards of Education.
		NO	
28		YES	ARTICLE VI, SECTION 4. Creating the office of Superintendent of Public Instruction to replace State Commissioner of Common Schools.
		NO	
29		YES	ARTICLE VIII, SECTION 1. To extend state bond limit to fifty million dollars for Inter-County Wagon Roads.
		NO	
30		YES	ARTICLE VIII, SECTION 6. Regulating Insurance.
		NO	
31		YES	ARTICLE VIII, SECTION 12. Abolishing Board of Public Works.
		NO	
32		YES	ARTICLE XII, SECTIONS 1, 2, 6, 7, 8, 9, 10 AND 11. Taxation of State and Municipal Bonds, Inher- itances, Incomes, Franchises and Pro- duction of Minerals.
		NO	
33		YES	ARTICLE XIII, SECTION 2. Regulation of Corporations and Sale of Personal Property.
		NO	
34		YES	ARTICLE XIII, SECTION 3. Double Liability of Bank Stockholders and Inspection of Private Banks.
		NO	

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35	YES	ARTICLE XV, SECTION 2. Regulating State Printing.
	NO	
36	YES	ARTICLE XV, SECTION 4. Eligibility of Women to Certain Offices.
	NO	
37	YES	ARTICLE XV, SECTION 10. Civil Service.
	NO	
38	YES	ARTICLE XV, SECTION 11. Out-Door Advertising.
	NO	
39	YES	ARTICLE XVI, SECTIONS 1, 2, AND 3. Methods of Submitting Amendments to the Constitution.
	NO	
40	YES	ARTICLE XVIII, SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 AND 14. Municipal Home Rule.
	NO	
41	YES	Schedule of Amendments.
	NO	

(Second Column)

INTOXICATING LIQUORS.

To vote FOR license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words:—"For license to traffic in intoxicating liquors."

To vote AGAINST license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words:—"Against license to traffic in intoxicating liquors."

	For license to traffic in intoxicating liquors.
	Against license to traffic in intoxicating liquors.

Mr. BROWN, of Lucas: I desire to explain this report on behalf of the committee on Submission and Address to the People. Briefly it covers these points; that there shall be a special election held on the third of September next, that the regular election laws of the state shall apply in all respects, so far as they can apply, to this special election. The penalties, the hours to vote, the election officers, the legal holiday, witnesses and challengers at the polls, and all, shall apply under such regulations as shall be prescribed by the secretary of state. We found that that was the only practical way to work it out, because there might be such a large number of committees interested in these forty-two proposals that we would fill the booths with witnesses and challengers;

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so we put that problem up to the secretary of state. The various proposals are to be printed upon the ballot, designating the article and section of the constitution which they either amend or supplement or change, and are to be printed with the approved title, that is, with the title which we have adopted here. The ballots will be marked as we are accustomed to vote, with a cross-mark at the left of each proposition, two boxes being provided, one for yes and one for no.

DELEGATES: Boxes?

Mr. BROWN, of Lucas: I mean squares. The provision is made for sending the abstract of returns in duplicate and sealed to the secretary of state and auditor of state within ten days after the election. These officers were chosen, because they happen at this time to belong to different political parties. Within five days after the returns are sent to them the returns are to be opened in the presence of these officers and of the governor, canvassed, and the result of the election made known to the people of the state of Ohio by proclamation of the governor. Each amendment upon which the affirmative vote shall exceed the negative vote shall become a part of the constitution at the time fixed by the schedule applying to that amendment. Your committee has had great difficulty in agreeing upon a form of ballot. The form of ballot has been under consideration for two weeks or more and until tonight the committee has never been able to agree upon a form of ballot. Again and again the vote was a tie, but tonight a majority of your committee agreed on this report recommending the adoption of this resolution, and the report is signed by twelve members of the committee. The form of ballot places all of the proposals except the license proposal in a single column in the order in which the various articles of the constitution appear in the present constitution, so that each proposal or amendment appears in just the form in which it will be printed in the constitution, the proposals amending article I coming first, and so on down the list. That rule has been followed in all respects save in the license proposal. It is recommended by the committee that the other forty-one proposals appear in a single column without any circle in which to vote for or against all of them. The license proposal appears at the right of the ballot and at the top with a special direction how to vote for that, for the reason that in that proposal it is determined how the proposal shall be placed upon the ballot, and it is impossible to use the words yes and no; it is therefore necessary to have a special rule for that. The purpose of the committee was to submit separately the license proposal, and the others all appear in their order on the ballot.

Mr. WATSON: Do you not think it would be a little plainer if the longer bars were in upper case and the shorter bars in lower case?

Mr. BROWN, of Lucas: The detail of printing will be possibly much improved. This is a sample form and the typewriting machine had just such type to use.

Mr. DWYER: Why was it necessary to give the liquor proposal so prominent a place on the ticket?

Mr. BROWN, of Lucas: It is not. The purpose of it was simply to separately submit it.

Mr. PETTIT: Was it not the purpose to submit the right of franchise separately?

Mr. BROWN, of Lucas: Yes; I was on the subcommittee that favored the separate submission of that amendment, but the whole committee overruled the subcommittee of which I was a member.

Mr. PETTIT: I am not in favor of giving the whisky proposal any more prominence than any other.

Mr. HARBARGER: How about the ballot?

Mr. BROWN, of Lucas: All on one ballot appearing in two columns.

Mr. HARBARGER: Why two columns?

Mr. BROWN, of Lucas: So that the literature sent out affecting any proposal may refer to it by the number.

Mr. MILLER, of Crawford: Then could not the person vote by the numerals?

Mr. BROWN, of Lucas: No one would remember the numerals.

Mr. MILLER, of Crawford: Yes; it would be easy to say to vote against such and such a number.

Mr. BROWN, of Lucas: I do not think it is unreasonable to aid the voter in finding what he wants to vote for.

Mr. KEHOE: What did I understand you to say as to what passes a proposal?

Mr. BROWN, of Lucas: If the number of affirmative votes exceeds the number of negative votes, the proposal is part of the constitution.

Mr. KEHOE: Do we determine that in this constitution, or are we under the provisions of the old constitution in determining whether these amendments are passed?

Mr. BROWN, of Lucas: We are under the old constitution.

Mr. HALFHILL: I do not exactly understand your statement as to why the committee put numerals on the margin of the proposals?

Mr. BROWN, of Lucas: So that the voters might have every possible aid in finding a proposal that they wish to vote for or against.

Mr. HALFHILL: If this is to be a campaign of education, would it not be just as well for the literature the voter gets discussing the proposal to give a number on it?

Mr. BROWN, of Lucas: Of course; it has to discuss the proposal, and you would not think of voting anything because you got a letter from me asking you to vote against No. 23.

Mr. HALFHILL: Of course not; not because I got a letter from you, but because I was in favor of it.

Mr. BROWN, of Lucas: But if No. 23 were discussed and good reasons given, I think you would be glad to have that number, to find it on the ballot.

Mr. ANDERSON: With the numbers on the side, at least on the ballot, as here appearing, would it not permit a voter who could not read but who could understand numbers to take in his vest pocket into the booth certain numbers and then mark accordingly?

Mr. BROWN, of Lucas: I suppose he would be able to read enough to read yes and no.

Mr. ANDERSON: In other words, is that not putting a premium upon the densest kind of ignorance and assisting those who are too ignorant otherwise to pick out certain things to be killed or to be voted for?

Mr. DWYER: I do not object to the numbers, but all I want to know is, does the committee intend to mail

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a facsimile of the ballot to every voter in the state before the day of the election with the numbers and the explanations on the different proposals, so that every voter before he comes to the polls will have a copy of that ballot and could mark it himself? That would enable every voter to know every proposal on the ballot.

Mr. WINN: How did you obtain the information that the committee proposes to do that?

Mr. DWYER: I understand that. I am a member of the committee.

Mr. WINN: Well, how did the committee get authority to do that?

Mr. DWYER: That is what we have in fact decided.

Mr. WINN: You mean that your committee proposes to recommend to the Convention that this Convention take that action?

Mr. DWYER: We do, on the score of economy.

Mr. WINN: I want to know whether the committee has mapped out a certain line of action that it intends to take irrespective of the wishes of the Convention?

Mr. DWYER: Do you not think that is a highly proper thing to do?

Mr. FACKLER: I rise to a point of order.

The PRESIDENT: The point of order is sustained.

Mr. READ: Do you not think it proper that a person who can read well and who is well informed, or can be, should be assisted by numerals when he has made up his mind?

Mr. BROWN, of Lucas: The argument against numerals would apply to having any index to a book.

Mr. KNIGHT: If the ballot is to follow this form, would it not be better for six, seven, eight and nine, down to seventeen, article II instead of article XI?

Mr. BROWN, of Lucas: That is article II. That is simply that much more work for the committee on Phraseology.

Mr. KNIGHT: This does not come to us. It is not a proposal.

Mr. BROWN, of Lucas: That can be rectified. It applies to article II.

Mr. KNIGHT: I insist that we correct it now.

Mr. BROWN, of Lucas: Well, we will correct it.

Mr. MARRIOTT: Is the liquor proposal numbered?

Mr. BROWN, of Lucas: That is not numbered.

Mr. MARRIOTT: Will you number it?

Mr. BROWN, of Lucas: If you prefer.

Mr. MARRIOTT: Have you numbered it?

Mr. BROWN, of Lucas: No, sir; it is entirely by itself on the ballot. I see no objection to numbering it if anybody wants it numbered.

Mr. EVANS: Why did you put the liquor proposition off in a place by itself? I would like to understand the meaning of that. Why was that done?

Mr. BROWN, of Lucas: The reason was this: The majority of the committee believed that that was the right way to submit it separately, so that everybody would see that the liquor amendment stood by itself in this proposal. Now some of us think there are people who want to vote for the liquor amendment regardless of anything else, and that some want to vote against it regardless of anything else. We thought if it were in a column with the other proposals, some people might desire to vote simply upon that and vote straight down that column one way or the other. Some of us signed

statement No. 1 under the Green law that we would separately submit the liquor amendment, and not have the rest of the constitution carried along with it. Several of us thought that was the place to put it, where everybody could find it, and everybody who wanted to vote for it could find it and everybody who wanted to vote against it could find it.

Mr. EVANS: Is it at the bottom or at one side?

Mr. BROWN, of Lucas: This comes right here opposite Mr. Elson's proposal at the top.

Mr. EVANS: Why did you put it to one side that way?

Mr. BROWN, of Lucas: We simply wanted to submit that separately. To be consistent we should have them all together, and we should not have given anyone precedence of position over the other.

Mr. EVANS: Well, doesn't this give that precedence?

Mr. BROWN, of Lucas: We don't think it gives precedence, because everybody can find it.

Mr. EVANS: The committee thinks that would give him a chance to find it anyhow, and he can find the others or not.

Mr. BROWN, of Lucas: No; the point was this: We do not want anybody who wants to vote against the liquor amendment to vote against everything else, as was done in 1873.

Mr. ULMER: A great many of the delegates here have at least signed a statement by which they pledged themselves that the liquor amendment should be submitted on a separate ballot. That was the first thing. Then the second thing was that the woman's suffrage proposal should be put on a separate ballot. Now, why put the liquor question separately this way and not submit woman's suffrage in the same way?

Mr. EVANS: I am not in favor of woman's suffrage.

Mr. WINN: A point of order, who has the floor?

The PRESIDENT: The gentleman from Lucas. Mr. Brown yielded the floor to Mr. Ulmer.

Mr. BROWN, of Lucas: There is one other point that I wish to make about this separate submission of the license proposal. That is the only alternative proposition before us. One is that license shall be granted, and the other is that license shall not be granted. That is not true of any other of these proposals. If the affirmative vote exceeds the negative vote on any other than this proposal, it becomes part of the constitution. If the negative exceeds the affirmative, the whole matter is gone.

Mr. WATSON: Why not leave a blank space underneath the same as all of the others and submit it that way instead of wasting so much space and time on it?

Mr. BROWN, of Lucas: Why leave a blank space?

Mr. WATSON: Why not submit it on a separate ballot?

Mr. BROWN, of Lucas: Every separate ballot requires a separate ballot box and tally sheet and all of the machinery of an election.

Mr. FACKLER: Is it not a fact that the license proposal as adopted by the Convention provided a different method of voting on the proposal from that which the committee recommends?

Mr. BROWN, of Lucas: Certainly, and it so appears on this ballot.

Mr. THOMAS: Do the polls close at 5:30 or 6

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o'clock? Was there not an amendment to close the election at six o'clock last year?

Mr. BROWN, of Lucas: I think not.

DELEGATES: Yes; there was.

Mr. BROWN, of Lucas: If so, whatever the law it is applicable to this election. I now move the adoption of this report.

Mr. WINN: I desire to offer an amendment.

The amendment was read as follows:

Amend the report of the committee on Resolution No. 118 as follows:

Strike out the following on the last page of the form of ballot: "Intoxicating Liquors. To vote for license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words:—'For license to traffic in intoxicating liquors.' To vote against license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words: 'Against license to traffic in intoxicating liquors,'" and place the form of ballot for vote on liquor license proposal in the column with the other propositions to be voted upon, and in its proper place, under the rule followed in the resolution giving place to the other propositions on the ballot.

Mr. WINN: I am not certain, gentlemen of the Convention, whether any other amendment to the resolution is necessary. I have not the text of the resolution before me, but the form of the ballot is part of the resolution, so I suggest by this amendment that the third page of the form of the ballot be changed by striking out the words "Intoxicating liquors" and all following down to the form of ballot for the vote on the last proposition—

Mr. DWYER: Will the gentlemen permit me?

Mr. WINN: Not now.

Mr. DWYER: I want to read a section?

Mr. WINN: I cannot yield for that now. In a moment I will—and that that be placed in the column in its proper place, following the rule adopted by the committee. Proposal No. 151 is an amendment of section 9 of article XV of the constitution, so that, if the same rule is applied to this as to all of the other proposals, it would appear probably as No. 36 or No. 37. Now, I do not believe that the temper of this Convention is favorable to the submission of this proposition or proposal off on the right of the ballot as recommended by the committee. I appreciate this fact, gentlemen, that around about saloons there are a great many men who have spent the best years of their lives cleaning cuspidors and in similar service for their masters, who are the saloon keepers, and they are not qualified in many instances to vote upon a proposition unless it is put some place on the ballot where they may be able to pick it out without reference to the language used in it. I do not believe that there is a majority of this Convention ready to submit the result of our own labors on these proposals to the determination of that class of men, and that is what is proposed by this plan of submission.

Mr. DWYER: Will the gentleman permit me?

Mr. WINN: If it does not come out of my time.

Mr. DWYER: These are the laws of 1911 under

which this Constitutional Convention was assembled, and is doing business. It makes provision about this. It reads:

Statement No. 1. I hereby state to the people of Ohio, as well as to the people of my county, that during my incumbency of the office of delegate to the Constitutional Convention, I will always vote for a separate submission to the people as a separate part of the constitution, of the alternative questions, "Shall the constitution provide for the licensing of the traffic in intoxicating liquors, or shall the constitution prohibit the licensing of the traffic in intoxicating liquors?"

Mr. WINN: I think we are all familiar with that.

Mr. DWYER: I want you to construe that.

Mr. WINN: It would be an insult to the intelligence of this Convention to assume that its members are not advised of that. But I am not asking that any person who was foolish enough to sign any pledge respecting that question shall violate his pledge. There is no such purpose as that in the amendment I propose. I propose that it be separately submitted. I am not even suggesting the violation of any pledge. When the general assembly enacted this law bringing into existence this Convention it was presumed (as we first presumed) that the result of our work would be an amended constitution to be submitted to the people on a question of "New constitution, yes", or "New constitution, no"; and that the constitution would be rejected or ratified by the people. So having that in mind, it was proposed that candidates might be pledged to submit this separate from the general constitution. The latter part of March or the first part of April we passed a resolution declaring it to be the sense of the Convention that we submit each proposal separately. That is what we all intended to do until the last two or three days when the very same influences that procured the general assembly to provide for that pledge in the law got in its work on the floor of this Convention and undertook to secure enough pledges for the submission of this question on a ballot in such a way that a man who might be described as the finished product of the saloon may be able to defeat our work at the polls. To me it seems that it would be belittling ourselves and would be an insult to the intelligence of the voters of Ohio for us to do a thing of this sort. Now there are some who wanted to put a circle at the top so that the voters could vote easily. But that has been rejected, and now it is urged that all the proposals be in one column, allowing the electors of Ohio to go to the polls and intelligently decide whether or not our work shall be ratified.

Mr. FACKLER: The amendment you have proposed is impossible. If you will turn to Proposal No. 151 you will find on page 3 what the committee found this afternoon when we started to make up the ballot. You will find that the form of the ballot is described in Proposal No. 151 and that it differs from the form in which all of the other proposals are to be submitted, and your amendment would throw the whole report on submission out of gear.

Mr. WINN: It might require a little further amendment, and the words "for or against license" might be used instead of "for or against license to traffic in intoxi-

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cating liquors." I believe those words have not been changed and the words are "For license to traffic in intoxicating liquors. Against license to traffic in intoxicating liquors."

Mr. FACKLER: You have evidently misunderstood me. If you notice the form of the ballot on the change

in the jury system is yes and no, but that is not the form on the liquor question.

Mr. STEVENS: I desire to submit an amendment to the amendment offered by the member from Defiance [Mr. WINN].

The amendment was read as follows:

Strike out the first and second columns of the report of committee and the pending amendment and insert the following:

Form of Ballot.

OFFICIAL BALLOT.

SPECIAL ELECTION, TUESDAY, SEPTEMBER 3, 1912.

AMENDMENTS TO THE CONSTITUTION.



To vote for or against any amendment separately mark (X) to the left of "Yes" or "No."

1	YES	ARTICLE I, SECTION 5. Reform in Civil Jury System.
	NO	
2	YES	ARTICLE I, SECTION 9. Abolition of Capital Punishment.
	NO	
3	YES	ARTICLE I, SECTION 10. Depositions by State and Comment on Failure of Accused to testify in Criminal Cases.
	NO	
4	YES	ARTICLE I, SECTION 16. Suits against the State.
	NO	
5	YES	ARTICLE I, SECTION 19a. Damage for Wrongful Death.
	NO	
6	YES	ARTICLE II, SECTIONS 1 TO 1g. Initiative and Referendum.
	NO	

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7	YES	ARTICLE II, SECTION 8. Investigations by each House of General Assembly.
	NO	
8	YES	ARTICLE II, SECTION 16. Limiting Veto Power of Governor.
	NO	
9	YES	ARTICLE II, SECTION 33. Mechanics' and Builders' Liens.
	NO	
10	YES	ARTICLE II, SECTION 34. Welfare of Employees.
	NO	
11	YES	ARTICLE II, SECTION 35. Workmen's Compensation.
	NO	
12	YES	ARTICLE II, SECTION 36. Conservation of Natural Resources.
	NO	
13	YES	ARTICLE II, SECTION 37. Eight Hour Day on Public Work.
	NO	
14	YES	ARTICLE II, SECTION 38. Removal of Officials.
	NO	
15	YES	ARTICLE II, SECTION 39. Regulating Expert Testimony in Criminal Trials.
	NO	
16	YES	ARTICLE II, SECTION 40. Registering and Warranting Land Titles.
	NO	
17	YES	ARTICLE II, SECTION 41. Abolishing Prison Contract Labor.
	NO	

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18		YES	ARTICLE III, SECTION 8. Limiting Power of General Assembly in Extra Sessions.
		NO	
19		YES	ARTICLE IV, SECTIONS 1, 2 AND 6. Change in Judicial System.
		NO	
20		YES	ARTICLE IV, SECTIONS 1, 3, 12 AND 15. Judge of Court of Common Pleas for each County.
		NO	
21		YES	ARTICLE IV, SECTION 9. Abolition of Justices of the Peace in Certain Cities.
		NO	
22		YES	ARTICLE IV, SECTION 21. Contempt Proceedings and Injunctions.
		NO	
23		YES	ARTICLE V, SECTION 1. Omitting word "White."
		NO	
24		YES	ARTICLE V, SECTION 2. Use of Voting Machines.
		NO	
25		YES	ARTICLE V, SECTION 7. Primary Elections.
		NO	
26		YES	ARTICLE VI, SECTION 3. Organization of Boards of Education.
		NO	
27		YES	ARTICLE VI, SECTION 4. Creating the office of Superintendent of Public Instruction to replace State Commissioner of Common Schools.
		NO	
28		YES	ARTICLE VIII, SECTION 1. State Bond Limit for Good Roads.
		NO	

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29		YES	ARTICLE VIII, SECTION 6. Regulating Insurance.
		NO	
30		YES	ARTICLE VIII, SECTION 12. Abolishing Board of Public Works.
		NO	
31		YES	ARTICLE X, SECTION 1. Woman's Suffrage.
		NO	
32		YES	ARTICLE XII, SECTIONS 1, 2, 6, 7, 8, 9, AND 10. Taxation of State and Municipal Bonds, Inher- itances, Incomes, Franchises and Pro- duction of Minerals.
		NO	
33		YES	ARTICLE XIII, SECTION 2. Regulation of Corporations and Sale of Personal Property.
		NO	
34		YES	ARTICLE XIII, SECTION 3. Double Liability of Bank Stockholders and Inspection of Private Banks.
		NO	
35		YES	ARTICLE XV, SECTION 2. Regulating State Printing.
		NO	
36		YES	ARTICLE XV, SECTION 4. Eligibility of Women to Certain Offices.
		NO	
37		YES	ARTICLE XV, SECTION 9. License to Traffic in Intoxicating Liquors.
		NO	
38		YES	ARTICLE XV, SECTION 10. Civil Service.
		NO	
39		YES	ARTICLE XV, SECTION 11. Out-Door Advertising.
		NO	

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40	YES	ARTICLE XVI, SECTIONS 1, 2, AND 3. Methods of Submitting Amendments to the Constitution.
	NO	
41	YES	ARTICLE XVIII, SECTIONS 1 AND 13. Municipal Home Rule.
	NO	
42	YES	SCHEDULE No. 4. Schedule of Amendments.
	NO	

Mr. STEVENS: This amendment does simply this: It places every amendment to this constitution in a straight line from top to bottom on a straight ballot, and it puts them on in the order in which they will be inserted in the old constitution when the whole work is done and the people have voted upon it. There is no other rational way in which to submit the work of the Convention, and anybody who desires to change that order has some motive other than a fair, square vote all around. Now, about the circle at the top of the ballot—

Mr. ULMER: Is the circle square?

Mr. STEVENS: No, a circle is not square. A circle is like a whole lot of people on the other side of the question. They are not square. Now if a person wants to vote for all of the amendment he can simply put a cross in the circle instead of making forty-two. It may be said that that puts a premium upon the work of the Convention. I want to say to you that I am in favor of putting a premium upon the work of this Convention. The state of Ohio has elected one hundred and nineteen delegates and spent \$200,000 in getting out this job, and if that does not create a presumption in favor of the work of this Convention then such presumption cannot be created. If we are not able to do this work we ought not to be here. The people sent us here. We have spent five months of painstaking work, and everything, I think, raises the presumption in favor of our work being adopted, and that circle does it. It is a right of every citizen, humble or otherwise, to have an opportunity of voting for or against any amendment, and for the purpose of extending that right to him I have used these words to the right of the circle:

To vote for or against any amendment separately mark X to the left of "Yes" or "No."

Suppose one of you men wishes to vote; if you want to vote for the whole business, mark X in the circle. Suppose you don't want to vote for all of them but want to vote against some; mark the X in the circle and then mark the X in the "No" square opposite those you wish to vote against. There cannot be a simpler method than that, and it is absolutely fair. If any of you men have friends not sufficiently intelligent to express their wishes on that ballot, I am sorry for your friends.

This plan will make it very much more easy to get these votes in. Ninety-nine per cent of the voters will vote for all of the amendments except three or four,

and the method I submit with the circle is the easiest and quickest and simplest method that can be devised to vote on these matters.

Mr. HALFHILL: I think the report of the committee deserves commendation, but also think that this last amendment that came in here for your consideration, and which is said to be fair, is the most unfair thing that could be presented to this Convention or to the people of Ohio. When the gentleman boasts about the intelligence of this Convention and the presumption in favor of its work, he ought to remember that pride goeth before destruction, and a haughty spirit before a fall, and he should not set himself up as being so exceedingly haughty as to think the Convention has done a thing that everybody in Ohio will agree with.

If we want a campaign of education and intelligence, follow the report of the committee, because I believe that is the surest way to get rid of both the vicious and the ignorant vote. I do not think we ought to adopt this circle at the top of the ballot so that everybody can vote for the whole thing by simply making a cross mark within the circle. I expect to vote for and advocate most of the work of this Convention, but some of it I shall not vote for. But I commend the work of this committee, and in regard to that separate submission that the gentleman from Defiance refers to, I would like that gentleman and everybody else to understand that not everybody in this Convention has signed any pledge. I did not sign any pledge under the Green law or any other law, but ever since I have had enough knowledge of the existing conditions to know what would be right and wrong upon submitting a proposal of this kind, I have known enough to know that it ought to be submitted on a separate ballot and voted for in a separate ballot box.

The gentleman from Defiance in his discourse didn't tell us what he stood for. He said it would defeat the work of this Convention, but he didn't tell us what the voters he described would vote against. After listening to his speech, I do not know now, and I do not believe any body in the Convention knows; but I do know a whole lot of people in the state of Ohio do not believe in license at all, and they are just as much entitled to vote their sentiments against license and for retaining the existing provisions of the constitution as the men who believe in license have a right to vote for it. It ought

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to be a separate ballot, and I always supposed that a separate submission meant putting it in a separate ballot box.

We all know what defeated the constitution of 1873. Probably that was the best constitution ever submitted to any state in the Union.

Mr. STEVENS: What about this one of ours?

Mr. HALFHILL: This is only a partial constitution. Now another thing: We cannot have the major part of our work carried at the polls unless we have the support of the great newspapers of the state of Ohio. You know that the Cincinnati Enquirer and the Columbus Dispatch beat the constitution of 1873. How many newspapers are there in the state that would support the work if we put a circle at the head of this ballot and allow all electors to vote for each amendment by voting in the circle, and make them vote "No" opposite each proposal if they want to vote against them all? I have heard the Longworth law denounced time and time again in this Convention because by virtue of that and the indorsement of the two political parties a constitutional amendment was carried. I hope whatever we do with these amendments we will observe substantially the report of this committee because it is eminently fair.

Mr. HARRIS, of Hamilton: Did you hear the statement made by the member from Tuscarawas [Mr. STEVENS] that in his judgment ninety-nine per cent of the people who go to the booths will vote for all of the amendments? Are you aware of the fact that not sixty per cent of this Convention voted for all of the amendments?

Mr. HALFHILL: I heard substantially that statement, and I think it was just as wide afield and as far from fact as some of the other statements of the gentleman from Tuscarawas.

Mr. STEVENS: I didn't make any such statement. I did not say that ninety-nine per cent of the voters would vote for all of the propositions. I said that ninety-nine per cent of the voters would vote for all of the propositions except three or four.

Mr. HALFHILL: I move that the amendment of the gentleman from Tuscarawas be laid on the table.

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 75, nays 33, as follows:

Those who voted in the affirmative are:

Baum,	Fox,	Ludey,
Beatty, Morrow,	Hahn,	Malin,
Beyer,	Halenkamp,	Marriott,
Bowdle,	Halfhill,	Marshall,
Brattain,	Harris, Hamilton,	Matthews,
Brown, Highland,	Harter, Huron,	Miller, Crawford,
Brown, Lucas,	Harter, Stark,	Norris,
Brown, Pike,	Hoffman,	Nye,
Campbell,	Holtz,	Okey,
Collett,	Hoskins,	Partington,
Colton,	Hursh,	Peck,
Cordes,	Johnson, Williams,	Pierce,
Cunningham,	Jones,	Price,
Davio,	Kehoe,	Read,
DeFrees,	Keller,	Redington,
Dunlap,	Kerr,	Riley,
Dwyer,	King,	Rockel,
Earnhart,	Knights,	Roehm,
Eby,	Kunkel,	Rorick,
Fackler,	Lampson,	Shaffer,
Farrell,	Leslie,	Shaw,
Fluke,	Longstreth,	Smith, Geauga,

Smith, Hamilton,	Stamm,	Tallman,
Solether,	Stewart,	Ulmer,
Stalter,	Stokes,	Woods.

Those who voted in the negative are:

Anderson,	Kilpatrick,	Stilwell,
Crosser,	Kramer,	Taggart,
Doty,	Lambert,	Tannehill,
Dunn,	Leete,	Tetlow,
Evans,	McClelland,	Thomas,
Farnsworth,	Miller, Fairfield,	Wagner,
Fess,	Miller, Ottawa,	Walker,
FitzSimons,	Moore,	Watson,
Harbarger,	Peters,	Winn,
Harris, Ashtabula,	Pettit,	Wise,
Johnson, Madison,	Stevens,	Mr. President.

So the motion to table was carried.

Mr. BROWN, of Lucas: I move that the amendment offered by the delegate from Defiance be laid on the table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 68, nays 39, as follows:

Those who voted in the affirmative are:

Beyer,	Halfhill,	Peck,
Bowdle,	Harris, Hamilton,	Pierce,
Brattain,	Harter, Huron,	Price,
Brown, Highland,	Harter, Stark,	Read,
Brown, Lucas,	Hoffman,	Redington,
Brown, Pike,	Hoskins,	Riley,
Cassidy,	Hursh,	Rockel,
Collett,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Rorick,
Crosser,	Keller,	Shaffer,
Davio,	Kerr,	Smith, Hamilton,
DeFrees,	King,	Stalter,
Doty,	Kunkel,	Stamm,
Dunlap,	Lampson,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Ludey,	Taggart,
Evans,	Malin,	Tallman,
Fackler,	Marriott,	Tetlow,
Farrell,	Marshall,	Thomas,
FitzSimons,	Matthews,	Ulmer,
Fox,	Moore,	Woods,
Hahn,	Okey,	Mr. President.
Halenkamp,	Partington,	

Those who voted in the negative are:

Anderson,	Harbarger,	Miller, Fairfield,
Antrim,	Harris, Ashtabula,	Miller, Ottawa,
Baum,	Holtz,	Nye,
Beatty, Morrow,	Jones,	Peters,
Campbell,	Kehoe,	Pettit,
Colton,	Kilpatrick,	Stevens,
Crites,	Knight,	Stewart,
Cunningham,	Kramer,	Tannehill,
Dunn,	Lambert,	Wagner,
Eby,	Leete,	Walker,
Farnsworth,	Longstreth,	Watson,
Fess,	McClelland,	Winn,
Fluke,	Miller, Crawford,	Wise.

So to the amendment was tabled.

Mr. DWYER: Now I move the previous question. The motion was lost.

Mr. ANDERSON: I think it is our duty to provide some way on this ballot that will permit those who have only a short period of time in which to vote to vote intelligently upon this all important question. Take the city of Youngstown. As I remember it, the statutes of Ohio provide that you can compel the big manufacturing establishments to close down for a period of three hours to permit their men to go and vote. Now some of those plants are a number of miles from the voting

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booths. There are from five thousand to seven thousand five hundred men employed there. With those great plants, where they take a billet of metal and send it down through the huge machinery operated by electric power at the other end, if certain men quit all have to quit. Therefore it means that all of those men are relieved at the same time to go to the polls and vote. A great many other men can sit in their office and have their chauffeurs bring their cars around and go at any time and take all the time they please to vote. Now, to be equally fair to all who wish to vote I insist that some means ought to be provided by which a man with two strokes of the pencil can vote for the whole constitution. "Oh," you say, "that is a premium on ignorance." Let us analyze it. The voter is not educated in the booth. The form of ballot does not make him any brighter or smarter. What he has done before he goes into the booth determines whether he has voted intelligently or not. He is not going to make a study of the proposed new constitution after he goes into the booth. What is the result? I am speaking of Youngstown. Those men working for the plants are relieved from work at a certain hour of the day. It takes them a certain time to get to their homes or to the voting booths, and they will be struggling there in long rows waiting to get in. And those in the booths will do what? They will know there are those outside waiting to get in, and do you think the man in the booth will make forty-two marks? Just get your watches out and see how long it will take you to read this ballot. It will take three and one-half minutes to read it, and I want to say to you that it is utterly impossible for those men in Youngstown to vote.

Mr. PECK: If they cannot vote on these amendments how can they vote under the initiative and referendum when we refer so many things to them?

Mr. ANDERSON: We are talking about this now and not discussing the other, but I am just as anxious to provide time for the men to vote under the initiative and referendum as upon this new constitution that it has taken us months and months to make.

Mr. BROWN, of Lucas: I move the previous question.

The motion was lost.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report of the committee was agreed to.

The PRESIDENT: The question now is, "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 81, nays 29, as follows:

Those who voted in the affirmative are:

Baum,	DeFrees,	Harris, Hamilton,
Beatty, Morrow,	Doty,	Harter, Huron,
Beyer,	Dunlap,	Harter, Stark,
Bowdle,	Dwyer,	Hoffman,
Brattain,	Earnhart,	Hoskins,
Brown, Highland,	Evans,	Hursh,
Brown, Lucas,	Fackler,	Johnson, Madison,
Brown, Pike,	Farnsworth,	Johnson, Williams,
Cassidy,	Farrell,	Keller,
Cody,	Fess,	Kerr,
Collett,	FitzSimons,	King,
Cordes,	Fluke,	Knight,
Crites,	Fox,	Kunkel,
Crosser,	Hahn,	Lambert,
Cunningham,	Halenkamp,	Lampson,
Davio,	Halfhill,	Leslie,

Ludey,	Peck,	Smith, Geauga,
Malin,	Pierce,	Smith, Hamilton,
Marriott,	Price,	Solether,
Marshall,	Read,	Stalter,
Matthews,	Redington,	Stamm,
McClelland,	Riley,	Stokes,
Miller, Crawford,	Rockel,	Taggart,
Norris,	Roehm,	Tallman,
Nye,	Rorick,	Ulmer,
Okey,	Shaffer,	Walker,
Partington,	Shaw,	Woods.

Those who voted in the negative are:

Antrim,	Leete,	Stilwell,
Colton,	Longstreth,	Tannehill,
Dunn,	Mauck,	Tetlow,
Harbarger,	Miller, Fairfield,	Thomas,
Harris, Ashtabula,	Miller, Ottawa,	Wagner,
Holtz,	Moore,	Watson,
Jones,	Peters,	Winn,
Kehoe,	Pettit,	Wise,
Kilpatrick,	Stevens,	Mr. President.
Lambert,	Stewart,	

So the resolution was adopted.

Mr. SMITH, of Hamilton: The special committee to which was referred Judge Taggart's report, submits the following report which was unanimously agreed to:

The select committee to which was referred Proposal No. 340—Mr. Taggart, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out the last sentence of the proposal and all pending amendments and insert the following:

"Any provision of the amendments passed and submitted by this Convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail."

The report was adopted.

The PRESIDENT: The question is upon the passage of the proposal, and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 97, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Mauck,
Antrim,	Halenkamp,	McClelland,
Faum,	Halfhill,	Miller, Crawford,
Beatty, Morrow,	Harbarger,	Miller, Ottawa,
Beyer,	Harter, Huron,	Moore,
Bowdle,	Harter, Stark,	Norris,
Brattain,	Hoffman,	Nye,
Brown, Highland,	Holtz,	Okey,
Brown, Lucas,	Hursh,	Peck,
Brown, Pike,	Johnson, Madison,	Peters,
Campbell,	Johnson, Williams,	Pettit,
Cassidy,	Jones,	Pierce,
Collett,	Keller,	Price,
Crites,	Kilpatrick,	Read,
Crosser,	Knight,	Redington,
Cunningham,	Kramer,	Riley,
Davio,	Kunkel,	Rockel,
DeFrees,	Lambert,	Roehm,
Doty,	Lampson,	Rorick,
Dunlap,	Leete,	Shaffer,
Earnhart,	Leslie,	Shaw,
Ebv,	Longstreth,	Smith, Geauga,
Evans,	Ludey,	Smith, Hamilton,
Fackler,	Malin,	Solether,
Farnsworth,	Marriott,	Stalter,
FitzSimons,	Marshall,	Stamm,
Fluke,	Matthews,	Stevens,

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Stewart,
Stilwell,
Stokes,
Taggart,
Tallman,
Tannehill,

Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,

Watson,
Winn,
Wise,
Woods,
Mr. President.

So the proposal finally passed.

Mr. THOMAS: I offer a report.

The report was read as follows:

The committee on Submission and Address to the People, having had under consideration plans for publishing information concerning the amendments to be submitted to the electors in the state, recommends the following:

First, that a pamphlet be prepared by the committee on Submission and Address to the People, containing a notice of election, a facsimile of the form of ballot to be used, a copy of each amendment, and a brief statement explaining each amendment, said statement in the case of each amendment to be drafted by the author and the chairman of the committee which had the amendment under consideration, and edited and approved by the committee on Submission and Address to the People, and then when thus approved said pamphlet shall be printed by the secretary of state and mailed as far as practicable to all the electors of the state, cost of the same to be paid by the state.

Second, that the committee on Submission and Address to the People be authorized and instructed to prepare statements concerning the amendments, to be sent free in plate form to such Ohio publishers as agree to use the same, and that this plate matter be distributed under the direction of the committee on Submission and Address to the People, provided, however, that an appropriation of the Convention's funds be and is hereby made for this purpose, not to exceed the amount of \$1600.

Third, that the date and nature of the election to ratify the amendments, be advertised in at least two papers of opposite politics in each county of the state, provided such advertisements are accepted by each paper at a rate not to exceed the usual quoted rates for unofficial advertising, and that the committee on Submission and Address to the People furnish the copy and determine the number of insertions of such advertisements, and the papers in which they are to be placed, and report to the secretary of state a complete itemized statement of the cost of the same, which cost shall be borne by the state.

Fourth, That the members of the committee on Submission and Address to the People shall receive the usual mileage for meetings which they deem it advisable to call, and that requisitions shall be made in the usual manner by the president and secretary for necessary postage and materials required for the work of the committee.

The report was adopted.

Mr. DWYER: I offer an amendment that in any county of the state where there is a German newspaper published it shall be published in one German newspaper.

The PRESIDENT: That is not in order at this time.
Mr. CASSIDY: I offer a resolution, and as the resolution is in my handwriting, I will have to read it.

The resolution was read as follows:

Resolution No. 141:

Resolved, First, that a pamphlet be prepared by the committee on Submission and Address to the People, containing a notice of election, a facsimile of the form of ballot to be used, a copy of each amendment, and a brief statement explaining each amendment, said statement in the case of each amendment to be drafted by the author and the chairman of the committee which had the amendment under consideration, and edited and approved by the committee on Submission and Address to the People, and that when thus approved said pamphlet shall be printed by the secretary of state and mailed as far as practicable to all the electors of the state, cost of the same to be paid by the state.

Second, that the committee on Submission and Address to the People be authorized and instructed to prepare statements concerning the amendments, to be sent free in plate form to such Ohio publishers as agree to use the same, and that this plate matter be distributed under the direction of the committee on Submission and Address to the People, provided, however, that an appropriation of the Convention's funds be and is hereby made for this purpose not to exceed the amount of sixteen hundred dollars.

Third, that the date and nature of the election to ratify the amendments, be advertised in at least two papers of opposite politics in each county of the state, provided such advertisements are accepted by each paper at a rate not to exceed the usual quoted rates for unofficial advertising, and that the committee on Submission and Address to the People furnish the copy and determine the number of insertions of such advertisements, and the papers in which they are to be placed, and report to the secretary of state a complete itemized statement of the cost of the same which cost shall be borne by the state.

Fourth, that the members of the committee on Submission and Address to the People shall receive the usual mileage for meetings which they deem it advisable, to call, and that requisitions shall be made in the usual manner by the president and secretary for necessary postage and materials required for the work of the committee.

Mr. CASSIDY: This resolution is to bring before the Convention a form so that it can be referred to a committee. This follows, word for word, the submission and address. If it is desired, I can give a statement of our financial condition up to tomorrow:

Out of the appropriation of \$200,000 made by the legislature for the expenses, up to tomorrow there will be expended \$178,398.70, as near as we can estimate it. This does not include the allowances made to the reporter for night sessions nor does it include the bill for printing and publishing the debates, the contract for which was \$5,000, nor does it include any item for printing the journal,

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which it is customary to do. Outside of those last-named items, we have \$21,000 in the treasury out of the appropriation made by the general assembly.

Mr. MAUCK: You propose to print pamphlets at the expense of the state and distribute them. Have you determined any way by which you can buy postage stamps on tick?

Mr. CASSIDY: Personally, I have never been able to do it.

Mr. MAUCK: Is it not the business of the committee to provide for that, for some method of publicity?

Mr. CASSIDY: The secretary informs me that the secretary of state has authority to make that distribution.

The PRESIDENT: The amendment of the gentleman from Montgomery to publish in one German paper in any county that has a German paper is the matter before the Convention.

Mr. CASSIDY: That matter was considered in the committee, and we decided that the selection of the newspapers had better be left to a committee. I would oppose that amendment.

Mr. KNIGHT: It seems to me that any matter that is sent out to the people of the state of Ohio officially in the name of this Convention ought to be something that is read to this Convention and adopted by the Convention. I am absolutely opposed, and I know there are a great many others with me, to any blanket resolution conferring upon any number of members of this Convention, after this body has adjourned, the right to describe in their own terms and in such fashion as they please the contents of the various amendments submitted to the people. If they are to go out to the people, they should go out over the official name and with the official authority of the Convention.

I do not believe it is the business of this Convention to do any advertising of its work except in a legal form, by paying for the necessary advertising required by law. I am quite opposed to the body of the resolution in that regard, and I hope it will be defeated or so amended as to remove this feature.

Mr. HARRIS, of Ashtabula: What authority has this Convention to provide that the secretary of state shall do this or that, involving an expenditure of money?

The delegate from Ashtabula [Mr. LAMPSON] here took the chair as president pro tem.

Mr. BIGELOW: Gentlemen of the Convention: The attitude of some of the members of the Convention seems to be that we should maintain a dignified indifference as to what the public does with our amendments, now that we have adopted them. That is not my attitude. To me it seems that our work is not yet finished, and that we have a duty to perform to the people of this state after we adjourn tomorrow, if we do adjourn tomorrow, and that duty is to go out as missionaries, if you please, to talk to the people about the work we have done, to explain these amendments, and to use our best endeavors to secure the ratification of our work at the polls. Now, if that is to be done, of course all of that campaigning must be done at individual expense, and as our voluntary contribution to the good of the commonwealth. But there is much that can be done by the Convention and by the state in disseminating information concerning what has been done. It is hardly conceivable to me that this Convention would hesitate to do any reason-

able thing to carry the intelligence to all of the voters of the state of what has been done here, because it is just as important that the people next September should vote with full information as to what has been done as that we should have done our work well. In fact, it is more important, because if they are not informed about it, no matter how good our work has been, it fails.

Now, it is a very proper function of the state to convey intelligence as to state matters. The usual way is to advertise amendments in such form that nobody reads them, and in a very expensive way. In 1908 we submitted the taxation amendment to the vote of the people, and the advertising bill for the submission of that one little amendment was \$41,000. I have had a computation made that if we pay at the same rates for the amount of matter we have to advertise, we will have to pay \$1,800,000. Of course, that is preposterous, and yet, because that would be out of the question, are we going to not advertise it at all? Surely, it is our duty, it is the duty of the state, to see that the people who are to pass upon the work of this Fourth Constitutional Convention shall have available the information to permit them to pass intelligently upon that work.

Now, what is the plan outlined? Instead of spending \$41,000 to print at the official rate in the newspapers of the state in a form that nobody reads one amendment, we have planned here that at an expense of not exceeding \$50,000 all of this work can be much better presented to the people of the state. The first plan is that a pamphlet be prepared. You have provided in the initiative and referendum proposal, which you have adopted, that whenever questions in the future are to be submitted under that proposal such a pamphlet shall be distributed that this information may be conveyed to the voters. How is this pamphlet to be prepared? The amendments are to be printed on a facsimile ballot with an explanation. The resolution says that this explanation shall be prepared jointly by the author of the proposal and the chairman of the committee that had the proposal under consideration, and when those two men have submitted the draft of the explanation it is to go to the committee on Submission and Address to the People in order that it may be properly arranged to go with similar statements from the authors and chairmen of the other committees that are to be incorporated in this pamphlet.

I can quite understand the reasonableness of the suggestion of the member from Franklin [Mr. KNIGHT] that it would be desirable, if it were possible, to have such pamphlet ready and acted upon by the Convention. There is a way by which it can be done. This Convention can adjourn and come back in two or three weeks, or any time you fix, when the work of the sub-committee can be reported, and the pamphlet can be ready and passed upon. But, if that is not desired, are we to forego the opportunity we have of conveying this intelligence to the voters without unreasonable cost? Not only is this statement to be prepared this way by the author of the proposal and the chairman of the committee, but the whole matter shall be acted upon by the committee on Submission and Address to the People.

I should think we have been here long enough to trust one another, and not imagine that an advantage would be taken. Here is a committee of eighteen people. The president and the vice president are on the committee,

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as are Mr. Brown, of Highland, Mr. Brown, of Lucas, Mr. Fackler, Judge Dwyer, Mr. Weybrecht, Mr. Beatty, of Wood, Mr. Thomas, Mr. Hahn, Mr. Evans, Mr. Woods, Mr. Crosser, Mr. Stevens, Mr. Johnson, of Madison, Mr. Bowdle, Mr. Doty and Mr. Lampson, while Mr. Cassidy was put on today. It might be desirable to make additions to this committee, so that it would be fully representative of every class of people here and of this that or the other interest. The other method suggested is that these statements or similar statements prepared in the same way be sent out with reference to each proposal in plate matter free to the country press that will use the same. This could be done at a cost of \$1,600 and the funds will be available from the Convention funds for doing this. Of course, it is out of the question that the newspapers of the state expect us to advertise our work, bulky as it is, at official rates. Yet it is reasonable that we should do some advertising, and the committee's plan is that there be inserted once or twice or three times preceding the election a display advertisement, or facsimile of the ballot, and the attention of the public called to the importance of the approaching election when the work of the Convention is to be finally passed upon. I should be glad to have this amended if this does not seem reasonable. I will leave it to the Convention to examine it and do with it as they desire. But if you do not do this, you should do something else equally as good or better. We certainly should not maintain an attitude of indifference as to what the public does with our work. Then indeed we should feel a very keen responsibility, at least to the extent of doing everything reasonable to convey to the public full intelligence as to what we have done, in order that their verdict at the polls may be intelligent.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

Strike out all advertising except the pamphlet, which pamphlet shall only contain copies of all amendments certified to by the secretary of this Convention.

Mr. WOODS: I do not agree with the president on a good many things pertaining to our work. I think when our work is done the people should be informed as to what we have done. I do not think it is up to us to analyze our work for them. We came here as their servants, not as their masters. We have done certain work and we should inform the people just what we have done. If we print a pamphlet with a certified copy of every amendment and mail it to every voter, they can find out what we have done and they can make up their minds whether to adopt the work or vote against it.

Mr. BIGELOW: Is it the purpose of your amendment to print a pamphlet with the text of the amendments?

Mr. WOODS: Yes.

Mr. BIGELOW: Do you think it would be possible for an average voter—indeed, do you think it would be possible for the average member of this Convention had he not been paid to spend five months here—to take such a pamphlet as you propose and get any ray of intelligence out of it as to what this Convention has done?

Mr. WOODS: I think if the people of Ohio are capable of making their own laws and voting for and against

every law, that they are capable of voting for or against these amendments.

Mr. HARRIS, of Hamilton: Will the gentleman yield for a question?

Mr. WOODS: Not now. Not only that, gentlemen of the Convention, but I say to you that it is not fair that the author of each proposal and the chairman of the committee which had that proposal under consideration only should make an argument for the respective amendments and print these in the pamphlet and send it to the voters. If you are going to have an argument for it, then in all fairness you should have an argument against it to go along with it to the voters.

Mr. WATSON: Will the gentleman yield for a question?

Mr. WOODS: Not now. Not only that, I am a member of this committee on Submission and Address to the People, and I have been notified of just two meetings of that committee. That is all. However, I have attended the meetings of the committee that I have had notice of with one exception when I could not be there. I don't want to reflect on that committee. There are some good men on it, but I say to you in my judgment you might just as well leave this matter of exploiting alone to the president of the Convention as to leave it to that committee. The members of that committee cannot spend their summer down here advertising. If this Convention see fit to prepare some advertising matter for the newspapers that is fair and proper advertising matter, I shall be for it, but I am absolutely opposed to doing something here that is going to allow somebody to advertise in all of the newspapers of this state something that this committee on Submission and Address to the People or this Convention may have to stand for. I am opposed to it. It looks to me as though this state house for the next three or four months and the state treasury and all that is in it and a good big bunch that is not in it are to be used for the purpose of getting the people of this state to adopt our work. For the life of me, I cannot understand how it becomes a part of our duty to get the people to vote for something they may not want. I am willing to go out in my county and explain what we have done down here, but I am not going to stump for votes. I shall try to explain these amendments, but I shall get them to vote against some things done here if I can. I am going to be fair about these matters. I don't think the people of the state expect us to go out and tell them what a great work we have done. I don't think that we are expected to do that or that we can afford to do it, and if this Convention passes this resolution and then passes the next resolution the people of Ohio are going to get the real cold truth from me, and that is the reason I object to it.

Mr. WATSON: Take the question of taxation. The chairman of that committee is not in sympathy with the work of this Convention and neither is the man whose name the said proposal bears. The report was made from the other side of the question. Would it be fair to let two hostile people make the explanation on that proposal?

Mr. WOODS: That is one of the reasons I do not think the proposals adopted by this Convention will come anywhere near getting the square deal in the advertising matter. I think the advertising matter will be used

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against some proposals that this Convention has adopted, and this Convention will have no way of stopping or preventing that advertising being done.

Mr. ANDERSON: Take Proposal No. 151. I was not on the committee at all, although the proposal bears my name. Do you think Mr. Bowdle, the chairman of that committee and I could agree on anything in that regard?

Mr. DOTY: I am willing to resign all my right and title as a member of the committee on Taxation to the member from Guernsey. He seems to know very much more about taxation than I ever did, and I now request him to prepare something that we cannot shoot holes through to put in that address.

Mr. JONES: It is just as important to have the people understand what work has been done here as the work itself is, and the only practical way of getting the people to understand this work is to put it before them. Now, it is absolute folly to talk about the average citizen taking these amendments and reading them over and getting any intelligent idea of the purpose and object of them. How can he tell whether that proposed amendment is better than what is already in the constitution unless the defect in the present constitution is pointed out to him and the thing sought to be accomplished by the amendment is also shown him? Take that proposal about bill boards. What conclusion will the average voter come to on that? How can he tell whether there was any necessity for it? Take that one about registering land titles. How will the average voter determine whether there is any necessity or need at all for that sort of an amendment? You could go through the list, twelve or fifteen or twenty that have been passed for the purpose of remedying some existing defect in the present constitution, and the average man, unless he should be a lawyer who has given attention especially and knows something about them, would absolutely be unable to make up any judgment as to whether these amendments should receive his vote or not.

The only practical way to bring it to the attention of the voters is to submit right in connection with the proposed amendment some statement as to the object and reason and purpose of it. I realize the force of the objection made by some that that statement should not be prejudiced or unfair. It should be a fairly reasonable statement of the real object and purpose sought to be accomplished by the amendment. It may be that there might be some advantage taken of this, but the great probabilities are that no member of this Convention or of the committee to whom this matter will be assigned will to any great extent abuse the privilege and confidence reposed in him in submitting this. But if it is thought there is any danger of that, then certainly the next thing that should be done is to have this Convention come back, in a short time after this report for publication is prepared with the statements, and then examine and pass upon each one of them, because, as I say again, it is absolutely useless to submit these proposals to the average voter without conveying to him some information in reference to their purpose. How is the average voter going to get that intelligence? Is he going to go to a lawyer and ask him what the old constitution is or what the old one was and what the purpose is of the new one? The average voter cannot do that. Will he talk

to the neighbors? Will he get the information from them? They will know as little as he does and there is no way for the voter to inform himself. Now if this statement is fair and reliable and correct and is prepared and submitted right along with the amendment, the average voter can tell as well as he can by any means, probably, what the purpose and object sought to be accomplished by the proposed amendment are and whether such amendment meets with his approval. I do think you would do more than in any other way to nullify the work of this Convention by a failure to submit with it a correct, definite and clear explanatory statement.

Mr. HARRIS, of Hamilton: I trust that at this late hour, the closing hour of our work, we shall not be influenced by prejudice or overrefinement of technicality. I say to you frankly from my point of view what has been proposed by the committee never occurred to me. But it is so sound and business-like that it is only fair that the Convention should acknowledge that it is under an obligation to that committee, and I believe that sense of obligation if expressed by this Convention will be expressed by the people of the state of Ohio who will find that there is placed in their hands a pamphlet giving them a resume of all we have done in the five months, so clear and so concise that they will be able to understand it without regard to what the position of the daily paper of their community may be relative to our work.

Now let us see what the province of the state of Ohio on this proposition is; and before I proceed further I call your attention to the fact, which every member of the Convention did not know and does not know now, that the initiative and referendum proposal which we have adopted provides that a pamphlet shall be sent to every voter in the state on every statute and that in that pamphlet there is provision made that a brief shall be filed of not more than three hundred words by the proponents and opponents of the measure. Now, we have voted that great expense upon the state of Ohio for the consideration of a simple statute that by the succeeding legislature may be rescinded. You may argue since we have made provision in the initiative and referendum for the proponents and opponents of the measure to be heard, why not in the proposed pamphlet? Let us consider why not. Because fundamentally there is no reason to do so, because it would be abhorrent to every reason that we could use and under which we have been acting for five months to give a negative point of view on any proposed amendment. We were called together to do an affirmative thing, amend the constitution. Therefore, every amendment which we make should bear the reason for that amendment before the people. That is all that is asked of this Convention; not why those who failed to defeat the measure should be heard. The public is not interested, in so far as this Convention is concerned, with the reasons that govern those who were unable to impress their reasons and the soundness of their argument upon this Convention. Our action is all affirmative.

Now, as has been well said by the gentleman from Fayette [Mr. JONES], it is beneath our dignity for one moment to consider that the chairman of the committee and the author of the proposal or the committee on Submission and Address to the People would take any unfair advantage. They are interested only in giving the rea-

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sons for the proposal in question, and if a member of that committee, the chairman or the author, were opposed to the proposal as adopted by this Convention, in making up this pamphlet he acts as trustee for the Convention with a positive mandate and with a great moral obligation to give the reasons for the adoption of that proposal.

Mr. WOODS: Will you kindly inform the members of the Convention who under that resolution, would prepare the statement for the uniform rule for taxation?

Mr. HARRIS, of Hamilton: If it were I, I would give the best argument I knew.

Mr. WOODS: But under that rule who would be the one to do it?

Mr. HARRIS, of Hamilton: The author of the proposal and the chairman of the committee. The author of the proposal is Judge Worthington, and do you dare to stand here and challenge his sense of duty?

Mr. WOODS: Is he not absolutely against it?

Mr. HARRIS, of Hamilton: Yes, but nevertheless, as trustee for the Convention, he would do justice as he has always done on the floor, and he would state the correct point of view although he did not agree with it.

Mr. JONES: The gentleman from Medina [Mr. Woods] assumes that there will be an argument in favor of each proposal. Is it the purpose to make any argument or is it not rather the purpose to make a fair statement of the purposes and object sought to be accomplished, without any argument either for or against the propriety of the accomplishment?

Mr. HARRIS, of Hamilton: You have stated the question with absolute accuracy. I do not want to cut off debate, and therefore I will refrain from moving the previous question.

Mr. TANNEHILL: Before any previous question is moved I want to make a suggestion which I believe is sensible. I would suggest limiting the statement on each proposal. Let the author write that and sign his name to it. I do not want any committee monkeying with what I write. Then in addition let this committee write what it wants and send its report and let them sign their report.

Mr. MILLER, of Crawford: I do not quite understand the resolution. Does it provide for an argument or just for a statement?

Mr. CASSIDY: The long resolution provides for a brief statement explaining each amendment.

Mr. MILLER, of Crawford: I have no objection to that, but I was afraid that we were trying to submit a discussion and argument. Will this statement set forth clearly just what we are attempting to do?

The PRESIDENT: The purpose of the suggestion was that along with the tax amendment there should go such an explanation as to the occasion for making it and the reason of the Convention in making it that when the voter read the amendment he would understand it.

Mr. HARRIS, of Hamilton: Am I to understand that this suggestion has been accepted by the committee, that there shall be a brief statement of explanation limited to three hundred words to be signed by the chairman of the committee and the reputed author of the proposal?

Mr. CASSIDY: I will accept that. It is as fair here as it would be in the initiative and referendum.

Mr. DOTY: I suggest that these amendments be put in writing.

Mr. TANNEHILL: I said that as we have a few proposals, like the one on taxation, where the author is not in favor of what we have done the president prepare a list and submit it to us as to who shall write each one and let us adopt it.

Mr. BROWN, of Lucas: As to the amendment of the member from Medina [Mr. Woods] striking out the advertisements, I have had a little experience in publicity in connection with elections extending over a period of years. I have tried pamphlets, circulars, postcards, billboards and newspapers, and in my judgment the most effective publicity for election purposes is newspaper publicity. I believe we shall be very unwise if we make it impossible by this resolution to use the newspapers for publication and make it impossible for us to have their good will.

Mr. HOSKINS: Did I understand the amendment is accepted?

The PRESIDENT: The gentleman from Logan accepted it.

Mr. CASSIDY: Yes, but I want it in writing.

Mr. THOMAS: I move that that amendment be laid on the table.

The PRESIDENT: The chair will recognize the gentleman from Defiance [Mr. WINN] first, and then the gentleman from Cuyahoga [Mr. THOMAS].

Mr. WINN: With this amendment it would be absolutely meaningless. At any rate, it would be so nearly meaningless that I do not think we should encumber our records with it, and I move to lay it on the table.

The motion to table was carried.

Mr. ANDERSON: I am very much in favor of Mr. Tannehill's suggestion. There are two proposals that bear my name. I can prepare the statement or explanation as to the liquor proposal in half an hour, and I can prepare the other in fifteen minutes. There is no trouble about it. We can prepare all we have to prepare by tomorrow and be ready for the pamphlet, and that will remove all difficulties.

Mr. NYE: It seems to me this is a very unusual thing for the Convention to continue its work after we adjourn tomorrow. I do not know of any constitutional convention that has undertaken to continue its work after it has completed the main body of its work. I had supposed if there was any adjournment to be had, it would be for some formal matter. I think we have completed our work and that it can be understood by the people. We would be blamed if we kept up a bureau of instruction after this Convention adjourns, and I think it would tend to make the people dissatisfied with our work. I think they would object to it. If we publish the work it will speak for itself. There is a member of this Convention in every county in the state, and in some counties there are more than one, and if the people of the state desire to learn something about these amendments they can easily find it out by consulting the members and have it explained. I do not think this resolution ought to pass.

Mr. TANNEHILL: I offer an amendment.

The amendment was read as follows:

At the end of the first paragraph insert:

"The explanation of every amendment shall be limited to three hundred (300) words and shall be signed by the chairman of the committee and the

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author of the proposal unless the Convention shall name some other member or members to so act."

Mr. DOTY: I will tell you right now you can name somebody else for me.

Mr. BOWDLE: I approve very heartily of the position taken by the distinguished delegate from Lorain [Mr. NYE], and I find myself in opposition to the president of the Convention for the first time in the history of the Convention. It is assumed here in all that has been said that the electors of the state need to be put through a kind of primer class at the expense of the state. The assumption is not correct. We were summoned here in response to a spirit of American restlessness and progressiveness that is now rampant from Maine to California. Men and women have assumed that they do know and did know a great deal about what was wanted in the way of a reform in the constitution. That progressive spirit does not need the pamphleteering that is now attempted to be expensively provided for. An other thing: We today in this world do not get our intelligence, especially in political matters, from pamphlets. We get what we get from the stump, and the men of this Convention have to go on the stump at every crossroad in this state and give such explanation of our work as the electors may care to ask for or to listen to. I do not believe you will accomplish anything by a large number of pamphlets sent out as proposed, and I do not believe that that progressive spirit requires the kind of instruction you are now providing to give. I do not agree with my distinguished colleague, Mr. Harris, in assuming that somehow or other a man can regard himself as a trustee in writing three or four or five hundred words. It is not conceivable that Mr. Kilpatrick, as fine a man as I know him to be, can sit down and write a fair statement of the suffrage question without making what some of us might regard as an argument in favor of his side of the question, and all at the expense of the people of the state. I am quite sure I could not write out the wet side of the Anderson proposal, for it is just as wet as anything that was introduced here. I could not write out anything that Brother Watson, of Guernsey, could agree to, and it is not fair that that should be sent out at the expense of the electors of the state.

I am, therefore, opposed to doing more than letting the people of this state know what the constitution is, and trusting to their intelligence, to comprehend it.

Mr. FESS: Gentlemen: I have not been able to quite understand the attitude of a good number of the members of the Convention in regard to favoring the work we have done here. I have heard upon every side that our duty is to submit our work so as to give it absolutely no favor, but to make it just as easy to reject as to adopt it. I now hear it said that we ought not to undertake to impress the public with the importance of our work and that we ought not to use any effort to induce the voters to favor what we have done, but we ought to submit it and allow them to use their own judgment and that we would be going afield of our duty if we tried to persuade anybody to vote for it. I cannot quite understand why we would be regarded as going beyond our authority if we tried to convince the people that the work that has been done here ought to be adopted. I do not see any lack of ethics in that. I do not understand why one hundred and nineteen men—and they represent a ma-

jority of the voters of the state, or they would not be here—would not be doing right if they should try to persuade the voters of the state that what we have done ought to be made a part of the organic law, and that we are justified in so doing. Just a mere writing or printing of the amendments will not do that, for all sorts of speculations are rife as to what we have done in this Convention. What will the average voter know about judicial reform by merely looking at the amendment? I say it would be a great help if a brief, concise and clear statement of what the amendment is were furnished to the voters. It will enable the voters to comprehend much more easily. Of course, you are going to have all of the amendments published, but there ought to be some explanation. Frequently what would not be intelligible at all can be made thoroughly so by a few lines of explanation. I think we are justified in using every influence we can to have our work ratified, and I am going to say a thing that is personal to me, and it is a repetition of what I said in the beginning, the greatest honor that has been conferred upon me has been the privilege of sitting, with these one hundred and eighteen men. It has been the pride of my life. I want this work accepted. I do not want it rejected. I want my children to have a pride that their father had something to do with an instrument adopted, and not one rejected.

Mr. KNIGHT*: Section 4 of the act calling this Convention describes what we have authority to do, and it does not seem to authorize us to spend the state's money for the purpose in this resolution.

Most of us are not gifted with oratory, but I think most of us will do what we can in explaining our work to the people. Now, because we wish to do this, does that make it right for us to do something we have no authority to do?

Mr. DWYER: Section 4 says that we may have the debates published in durable form and secure a copyright on same for the state and fix and describe the time and form and manner of submitting any proposed revision, alterations, or amendments of the constitution to the electors of the state; also the notice to be given of such submission.

Mr. NYE: May I ask a question?

Mr. FESS: I want to answer the suggestion of Professor Knight. I do not understand that the Convention is undertaking to do anything except what we started out to do, namely, to put the work before the people.

Mr. NYE: Do you know of any constitutional convention that ever met in the state of Ohio that did not adjourn sine die when it got through with its main work?

Mr. FESS: If any other convention adjourned as quickly as their work was done, it has done a very foolish thing, because we do not want to kill this Convention; we want to keep it alive in order that if anything needs to be done we are in shape to do it.

Mr. NYE: I am not asking about that, but do you know of any constitutional convention in any state that has continued after its work was done?

Mr. FESS: I am not advised as to that.

Mr. NYE: Would we not be criticised if we maintained an organization for the purpose of publicity?

Mr. FESS: That is not the purpose. There may be other things that we want to do.

Form of Ballot Submitting Amendments to the People.

Mr. NYE: I am not objecting to the other part at all.

Mr. WOODS: It has been said that there is nothing in the law that created this body that prevents us from spending money to advertise our work, but have we authority to do anything that that statute does not expressly give us authority to do? It is not a question of whether the statute says we cannot do it, but whether this law says we may do it.

Mr. FESS: Where the end is specified, the means of doing it need not be specified, but may be implied.

Mr. HALFHILL: I do not believe we have any authority but if we stretch the authority and assume we have, then what is the situation? Every lawyer knows when he starts to writing a brief that it is almost impossible to make a statement of the facts without getting in some argument. It is one of the hardest things in the world, to state your facts without any argument. Now what situation am I in on this taxation question? Do you think I will vote for the taxation amendment? I certainly shall not. I propose to denounce it on every occasion and in every place that I can. I think it is both wrong and unwise, and when I find myself in that situation I propose to fight it and I don't want any argument sent out by the Convention, and I will not be bound by any. But, gentlemen, I have as much pride as anybody in hoping to see the main work of the Convention prevail, because I believe it is good for the commonwealth, and I have a reasonable amount of pride in hoping that our work will be adopted. But that does not change me in the relation I shall occupy to some of the work done here.

It was well stated by the gentleman from Hamilton [Mr. HARRIS] that forty per cent of the members of the Convention were opposed to all of the work of the members of the Convention. That takes us all in.

Now, it is the newspapers of the state and the state journals of the state that are really going to carry the information by which the people will become informed, coupled with the work on the stump. Why, if you had permitted me to press the amendment today which you turned down, I have a sheaf of newspaper editorials here from the leading journals of the state—I cannot name them all, but there were the Cleveland Leader and the News and the Toledo Blade and the Dayton Journal and the Columbus Dispatch and the Ohio State Journal and others, all of them denouncing the work of this Convention as being unfair in failing to submit the alternative proposal for which I contended. Now what is the situation when you put out your pamphlets?

Mr. CUNNINGHAM: About those editorials, every-one of them is simply boiler plate.

Mr. HALFHILL: I submit they are not, they are able editorials. They may be boiler plate or gun metal, but they are giving facts and argument, and we are going to put ourselves in a very peculiar situation.

Now these proposals are not, in a good many instances, the work of the man whose name they bear. They went to a committee and they were amended there and they were discussed on the floor of this Convention and they were amended here. I don't see how it is possible for the putative authors of some of these proposals to even write a fair statement about them. I believe in a certain amount of publicity, but I do not want it sent

out by this Convention, and I do not want it to bear the stamp of this Convention, to meet me on the stump and confuse me in the campaign, though I do not think I shall be in any campaign on any thing that I may be personally confused over. I mean any defect in the work of the Convention.

Mr. DWYER: Well, give us the way you think we ought to do it.

Mr. HALFHILL: I think it is our duty to submit this work and await the verdict. If the people of the state of Ohio knew enough to call this Convention into existence they ought to know enough to take the work and pass upon it and render a verdict with the aid of the newspaper agencies and the views that come from the stump. I do not believe it is right for the Convention to pose as the advocate of all its work, because it is not, and that is what I object to.

Mr. JONES: You made a statement that it would put you in a bad position to go out on the stump with your ideas with reference to the question of taxation. If a fair and correct statement is made of that proposition, what would it contain more than you would state if you went on the stump to discuss it?

Mr. HALFHILL: I would denounce it.

Mr. JONES: But would you not first make a fair clear statement of what the proposition was?

Mr. HALFHILL: Yes, and I would show it up just as much as I could and impress my particular view on the people all I could.

Mr. JONES: You would not attempt to do anything unfair?

Mr. HALFHILL: No; I would attempt to convince the people and I would attempt to make them see the light, and unless they have a case of arrested mental development they will see the light.

Mr. MARSHALL: I move the previous question.

The motion was lost.

Mr. MARRIOTT: I move that the Convention adjourn until 10 o'clock tomorrow.

Mr. ANDERSON: I move to amend by making it nine o'clock.

Mr. MARRIOTT: I will make it nine o'clock.

The PRESIDENT: I think it is quite proper for any member to convey information if it is true, and I want to say that the action tonight is going to prevent our getting away tomorrow.

Mr. WOODS: I make a point of order that the motion to adjourn is not debatable.

The PRESIDENT: It is open to a limited amount of debate.

The motion to adjourn was lost.

Mr. NYE: I offer an amendment.

The amendment was read as follows:

Strike out the first paragraph of the resolution and substitute the following:

First, That a pamphlet be prepared by the committee on Submission and Address to the People containing a facsimile of the form of ballot to be used, and a copy of each amendment, and that when thus prepared it shall be printed by the secretary of state and mailed as far as practicable to all the electors of the state, cost of same to be paid by the state.

Form of Ballot Submitting Amendments to the People.

Mr. THOMAS: I move that the amendment be laid upon the table.

The motion to table was carried.

Mr. DOTY: If we can get this out of the way it won't take ten minutes after that to finish what we have to do tonight. I therefore move the previous question.

The main question was ordered.

The PRESIDENT: The question is on the adoption of the Tannehill amendment.

The amendment was agreed to.

The PRESIDENT: The question is now on the adoption of the resolution as amended and the yeas and nays have been demanded. The secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 51, nays 54, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Read,
Beyer,	Harter, Stark,	Roehm,
Brown, Lucas,	Hoffman,	Shaffer,
Cassidy,	Hoskins,	Shaw,
Crosser,	Hursh,	Smith, Hamilton,
Davio,	Jones,	Stamm,
DeFrees,	Kilpatrick,	Stevens,
Doty,	King,	Stilwell,
Dwyer,	Lampson,	Stokes,
Earnhart,	Leete,	Taggart,
Fackler,	Leslie,	Tallman,
Farrell,	Longstreth,	Tannehill,
Fess,	Ludey,	Tetlow,
FitzSimons,	Malin,	Thomas,
Fox,	Miller, Crawford,	Ulmer,
Hahn,	Peck,	Winn,
Halenkamp,	Pierce,	Mr. President,

Those who voted in the negative are:

Antrim,	Harris, Ashtabula,	Nye,
Baum,	Holtz,	Okey,
Beatty, Morrow,	Johnson, Williams,	Partington,
Bowdle,	Kehoe,	Peters,
Brattain,	Keller,	Pettit,
Brown, Pike,	Kerr,	Price,
Cody,	Knight,	Riley,
Collett,	Kramer,	Rockel,
Colton,	Kunkel,	Rorick,
Cordes,	Lambert,	Smith, Geauga,
Cunningham,	Marriott,	Solether,
Dunlap,	Marshall,	Stalter,
Dunn,	Matthews,	Stewart,
Eby,	McClelland,	Wagner,
Farnsworth,	Miller, Fairfield,	Walker,
Huke,	Miller, Ottawa,	Watson,
Halfhill,	Moore,	Wise,
Harbarger,	Norris,	Woods.

So the resolution was lost.

Mr. DOTY: I now call up Resolution No. 133, which was a special order for eight o'clock. We tried to have this correctly printed, but there are several errors. There is one on page 5 and a word has been dropped out in the second line. I have an amendment I desire to offer at this time and I will state that this amendment does two things. First, it adds to this section headed "schedule" what we adopted tonight in the amendment to the Taggart proposal. I have had that carefully drawn in the secretary's office. The second is the resolution that we adopted on the method of submission, and that has a copy of the ballot just as we adopted it tonight, taken from the records of the journal. This copy was made at the time that the original was made.

The amendment was read as follows:

Amend Resolution No. 133 by adding at the end of resolution and without a paragraph, the following:

"Any provision of the amendments passed and submitted by this Convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail."

METHOD OF SUBMISSION.

The several proposals duly passed by this Convention shall be submitted to the electors as separate amendments to the constitution at a special election to be held on the third day of September, 1912. The several amendments shall be designated on the ballot by their proper article and section numbers and also by their approved descriptive titles and shall be printed on said ballot and consecutively numbered in the manner and form hereinafter set forth. The adoption of any amendment by its title shall have the effect of adopting the amendment in full as finally passed by the Convention. Said special election shall be held pursuant to all provisions of law applicable thereto including special registration. Ballots shall be marked in accordance with instructions printed thereon. Challengers and witnesses shall be admitted to all polling places under such regulations as may be prescribed by the secretary of state. Within ten days after said election the boards of deputy state supervisors of elections of the several counties shall forward by mail in duplicate sealed certified abstracts of the votes cast on the several amendments, one to the secretary of state and one to the auditor of state at Columbus. Within five days thereafter such abstracts shall be opened and canvassed by the said secretary of state and auditor of state in the presence of the governor who shall forthwith, by proclamation, declare the results of said election. Each amendment on which the number of affirmative votes shall exceed the number of negative votes shall become a part of the constitution.

Form of Ballot Submitting Amendments to the People.

Form of Ballot.

OFFICIAL BALLOT.

SPECIAL ELECTION, TUESDAY, SEPTEMBER 3, 1912.

AMENDMENTS TO THE CONSTITUTION.

(First Column)

To vote *FOR* any amendment place a cross mark in the blank space to the left of the word "Yes" opposite the title of such amendment.

To vote *AGAINST* any amendment place a cross mark in the blank space to the left of the word "No" opposite the title of such amendment.

1		YES	ARTICLE I, SECTION 5. Reform in Civil Jury System.
		NO	
2		YES	ARTICLE I, SECTION 9. Abolition of Capital Punishment.
		NO	
3		YES	ARTICLE I, SECTION 10. Depositions by State and Comment on Failure of Accused to testify in Criminal Cases.
		NO	
4		YES	ARTICLE I, SECTION 16. Suits against the State.
		NO	
5		YES	ARTICLE I, SECTION 19a. Damage for Wrongful Death.
		NO	
6		YES	ARTICLE II, SECTIONS 1 TO 1g. Initiative and Referendum.
		NO	
7		YES	ARTICLE II, SECTION 8. Investigations by each House of General Assembly.
		NO	
8		YES	ARTICLE II, SECTION 16. Limiting Veto Power of Governor.
		NO	

Form of Ballot Submitting Amendments to the People.

9		YES	ARTICLE II, SECTION 33. Mechanics' and Builders' Liens.
		NO	
10		YES	ARTICLE II, SECTION 34. Welfare of Employes.
		NO	
11		YES	ARTICLE II, SECTION 35. Workmen's Compensation.
		NO	
12		YES	ARTICLE II, SECTION 36. Conservation of Natural Resources.
		NO	
13		YES	ARTICLE II, SECTION 37. Eight Hour Day on Public Work.
		NO	
14		YES	ARTICLE II, SECTION 38. Removal of Officials.
		NO	
15		YES	ARTICLE II, SECTION 39. Regulating Expert Testimony in Criminal Trials.
		NO	
16		YES	ARTICLE II, SECTION 40. Registering and Warranting Land Titles.
		NO	
17		YES	ARTICLE II, SECTION 41. Abolishing Prison Contract Labor.
		NO	
18		YES	ARTICLE III, SECTION 8. Limiting Power of General Assembly in Extra Sessions.
		NO	
19		YES	ARTICLE IV, SECTIONS 1, 2 AND 6. Change in Judicial System.
		NO	

Form of Ballot Submitting Amendments to the People.

20		YES	ARTICLE IV, SECTIONS 3, 7, 12 AND 15. Judge of Court of Common Pleas for each County.
		NO	
21		YES	ARTICLE IV, SECTION 9. Abolition of Justices of the Peace in Certain Cities.
		NO	
22		YES	ARTICLE IV, SECTION 21. Contempt Proceedings and Injunctions.
		NO	
23		YES	ARTICLE V, SECTION 1. Woman's Suffrage.
		NO	
24		YES	ARTICLE V, SECTION 1. Omitting Word "White."
		NO	
25		YES	ARTICLE V, SECTION 2. Use of Voting Machines.
		NO	
26		YES	ARTICLE V, SECTION 7. Primary Elections.
		NO	
27		YES	ARTICLE VI, SECTION 3. Organization of Boards of Education.
		NO	
28		YES	ARTICLE VI, SECTION 4. Creating the office of Superintendent of Public Instruction to Replace State Commissioner of Common Schools.
		NO	
29		YES	ARTICLE VIII, SECTION 1. To Extend State Bond Limit to Fifty Million Dollars for Inter-County Wagon Roads.
		NO	
30		YES	ARTICLE VIII, SECTION 6. Regulating Insurance.
		NO	

Form of Ballot Submitting Amendments to the People.

31	YES	ARTICLE VIII, SECTION 12. Abolishing Board of Public Works.
	NO	
32	YES	ARTICLE XII, SECTIONS 1, 2, 6, 7, 8, 9, 10 AND 11. Taxation of State and Municipal Bonds, Inher- itances, Incocmes, Franchises and Pro- duction of Minerals.
	NO	
33	YES	ARTICLE XIII, SECTION 2. Regulation of Corporations and Sale of Personal Property.
	NO	
34	YES	ARTICLE XIII, SECTION 3. Double Liability of Bank Stockholders and Inspection of Private Banks.
	NO	
35	YES	ARTICLE XV, SECTION 2. Regulating State Printing.
	NO	
36	YES	ARTICLE XV, SECTION 4. Eligibility of Women to Certain Offices.
	NO	
37	YES	ARTICLE XV, SECTION 10. Civil Service.
	NO	
38	YES	ARTICLE XV, SECTION 11. Out-Door Advertising.
	NO	
39	YES	ARTICLE XVI, SECTIONS 1, 2, AND 3. Methods of Submitting Amendments to the Constitution.
	NO	
40	YES	ARTICLE XVIII, SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 AND 14. Municipal Home Rule.
	NO	
41	YES	Schedule of Amendments.
	NO	

Submission of Amendments to the People.

(Second Column)

INTOXICATING LIQUORS.

To vote FOR license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words: "For license to traffic in intoxicating liquors." To vote AGAINST license to traffic in intoxicating liquors place a cross-mark in the blank space to the left opposite the words: "Against license to traffic in intoxicating liquors."

	For license to traffic in intoxicating liquors.
	Against license to traffic in intoxicating liquors.

Mr. NYE: Is it intended to have Resolution No. 133 printed in the order in which it is here?

Mr. DOTY: In the order in which it is here, and this is the numerical order of the proposals.

Mr. NYE: Would it not be more intelligent to have all the amendments on article I printed first?

Mr. DOTY: The only object in printing the thing at all is to print the thing we sign and because we are printing that we print a lot of others. We simply printed the proposals in numerical order so that the members could follow them through their books and compare them if they wanted to.

Mr. NYE: Does it not seem to you that this ought to be filed in the secretary of state's office in some systematic way so that all the amendments to article I should appear first?

Mr. DOTY: That can be done without preventing our doing this. It makes no difference what the order is. If it can be done I will have it done that way if it does not delay us.

The amendment was agreed to.

Mr. DOTY: I call up the further consideration of Resolution No. 134 and I move to postpone further consideration until 9:30 a. m. tomorrow.

The PRESIDENT: The question is first on the adoption of this resolution and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 91, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Brown, Pike,	Cunnigham,
Antrim,	Cassidy,	DeFrees,
Baum,	Cody,	Doty,
Beatty, Morrow,	Collett,	Dunn,
Beyer,	Colton,	Dwyer,
Bowdle,	Cordes,	Earnhart,
Brown, Lucas,	Crosser,	Eby,

Farnsworth,
Farrell,
Fess,
RitzSimons,
Fluke,
Fox,
Hahn,
Halenkamp,
Halfhill,
Harbarger,
Harris, Ashtabula,
Harris, Hamilton,
Harter, Huron,
Hoffman,
Hoskins,
Hursh,
Johnson, Williams,
Jones,
Kehoe,
Keller,
Kerr,
King,
Knight,
Kramer,

Kunkel,
Lambert,
Lampson,
Leete,
Leslie,
Longstreth,
Ludey,
Malin,
Matthews,
McClelland,
Miller, Fairfield,
Miller, Ottawa,
Moore,
Nye,
Okey,
Partington,
Peck,
Peters,
Shaffer,
Pettit,
Pierce,
Price,
Read,
Rockel,

Roehni,
Rorick,
Shaffer,
Shaw,
Smith, Hamilton,
Stamm,
Stevens,
Stewart,
Stilwell,
Stokes,
Taggart,
Tallman,
Tannehill,
Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Watson,
Winn,
Wise,
Woods,
Mr. President.

Mr. Riley voted in the negative.

The resolution was adopted.

Mr. Doty moved that three thousand five hundred copies of Resolution No. 133 be printed and that twenty-five copies be sent to each delegate.

The motion was carried.

The PRESIDENT: The question is now on the motion of Mr. Doty to postpone the consideration of Resolution No. 134 until 9:30 tomorrow.

The motion was carried.

Mr. DOTY: It will take about a half an hour tomorrow morning to read the journal and it is not necessary to have everybody here by nine o'clock tomorrow and I move to adjourn until nine o'clock. We will have the journal out of the way by 9:30.

The motion was carried.

EIGHTIETH DAY

MORNING SESSION.

SATURDAY, June 1, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Mr. McClelland, delegate from Knox county.

The journal of yesterday was read and approved.

Mr. DOTY: I have just communicated with the printer, and the resolution for our signatures will be here at eleven o'clock. When I gave him the copy last night at midnight he promised then that it would be here at eleven o'clock, and he has been there himself doing nothing else! That is the reason the printed journal has not been sent up yet. The rearrangement suggested by the delegate from Lorain can be done, and the printer will have it rearranged this morning.

Mr. STOKES: I have a report to make.

The report was read as follows:

The members of the banquet committee, in pursuance of a motion adopted at the Constitutional Convention banquet, beg leave to report that they have selected Frank Taggart, of Wayne county; Simeon D. Fess, of Greene county, E. W. Doty, of Cuyahoga county; E. L. Lampson, of Ashtabula county, and John W. Winn, of Defiance county, as the reunion committee for the ensuing year.

The report was ordered spread on the journal.

Mr. Cassidy offered the following resolution:

Resolution No. 142:

Be it resolved, That the following bills be allowed and paid:

A. Rosnagle & Co., supplies.....	\$7.00
The Frank P. Hall Co., supplies.....	34.70
J. C. Sherlock, hauling and repairs.....	2.50
Harris & Company, thermometers.....	3.00
The Beggs Company, labor and supplies	22.54
The Crystal Ice Manufacturing & Cold Storage Co., water.....	33.00
The Columbus Ice Co., ice.....	81.91
A. H. Smythe, supplies.....	19.25
The Wendt-Bristol Co., supplies.....	72.10
W. C. Wetherholt, repairs.....	2.00
Minnie Rodgers, typewriter rental....	18.00
Max Schmidt, plumbing.....	10.20
Columbus Citizens Telephone Co., toll and rentals	149.70
John L. Baum, freight and expenses....	1.75
The Erner & Hopkins Co., supplies....	1.50
The Bryce Bros. Co., supplies.....	.40
The Western Union Telegraph Co., telegram25
The MacDonald Stationery Co., supplies	2.30
A. H. Smythe, supplies.....	.90
Remington Typewriter Co., rental.....	7.50
Western Union Telegraph Co., syno-	
chronized time service and telegram..	5.25
Remington Typewriter Co., rental.....	6.00

Central Union Telephone Co., toll and rentals	183.80
The Crystal Ice Mfg. Co. & Cold Storage Co., water	37.00
The secretary of state, supplies.....	248.06
The F. J. Heer Printing Co., printing..	375.15
Fred H. Tibbetts, printing.....	5.25
The Morehouse-Martens Co., supplies..	86.99
The W. H. Anderson Co., supplies.....	70.00
Charles W. Kempel, clerk typewriter rental	7.50
E. H. Sells & Co., rentals.....	3.00
Minnie Rodgers, typewriter rental.....	2.10
United States Telephone Co., toll.....	135.71
Underwood Brothers, flowers, etc.	21.00
The Troy Laundering Co., laundry.....	50.95

The committee on Claims Against the Convention recommends the payment of the bills included in Resolution No. 142.

The rules were suspended and the resolution considered at once.

The yeas and nays were taken, and resulted—yeas 93, nays none, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Peck,
Baum,	Harbarger,	Peters,
Beatty, Morrow,	Harris, Hamilton,	Pettit,
Brown, Highland,	Harter, Huron,	Pierce,
Brown, Lucas,	Harter, Stark,	Price,
Brown, Pike,	Henderson,	Redington,
Campbell,	Holtz,	Riley,
Cody,	Hursh,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Rorick,
Crites,	Keller,	Shaffer,
Crosser,	Kerr,	Shaw,
Cunningham,	Kilpatrick,	Smith, Geauga,
Davio,	King,	Smith, Hamilton,
DeFrees,	Knight,	Stalter,
Donahey,	Kramer,	Stamm,
Doty,	Kunkel,	Stevens,
Dunlap,	Lambert,	Stewart,
Dunn,	Lampson,	Stilwell,
Dwyer,	Leete,	Stokes,
Earnhart,	Longstreth,	Tallman,
Eby,	Ludey,	Tetlow,
Elson,	Malin,	Thomas,
Evans,	Marshall,	Ulmer,
Farnsworth,	Matthews,	Wagner,
Farrell,	Miller, Crawford,	Walker,
Fess,	Miller, Fairfield,	Watson,
FitzSimons,	Miller, Ottawa,	Winn,
Fluke,	Moore,	Wise,
Hahn,	Okey,	Mr. President.
Halenkamp,	Partington,	

The resolution was adopted.

Mr. CASSIDY: I submit the following report:

The standing committee of Claims against the Convention, to which was referred Resolution No. 136—Mr. Peters, having had the same under consideration, reports it back without recommendation.

Resolution for Payment of Claims—Submission of Amendments to the People.

The SECRETARY: It is a resolution providing for payment for the group picture, \$292.

Mr. PETERS: This is for the getting up of that picture. I am informed that the picture cost about \$750 to get up, and it is a question of whether we want to purchase it and leave it in the hall or not.

Mr. PECK: If we want to perpetuate ourselves we should pay for it ourselves and not ask the state to do it.

Mr. DOTY: Of course, we could pay for it ourselves. We are getting such large salaries that we could do that and pay all of our board bills and then we would have enough to get home on. If the state of Ohio in the generations to come want to look at my picture as a member of the Constitutional Convention, they will have to pay for it. If they want me to pay for it, I say right now it won't go. They have got me on those group pictures about three times already, and I don't care to pay for another time.

Mr. COLTON: How is that done in the legislature?

Mr. ANTRIM: I understand that the legislature pays about \$300 for the group pictures. We are getting an \$8.00 discount.

Mr. LAMPSON: The gentleman does not take into account the superior character of the subjects?

Mr. DOTY: I did.

Mr. WINN: How were those pictures that you know about paid for by the state, Mr. Doty?

Mr. DOTY: Every one of them was paid for by the state. My picture has been paid for three or four times.

Mr. WINN: What has been the practice of the legislature?

Mr. DOTY: For the state to pay.

The question being "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 91, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Nye,
Antrim,	Harbarger,	Okey,
Baum,	Harris, Ashtabula,	Peters,
Beatty, Morrow,	Harter, Huron,	Pettit,
Beyer,	Harter, Stark,	Pierce,
Bowdle,	Henderson,	Price,
Brown, Highland,	Holtz,	Read,
Brown, Lucas,	Hursh,	Redington,
Brown, Pike,	Johnson, Madison,	Riley,
Campbell,	Johnson, Williams,	Rockel,
Cody,	Kehoe,	Roehm,
Collett,	Kerr,	Rorick,
Colton,	Kilpatrick,	Shaffer,
Cordes,	King,	Shaw,
Crites,	Kramer,	Solether,
Davio,	Kunkel,	Stamm,
Doty,	Lambert,	Stevens,
Dunlap,	Leete,	Stewart,
Dunn,	Leslie,	Stilwell,
Dwyer,	Longstreth,	Taggart,
Earnhart,	Ludey,	Taliman,
Eby,	Malin,	Tetlow,
Evans,	Marriott,	Thomas,
Fackler,	Marshall,	Ulmer,
Farnsworth,	Matthews,	Wagner,
Fess,	McClelland,	Walker,
FitzSimons,	Miller, Crawford,	Watson,
Fluke,	Miller, Fairfield,	Winn,
Fox,	Miller, Ottawa,	Wise,
Hahn,	Norris,	Mr. President.
Halenkamp,		

Those who voted in the negative are: Cassidy, Elson, Peck, Woods.

So the resolution was adopted.

Mr. JOHNSON, of Williams: I move that the vote tabling Resolution No. 133 be reconsidered.

The PRESIDENT: The member is in error as to the number. It is Resolution No. 141.

Mr. JOHNSON, of Williams: I voted against it thinking I was wrong at the time, and I move to reconsider the vote by which it was defeated.

The PRESIDENT: This is the resolution concerning the work of publication which was defeated last night, and the gentleman from Williams moves that this action be reconsidered.

Mr. FESS: Last night in our hurry to get through with our work we took a vote that I believe we would be glad to reconsider, and I only want to make a statement similar to the one I made last evening. If we adjourn without anything at all being set out by this Convention as evidence of our work here I think it would be closing our work with a mark of disrespect to ourselves as well as with little regard for the voters of the state. I do not believe any other convention ever closed in any such way. The federal convention, the greatest in the history of this country, that was composed of fifty-five members, many of whom were in the second continental congress, about which William Pitt made the most eloquent reference that has been made regarding anything of its kind in the world, closed its work on the 17th of September, 1787, after having been in continuous session from the 25th of May, but it closed its work by sending a letter from the convention, written by the president of that convention, General Washington, and also having a letter written by the secretary, Mr. Jackson, calling upon the states to give it the closest and most careful consideration, in the hope that the work would not be repudiated. You remember that Benjamin Franklin made the statement that "In all probability the work we have done is not satisfactory to the people at large," and he said, "Indeed, it is not satisfactory to me. I should like very much to have had some changes, but it has been the best we could get." And he asked that it be regarded carefully. Benjamin Franklin was the oldest man in the convention, and he was the philosopher of his time, and I do not believe made any blunder. But I believe you will recall one of the most spectacular moments in that convention, when a member in his anxiety to quit arose and made a motion to adjourn. General Washington, the president of the convention, had not spoken upon the occasion of the meeting of the convention up to this time, and when this member in his desire to adjourn made the statement, "We have been here behind closed doors until the people at large are wondering what we have been doing," and he moved that the convention adjourn. It was on that occasion that General Washington spoke, and these were his words: "Gentlemen of the convention, if we do that now, which we cannot endorse, what will be our attitude when we return to our homes and are called upon to give an account of our work? Let us lift the standard so high that all the good can repair to it. This is not the work of man, the hand of God is in this thing." That was the only time that General Washington spoke during that convention, and the motion to adjourn was withdrawn. I mention these things, men, to indicate to you the temper of that convention, the greatest in the history of the

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world. They were ready to adjourn without giving complete consideration to their work. I do not believe the Fourth Constitutional Convention of Ohio desires to close its work without putting its work before the people that they may study it, and to submit nothing more than the amendments—just print nothing more than the amendments, and you have not even provided for that, you have voted down everything,—but to do nothing more than to print the amendments you might as well burn them up or throw them into the river, for the people will care very little about reading them. I hope you will reconsider this motion, and if you do I want to offer an amendment whereby we can print a naked statement of the work and have it signed by as many members of this Convention as will sign it, with the understanding that if we do not get the signatures of a majority nothing is to be sent out. It seems to me that will be absolutely fair, and I hope you will reconsider this matter.

Mr. KNIGHT: I know nothing that has been said by anyone in the Convention that would create the impression that this Convention does not want to send out some form of address to the people. The bone of contention was as to the method or manner of doing that. I fully agree with the main points made by the gentleman from Greene, that this Convention owes it to the people of the state of Ohio to give to them in some form some information about this constitution, and I believe that what was done last evening was done because it was felt undoubtedly by a majority of this Convention that the resolution offered did not do or propose to do that which was wise for the Convention to do as to that form. I am very certain that there can be few, if any, in this Convention who feel that we ought just to quit without some form of address to the people. I therefore hope that the motion to reconsider will prevail and that the members of this Convention may be able, as they ought to be, to get together on some form of address and some form of instruction that will satisfy everyone.

Mr. RILEY: Are you aware that the convention of 1851 adjourned without doing anything except ordering a few thousand copies of the constitution to be printed?

Mr. KNIGHT: Yes.

Mr. RILEY: Yes, and the constitutional convention of 1874 directed an address to be prepared that was ineffective and the constitution was defeated.

Mr. KNIGHT: I am aware of that fact, but that does not answer the point here. I think the matter should be reconsidered and the address, in which we should all have a hand, gone into.

Mr. HARTER, of Huron: I have been requested from the neighboring city of Huron by the superintendent of schools to explain this constitution. They are in touch with all of these things, but they don't understand them. Take that Knight proposal. That was misrepresented, and yet when it was properly explained it went in. It seems to me that the statements made should be just plain, simple statements as to the aim to be accomplished by these amendments, without any argument for or against.

Mr. HALFHILL: I have great respect for the views of the learned member from Greene county [Mr. FESS], but it seems to me that the parallel he makes between our work and that of the national constitutional convention is pretty far-fetched. Of course I would

be glad to be in that same class. However that may be, at that particular time about all of the constitutions that we knew anything about were the things that had come to us from the English kings in the form of charters, and it is true that one or two or three of the states had in some instances modified those rules. Pennsylvania had a sort of a constitution with a single house. But the question of written constitutions was an entirely new one, and it originated altogether because of the ineffective condition of the old articles of confederation, so that I say the parallel is pretty far-fetched.

We did not have at that time newspapers or telegraphs, and with apologies to the learned gentleman from Hamilton county [Mr. BOWDLE], did not have aeroplanes or aerograms as a means of disseminating intelligence.

Now the situation is we have voted down this report, and have done so properly, because this committee upon Submission, if it had desired to have the indorsement of the Convention, should have had its plan here for approval. It had as much time as the other committees of the Convention, and its work was not to be acted upon until the last day, and it should have been brought here and had the approval of the Convention before it goes out. Now we are asked to inaugurate a bureau and keep this Convention in force through its bureau, and send out something that the Convention is responsible for, and yet that it does not in fact authorize. This report being voted down, it is now in order for somebody to present a resolution authorizing the secretary of state to publish the work of this Convention in pamphlet form, and to attach thereto some reasonable statement, if necessary, explaining that work. The question is, Why has not that statement been prepared, and is there not such a statement in existence? A couple of weeks ago I got as a supplement to a newspaper a very fair and judicial statement of the work of this Convention, which I understood was the voluntary contribution of the secretary to the publicity of the Convention. Every one of the proposals had been gone over in review and a careful explanatory statement was set forth.

The time of the gentleman here expired.

Mr. COLTON: I hope this motion will not prevail. It seems to me that the resolution voted down last night was a very inappropriate one. I do not believe that we can send out attached to the various proposals or amendments which have been passed by this Convention any statement prepared as suggested in the resolution that will be fair. For my own part, I will not have any part in preparing such a statement. I doubt whether any of you, when the question is put to you, would be willing to prepare a statement over your own signature and send it out with the statement that it is fair.

We are so widely divided in opinion with respect to many of the amendments that it is impossible for anyone to prepare a statement which all would regard as fair. We would be charged with having said too much about certain parts and too little about others, and with having failed to emphasize certain points that we ought to emphasize. Again, take Proposal No. 329. What explanation does that need? It is comprised in two lines and no one reading it finds any explanation necessary. The same is true of many amendments. I shall submit the following in place of the resolution:

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Resolved, That the secretary of this Convention be authorized and directed to prepare a pamphlet in which shall be printed the present constitution of the state and the amendments proposed thereto by this Convention, and that the secretary of state is hereby authorized to print the same and send a copy of it so far as practicable to every elector in the state; said work to be done at the earliest possible time.

I have included in this a copy of the present constitution. If you go among the people and try to find copies of the state constitution, you will find that it is exceedingly rare. You will find ten copies of the constitution of the United States among the masses of the people where you will find one copy of the constitution of Ohio. The constitution of the United States is printed in the histories of the United States, and the histories of the United States are in every home, while the histories of Ohio are very rare, and I think the constitution of the state should be printed in connection with these amendments in order that the people may compare each amendment with the section that is amended.

Mr. FESS: You ask what explanation will be needed of Proposal No. 329: That is one of the proposals I had in mind. It is as clear to us as any proposal I know of, and yet no proposal has met such a variety of opinion.

Mr. COLTON: It has been misrepresented in the press, but when the pamphlets containing the amendments are distributed over the state I think such misrepresentation will cease. We can depend upon the advocates of each measure to put their side before the people, and we may depend upon those who oppose the different amendments to put their side before the people, and thus through the newspapers, it seems to me, it should be fairly represented on both sides, but I do not believe that we as members of this Convention can do anything in connection with these individual amendments. I am sorry that the committee on Submission did not prepare an address which we could adopt as a Convention, thus eliminating all individual statements.

Mr. SMITH, of Hamilton: I hope that this motion to reconsider will prevail. I do not think there should be any argument made in the address, but there certainly should be a statement of facts as to the changes proposed. There have been proposals presented in this Convention and arguments given in support of them and sometimes half of the members of the Convention did not know the meaning of the proposal until after the explanation of the gentleman offering it. Take the amendment which I was particularly interested in for example—Judge Taggart's proposal as to method of amending the constitution. That was a proposal of forty lines. I venture to say the average citizen of the state could read that proposal two or three times and not understand exactly the effect of it. The vital change in that proposal consists of the change of one word, and many people would be apt to miss it. Just two lines of explanation would make that proposal absolutely clear to the people. It would do to simply say that the change that the Convention made was to provide that the majority of those voting on any question should decide it instead of a majority of those voting at the election. There is surely no harm in making a statement of that kind in our address to the people. Last night I was

greatly disappointed to hear gentlemen say that money used to educate the people on our work was money wasted. I think money spent for education of any kind is money saved. One dollar spent in educating the people and telling the people about the work of this Convention and the great task we have tried to do will come back to the state an hundredfold.

Mr. ANDERSON: I hope that the motion to reconsider will prevail. The suggestion of those who seek the reconsideration is to print all of this I have in my hand and considerably more, and send that to each voter in the state of Ohio. Now you must remember that we have obtained considerable education in the months we have been here before this Convention. Just imagine yourself, with the information you had before you came here getting this sent to you as a voter and then trying to dig out what it all means. Stop and think a minute. See if you can do it. You cannot do it. For instance, take the initiative and referendum proposal, Proposal No. 2, which covers five pages. A gentleman sitting in some farm house after a day's work has been done, is trying to work out what that means by reading the five pages; who can, under such circumstances, understand what it means?

Take Mr. Mauck's blue-sky law. How will they understand that? Three hundred words of explanation will let everybody understand it thoroughly. And so on as to every proposal.

Mr. MARSHALL: Suppose you were going to write three hundred words in explanation on the proposal to license the traffic in intoxicating liquors and Judge King would go into another room and do the same. How close do you think those things would come together?

Mr. ANDERSON: If we both did it fairly, which I think we would, there wouldn't be enough difference between the two to notice it.

Mr. DOTY: He couldn't find it out anyhow, could he?

Mr. ANDERSON: If there were differences, you couldn't discover them.

Mr. EVANS: I think we owe it to the people of the state of Ohio to inform them of our work. I am sorry I was put on the committee on Submission and Address to the People. I would rather not have been on it, but I am on it and I signed that report. I am willing to stand by it, but I am not willing to attempt to bunco the people of the state of Ohio. I happened to be talking to two gentlemen Friday morning and they said to me, "Are you not going to let us know why you did these things; are you not going to have some kind of an address?" I replied, "I don't know." One of the gentlemen said, "You owe it to us to do it." That is the tendency now in all initiative and referendum measures. You very well know that there are three or four proposals that I would not vote for, but I approve of most of them. I think they ought to pass, but I think we owe it to the people of the state of Ohio to explain the reasons for them, and I think all the members of this Convention are gentlemen, and I am willing to treat them as gentlemen any time, and I think we can trust eighteen of them and the chairman of these several committees and the authors of these several proposals to state the matter fairly to the people. I think we owe it to the people. We are about to adopt the system of initiative

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and referendum by which we bind ourselves whenever we submit a measure to explain it, to give a candid, impartial statement of it. Now, why don't we do it? It would be an insult to the people of the state of Ohio to submit this constitution to them without any information or any explanation. This is a day of discussion of public matters, and we ought to give them full explanation.

Mr. OKEY: I voted against this proposition last night because I didn't approve of the manner proposed, and I will vote now for a reconsideration of it in order that we may have the proposition before the Convention. I think the Convention has the power to designate how this shall be brought before the people. I am in favor of a committee being appointed by this Convention. Let the powers of that committee be limited, and let this Convention instruct that committee as to the extent of the explanation that each proposal shall have. Let us have an analysis of each proposal and not an argument.

Mr. JOHNSON, of Williams: When my friend from Hamilton county [Mr. BOWDLE] said that we have a court room environment and a street environment and a constitutional convention environment, I thought I might get used to the constitutional environment by the time we hold the next convention. I am not used to being on my feet. I have not talked half an hour at a time for a quarter of a century. I guess it is good for the Convention that I have not been accustomed to that. I moved to reconsider this resolution because I was in favor of it in the first place, but I didn't like it because it proposed that I should take care of my own proposal, which passed this Convention and for which I thank the gentlemen, not because you did me a favor, but because I think you did the people of the state a favor in passing it.

I have been surprised at the charges and counter-charges that have been made in this Convention in more than four months. I still believe that a majority of the Convention want to be honest. I believe I can write all of these papers, though I do not wish to. I was even going to ask that someone else be designated to write concerning my proposal, but I believe, without conceit, that I can say I have made that a study for some years and can write that as well as any gentleman on the floor of the Convention. I believe I can explain it so that you would not know which side of the proposition I was on, and still have the information for the voters. I do not like the limitation of three hundred words.

Now, take the word "white" in the constitution. The gentleman from Mahoning has told us that there is not a state in the Union that has it there. If that is correct, what harm does it do simply to say the word "white" is to be stricken out because of the national constitution? That is all of the statement necessary as to that. And so as to a good many other of these.

The PRESIDENT: The gentleman's time is up.

Mr. LEETE: Mr. President and Gentlemen of the Convention: I wish to say but a few words relative to personal experience in the last few weeks. Each Friday and Saturday while this Convention has been going on I have been out among the miners and among the coal diggers of the southern part of the state. When I would go out to the mines the men would gather around me and ask questions regarding certain proposals. They

didn't understand them. One would say, "What is this about the initiative and referendum? We never heard of the indirect initiative and referendum. What is it?" I would take time and explain it to them and many times I would take nearly an hour explaining things to these men. They seemed very anxious to find out every thing they could about the constitution. I was in a bank one day about four weeks ago and the banker said, "You folks have passed the initiative and referendum. I am against it." I said, "Have you read it?" He said, "No, but I am against it; the name itself is enough to condemn it." I then asked him if he had heard of the indirect initiative and he said that he did not know. I kept on talking to him for ten minutes and explained it to him and he said it was all right. It is just so with a great many other proposals here. The people do not know what they are. I do hope that this Convention will send out some explanation of what each proposal is and what it will do, and I hope you will reconsider this.

Mr. PARTINGTON: Each week when I return to my people in Shelby county I do not see how members of this Convention can give the people of this state of ours so little credit as to think they don't know anything. Down in my section of the state the high school pupils have been debating these questions. The teachers in their organization have taken these questions and the people of my county know more about this constitution than some of the members of the Convention give them credit for. I for one do not fear that this constitution of ours will fail before the people. Half the members of this Convention assume that if we do not send out some few trivial statements in regard to these propositions that the people will not know about them or talk about them and will be ignorant of them. How many such voters do you think you can find in the state of Ohio? What is the percentage of illiteracy?

Now, here is a supplement prepared by the American Press Association of Columbus. These statements have been spread broadcast and I feel honestly that seventy-five per cent of the homes of Shelby county will have this sheet in it. I believe the same ratio, or almost that same ratio, will obtain throughout the rest of the state, and that shows that the people of Ohio are not so ignorant as some of the people think they are.

Mr. PECK: I think we ought to send some sort of a statement to the people. I think the people expect it and the act under which we met provides for an address to the people. Our address should contain in brief terms, an explanation of what we have done and why we have done it. Everyone of you knows that when a proposal was put before this Convention the first thing that was done was to have the author of the proposal take the stand and explain the whys and wherefores of it, and everyone of you knows, when he was through with the explanation, we understood it a great deal better than we did by just referring to the printed proposal. That custom was a good custom, having it explained at the outset. That is what the people of Ohio want. They want to know why this proposal was put forward and why it was necessary. I say the custom of this Convention was to have the proposals explained by the author, and the reason for that was the very reason why the people should have the proposals explained to them. They want to know the whys and the wherefores. Why

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did you pass this? What was the occasion for it? What were the underlying circumstances surrounding it? Those are the things they want to know, and those should be indicated in the circular which we send to the people.

Mr. PIERCE: I think we are probably as well able to vote intelligently upon this question now as we will be at any time and I move the previous question.

The main question was ordered.

Mr. MARRIOTT: I move that the motion to reconsider be laid on the table.

Mr. FESS: I make the point or order that the previous question having been ordered this motion is out of order.

The PRESIDENT: The point is well taken. The question is "Shall the motion be reconsidered?"

The yeas and nays were taken, and resulted—yeas 80, nays 30, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Pettit,
Beyer,	Harter, Stark,	Pierce,
Bowdle,	Henderson,	Read,
Brown, Lucas,	Hoffman,	Redington,
Cassidy,	Hoskins,	Rockel,
Cordes,	Hursh,	Rohm,
Crites,	Johnson, Madison,	Rorick,
Crosser,	Johnson, Williams,	Shaffer,
Davio,	Jones,	Shaw,
DeFrees,	Kerr,	Smith, Geauga,
Donahey,	Kilpatrick,	Smith, Hamilton,
Doty,	King,	Stamm,
Dunn,	Knight,	Stevens,
Dwyer,	Lambert,	Stewart,
Elson,	Lampson,	Stilwell,
Evans,	Leete,	Stokes,
Fackler,	Leslie,	Tallman,
Farnsworth,	Longstreth,	Tannehill,
Farrell,	Ludey,	Tetlow,
Fess,	Marshall,	Thomas,
FitzSimons,	Matthews,	Ulmer,
Fluke,	Mauck,	Wagner,
Fox,	Miller, Crawford,	Watson,
Hahn,	Miller, Fairfield,	Winn,
Halenkamp,	Okey,	Wise,
Harbarger,	Peck,	Mr. President.
Harris, Hamilton,	Peters,	

Those who voted in the negative are:

Antrim,	Earnhart,	McClelland,
Baum,	Eby,	Miller, Ottawa,
Beaty, Morrow,	Halfhill,	Norris,
Brattain,	Harris, Ashtabula,	Nye,
Brown, Pike,	Holtz,	Partington,
Cody,	Kehoe,	Price,
Collett,	Kramer,	Riley,
Colton,	Kunkel,	Stalter,
Cunningham,	Malin,	Walker,
Dunlap,	Marriott,	Woods.

So the motion to reconsider was carried.

The PRESIDENT: The question is on the adoption of the resolution.

Mr. FESS: I move an amendment that I suggested a moment ago.

The amendment was read as follows:

Add to the end of the resolution:

"Provided further, that the member from Guernsey and the member from Portage be appointed to draft the explanation of the taxation proposal, and provided that no pamphlet be sent out by the secretary of state which does not con-

tain the autograph signatures of at least a majority of the delegates of the Convention and that no other matter be sent out which has not first been mailed to all the delegates and has received the written approval of at least a majority of the delegates."

Mr. FESS: This is offered in the hope that every member of the Convention will believe that it is absolutely fair and that there is no desire whatever to take any advantage of the people or to give any undue advantage to any proposal or any part of the people in the Convention. It is drafted in the hope that it will be looked upon as an absolutely fair and square proposition. The few members that are named it might be thought would suggest some partiality, but that is not meant at all. It is simply to answer the criticism that was offered as to who would write the explanation of the taxation proposal. This is not done for any other purpose than to put the persons making the explanation in harmony with the tax proposition. I hope this will not be resented by the minority.

Mr. DOTY: It will not be resented by the chairman of the committee. I have given all that up, you may be sure.

Mr. FESS: The other point is that no document should be sent out until after it is signed by a majority of this body.

Mr. DOTY: Do I understand your amendment to propose to have the autograph signatures printed in the pamphlet?

Mr. FESS: I presume they will be printed in the pamphlet.

Mr. DOTY: On that I want to call attention to the fact that you are going to print a million and a half.

Mr. FESS: I don't think we want the names printed. I don't understand that. I don't care about paying for a lot of space like that. The matter that is to be sent out is a matter that has been indorsed by a majority of the Convention.

Mr. MILLER, of Ottawa: Are these proposals to be offered with the signature of every delegate?

Mr. FESS: Opportunity will be given to every delegate to sign, and if it does not get a majority it is not to be sent out.

Mr. HALFHILL: Does your proposed action there contemplate that the individual members at their homes or other places shall sign something and send it in here and then that will be sent broadcast as the action of the Convention?

Mr. FESS: That is to be determined afterwards. If we want to come back in two weeks from now all right; otherwise it will have to be signed at their homes and sent out.

Mr. HALFHILL: Why would it not be the proper thing and the judicious thing to adjourn the Convention, until a week from Monday say, and then come back and finish the work?

Mr. FESS: That is a pretty serious matter and one that should be considered. Then if anything should develop that needed attention we could attend to that.

Mr. HALFHILL: I do not think it is wise to leave any bureau of the Convention here during the summer.

Mr. FESS: I am getting tired of the fact that nothing can be done without suspicion being centered on

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somebody. There is nothing of that sort here. We do not want to make it impossible for us to correct an error that may have crept in here when we can easily correct it if we know its existence.

Mr. HALFHILL: My question is not a question of suspicion, but a question of political sagacity. Do you want to keep the Convention here in order to draw the fire of the people to the Convention, or do you want to submit its work and let its work be discussed?

Mr. FESS: You are a lawyer making everything possible out of the practice of the law. We can adjourn today, but not adjourn sine die. We can come together at any time hereafter; any number less than a quorum can adjourn the Convention from day to day, and I insist that we should not adjourn sine die because something might come up.

Mr. HALFHILL: I grant that. Have you read Resolution No. 134?

Mr. FESS: Yes.

Mr. HALFHILL: In your judgment was not Resolution No. 134 on this submission question framed so that they coordinate together—

Mr. FESS: Resolution No. 134 is not being discussed and when it comes up I shall probably vote against it.

Mr. HALFHILL: I just asked you if they do not coordinate?

Mr. FESS: That is not now being discussed. Now just one other question. My friend from Shelby intimates that we are insinuating that the people do not understand the thing and he says that he goes home weekly. Let me tell you, if this will not be regarded too personal, since the twenty-first of May I have been in Junction City, Kings Mill, Eaton and dozens of other places throughout Ohio, and the question that was being discussed everywhere was the work of this Convention. We have heard it discussed much, but I find that a good deal of explanation is required to clear up errors.

Mr. WOODS: I want to make a point or order. I object to some members of the Convention being given all the time they want to take and others being held down to five minutes.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

Strike out the resolution and the pending amendment and insert the following:

Resolved, That the secretary of this Convention be authorized and instructed to prepare a pamphlet in which shall be printed the present constitution of the state and the amendments proposed thereto by this Convention, and that the secretary of state be and is hereby requested to print the same and to send a copy of it, so far as practicable, to every elector in the state, said work to be done at the earliest possible time.

Mr. NYE: Mr. President and Gentlemen of the Convention: It has been repeatedly said here by those who oppose this original resolution that we are opposed to the work of this Convention. For myself and in behalf of many others I want to say that that is not an accurate statement. I am for the work—most of the work—of this Convention, as I suppose every other member is, and I want that work to be adopted. The gentleman

from Greene [Mr. FESS] has said that the great Convention which prepared the constitution of the United States prepared an address to the people. That is what I want this body to do. Four and a half months ago a committee was appointed consisting of the president, the vice president and fifteen other men as a committee on Submission and Address to the People, and we ought to have that address to send out to the people. The thing that I am objecting to is to forming a board of publicity that this Convention knows nothing about and having that board send out what is provided by the resolution which is prepared here and which we are asked to adopt.

Mr. PECK: Will you allow me a question? How could the committee on Submission prepare an address describing the work of this Convention until the work was done?

Mr. NYE: It is done now, and if it is necessary for the Convention to adjourn one week or two weeks to have it prepared and then come back here and adopt it, I am in favor of doing that, although I would like to be at home as well as any member here. But whatever is done ought to be the act of the Convention.

Mr. FESS: Do you think the resolution I have just introduced presupposes a better distribution to be in existence?

Mr. NYE: I would not object to the part you tack on to the resolution, but it is tacked on to a resolution which has been reconsidered and that is now before the Convention. That is the reason I object to it. I think anything that goes out should be drafted and adopted by the Convention and should go out as the act of the Convention, and it should not be left to a board consisting of somebody and the rest of the Convention not know anything about what goes out.

Mr. DWYER: If we here outline our idea of what this address ought to contain and let it be prepared and come back two weeks from now and adopt it, would not that be the proper thing?

Mr. NYE: That is the very thing that I am suggesting. I would be willing to come here at my own expense. I do not think that we ought to hurry the end of this work of the Convention. I know it is nearly eleven o'clock Saturday, but that is no reason why we should hurry this. We have spent five months here, lacking a single week, but I believe that we had better adjourn over to have what we do approved by the people. That is what I am in favor of. If the address is not ready, let us get it ready. We have a committee—and I am not finding fault with any person on the committee or with any person in this Convention. I believe that everyone is trying to do the best thing for the people and to have this adopted. I am in favor of this work and I am in favor of having it submitted to the people fairly and openly and with publicity. I am in favor of the amendment offered by the gentleman from Portage, that we send out copies of the constitution as it now exists and copies of our amendments, and, if you please, you can add the address adopted by this Convention. That is what I am in favor of. Let us not hurry on the last day of the Convention. Let us not leave something undone that we ought to have done. We have spent nearly five months in good honest work. Let us present it to the people in an intelligent way so that the

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people may understand what we have done and adopt it.

Mr. DOTY: Do you think it is better for one of us to trust one of our employes after we are gone than to trust a committee of this Convention?

Mr. NYE: I am not afraid to trust—

Mr. DOTY: Take out the "trust". Do you think it better for us to allow an employe of the Convention to do a certain piece of work that we refuse to allow a committee to superintend?

Mr. NYE: I do not, but we have had a committee on Submission and Address to the People and that committee ought to have given us a report containing the necessary explanation of the constitution that we are sending out.

Mr. DOTY: Do you not see that that is exactly what the original resolution does?

Mr. NYE: It does more than that.

Mr. DOTY: What more?

Mr. NYE: It establishes a board of the president and somebody else to send out literature.

Mr. DOTY: Is that any worse than to allow an employe to do the same thing?

Mr. NYE: I am not talking about what one man will do. I am asking that whatever is sent out shall be adopted by the Convention.

Mr. DOTY: You are advocating one man being a committee. You say that Colton amendment should prevail.

Mr. NYE: The amendment does not provide an address to the people. It simply provides for printing a constitution and the amendments to the constitution and that it be sent out in pamphlet form, which I think ought to be done, and that address made by the committee on Submission can be adopted hereafter by the Convention.

Mr. STILWELL: As one of the delegates to this Convention I want to enter my protest against any effort to adjourn this Convention today. I think very favorably of the suggestion made by the member from Greene [Mr. FESS], that in view of the fact that the committee on Submission and Address to the People do not seem to have prepared a report that is entirely satisfactory to this Convention, when we leave today it shall be to reconvene a week hence or two weeks hence. I do not care just exactly when it is, but I do not think in the last hours of this Convention we should do anything hastily. Personally I am willing to trust any committee of this Convention. There is no blight of distrust in my soul that seems to prevail in many delegates here. But there is some feeling in my mind that even at this moment there are delegates in this Convention who would be willing to adjourn now sine die in order to defeat the work of this Convention. The amendment of the delegate from Portage would leave the matter entirely in the hands of the secretary of the Convention simply to send out the cold work of this Convention without a word of explanation. I therefore move that the amendment offered by the member from Portage be laid on the table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 66, nays 38, as follows:

Those who voted in the affirmative are:

Brown, Highland,	Davio,	Dwyer,
Brown, Lucas,	DeFrees,	Earnhart,
Cassidy,	Donahey,	Evans,
Cordes,	Doty,	Fackler,
Crosser,	Dunlap,	Farnsworth,

Farrell,
Fess,
FitzSimons,
Hahn,
Halenkamp,
Halfhill,
Harris, Hamilton,
Harter, Huron,
Henderson,
Hoffman,
Hoskins,
Hursh,
Johnson, Madison,
Johnson, Williams,
Jones,
Kehoe,
Kerr,

Kilpatrick,
King,
Knight,
Leete,
Leslie,
Ludey,
Malin,
Marshall,
Matthews,
Miller, Crawford,
Miller, Fairfield,
Okey,
Peck,
Pettit,
Pierce,
Redington,
Rockel,

Rochm,
Shaffer,
Shaw,
Smith, Hamilton,
Solesher,
Stamm,
Stevens,
Stilwell,
Stokes,
Taggart,
Tallman,
Tetlow,
Thomas,
Watson,
Winn,
Wise,
Mr. President.

Those who voted in the negative are:

Antrim,
Baum,
Beatty, Morrow,
Beyer,
Bowdle,
Brattain,
Brown, Pike,
Cody,
Collett,
Colton,
Crites,
Cunningham,
Dunn,

Elson,
Fluke,
Harbarger,
Harris, Ashtabula,
Holtz,
Kramer,
Kunkel,
Lambert,
Longstreth,
Marriott,
McClelland,
Miller, Ottawa,
Moore,

Norris,
Nye,
Partington,
Peters,
Read,
Riley,
Rorick,
Smith, Geauga,
Stalter,
Wagner,
Walker,
Woods.

So the motion to table was carried.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out the resolution and pending amendments and insert the following:

Resolved, 1. That the committee on Submission and Address to the People be instructed to prepare a brief address to the people including as a part thereof the full text of the amendments passed by this Convention, together with a brief explanation of the contents of each.

2. That said committee report such address to this body on June 6, 1912, for its consideration and adoption.

3. That when adopted by this Convention it be embodied in a pamphlet to be printed and distributed so far as possible to each voter of the state.

4. That when this Convention adjourns today it be to meet on June 6, 1912, at 2 p. m.

Mr. KNIGHT: A few words on this resolution. It has been submitted to a good many members of the Convention of all shades of opinion. This is designed to only dispose of the question of the formal address that shall go out officially from this Convention. I find in other constitutional conventions addresses to the people, short or long, embodying the whole constitution and the amendments thereto that have been formally reported to the convention and adopted as an official part of the action of the convention and made a part of the record and journal. Everything that we have in mind can be done on this matter of address in one day after the committee has prepared its report. The Convention could then pass upon it and that would make it the official action of the Convention.

Mr. ANDERSON: And during that intermission

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there will be an expense of \$300 a day, for which we get absolutely nothing.

Mr. KNIGHT: It need not hold the employes over because there is a resolution that takes care of that. That is the next resolution that comes up. Do you not believe in bringing the main body of the Convention together for this one of the most important matters that has been before the Convention?

Mr. BROWN, of Lucas: Does the gentleman recall the fact that one of the great political parties will be holding a convention then?

Mr. KNIGHT: That was put in at the suggestion of others. I am willing to make it one week from the tenth.

Mr. FESS: With the consent of the Convention I would like to have that change made.

Mr. HARRIS, of Ashtabula: I think that would strike every college commencement and every high school commencement in Ohio.

Mr. KNIGHT: It strikes my own institution, but I am willing to be here.

Mr. FESS: Do not the commencements usually come on Thursday or Friday?

Mr. KNIGHT: Monday is part of commencement week. I do not think, however, there are any commencement exercises on Monday.

Mr. FESS: I would like to raise one question which might cause us some trouble if this substitute is carried. I indorse the spirit of this substitute, but there is one danger. If it is possible for us to clean up our work today we ought to do it, because this resolution that Dr. Knight introduces necessitates a majority of this Convention coming together or you cannot adjourn. So if you carry this resolution this Convention has to be here in a majority or no business can be done at all at this subsequent meeting. I hope we can clear up our work today, but hold the Convention alive in such way that any number can come together and adjourn officially; otherwise you have to come as a body—it necessitates a quorum. I hope you will notice that.

Mr. HOSKINS: If this resolution prevails the time ought to be fixed to adjourn that session. I am opposed to adjourning until the tenth. If we must adjourn until the tenth, I think we should adjourn to meet at two o'clock in the afternoon so that we can finish our work that day.

Mr. HARRIS, of Ashtabula: I do not understand that Dr. Knight proposes to put any limit on the time of meeting. We might meet at ten o'clock. We ought to give ourselves sufficient time to finish the work. I have gotten through trying to fix any limit on time. All I want to do is to get the work finished properly.

Mr. HOSKINS: Why cannot it follow the Baltimore convention.

Mr. HARRIS, of Hamilton: As one of those who last evening mildly advocated the original resolution I wish to say I now heartily indorse the substitute offered by Professor Knight. I think it meets all of the requirements of the situation. I think we have all about made up our minds on the question and it is only fixing the date when we shall come together that is left. I move the previous question on the amendment.

Mr. EVANS: I am in favor of the seventeenth as the day of meeting.

Mr. STILWELL: Why not carry this without the date being fixed and fill that in afterwards?

Mr. HARRIS, of Hamilton: Perfectly satisfactory.

Mr. KNIGHT: Just leave the date blank and we will fix the date afterwards.

The main question was ordered.

The PRESIDENT: The question is now on the adoption of the amendment.

Mr. HOSKINS: I move that the date be filled by inserting Monday, July 1. A week from next Monday is entirely too soon.

Mr. JONES: Why?

Mr. HOSKINS: Because you are going to run into a lot of work that is going on in other bodies. Next week is objectionable because of the Chicago convention. The next week after that is objectionable because of the Baltimore convention. Personally I do not care for either of those. Another thing, the courts of every county are closing up their sessions and there is not a lawyer here who has not cases to attend to.

Mr. ELSON: I think that time is entirely too long. I cannot be here and a good many others cannot.

Mr. HOSKINS: Well, I move to insert July 1.

Mr. JONES: I move to amend by inserting Monday, June 3.

Mr. ELSON: I move to amend by inserting Monday, June 10.

Various delegates suggested June 17.

Mr. WALKER: Let us take a vote on June 7.

Mr. WINN: I have a very important trial set for the seventeenth, which will take nearly all the week. I can be here on the tenth, but not on the seventeenth. I would suggest June 5.

Mr. STOKES: The democratic convention will be in session then.

Mr. LAMPSON: I think the sixth is the proper day. A lot of members will stay here from the republican convention then and there will be a lot of democrats who will be on their way to the convention that can stop here and attend to this business.

The PRESIDENT: That amendment is not now in order.

Mr. HOSKINS: I will withdraw my amendment to let that come in.

Mr. LAMPSON: Then I move to amend the resolution by inserting Thursday, June 6, two o'clock p. m.

The amendment was agreed to.

The resolution as amended was adopted.

Mr. PECK: I offer a resolution.

The resolution was read as follows:

Resolution No. 143.

Resolved, That the thanks of this Convention are due and are hereby tendered to Edward W. Doty, of Cuyahoga county, for his labors and services in preparing the rules under which the Convention has done its work, and his indefatigable industry in forwarding that work.

The resolution was adopted.

Mr. DOTY: I have not a word of response. The resolution, under the rules I wrote, ought to have been declared out of order. I seem to have been overruled without having a chance to make the point of order. What I have attempted to do was simply to contribute what experience I have had and what knowledge I

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thought I had for the benefit of the work of this Convention. I have attempted to be as helpful as I could. I have really tried not to be any more of a nuisance than I could help. Whether I have succeeded or not, of course it is not for me to say. I have enjoyed every minute of the work. I have enjoyed associating with the members of the Convention and I have not anything but love and esteem for every member of the Constitutional Convention of 1912. That this resolution should have been offered and passed certainly is a tribute that I cannot overlook and I do not want to, nor can I sufficiently express my thanks for your action.

Mr. PECK: I want to say that in the years to come, when we look back and think over this Convention, there will be no figure more prominent on the mental retina of any of us than that of Mr. Doty.

Now I have another resolution which I propose to put and read myself.

Resolution No. 144:

Resolved, That the thanks of this Convention are hereby tendered to President Herbert S. Bigelow for his uniform courtesy and fairness in the discharge of the onerous duties of his office. We part from him with regret, and bid him God speed in the great career which he has before him.

Mr. PECK: All those in favor of this resolution will say aye. The resolution is adopted.

Mr. DOTY: I offer a resolution.

The resolution was read as follows:

Resolution No. 145:

Resolved, That the thanks of the members of this Convention are hereby given to the Hon. Simeon D. Fess, vice president of the Convention, for his uniform courtesy, his splendid ability while presiding and the fair and impartial manner shown by him to all members and all matters coming before the Convention.

Mr. DOTY: I do not know whether any of you remember it—but I still remember it—that this Convention elected one of two who were candidates for vice president and I offer this resolution sincerely, because I mean what I have offered, and I trust the Convention will agree with me. Mr. Fess has proven a most able and impartial presiding officer, and it is with very great pleasure that I at this time offer this resolution which I trust will be unanimously adopted.

The resolution was adopted.

Mr. FESS: Gentlemen of the Convention: To have a vote of confidence from brothers with whom you have sat for half a year and from members with whom you have seriously at times differed on matters of policy and also on the question of adoption of various proposals and other things, is the highest compliment that can come to any individual. I admire the man who can stand up and oppose me with vigor and at the same time have nothing personal against me. I admire the fellow who can fight openly and when it is all over realize that there was nothing personal in it, but that it was only a difference of opinion. I remember when I first came into the Convention, I am very frank to say, I did not like Mr. Doty at all. Now I want to say that as I go out of the

Convention there is no one for whom I have a deeper regard than my friend and open fighter who is always on the fighting line. It has been a great pleasure not only to meet him in battle array but to meet him and differ with him on many little things, and have him differ with me, and yet give me this splendid vote of confidence. That is the highest tribute that I shall take from this Convention. All is well that ends well. I hope that this Convention will end well and then we will all be all right.

Mr. DAVIO: I wish at this time to address a few remarks to President Bigelow. I think it can be safely said that as a delegate to this Convention I have not burdened its records with any unnecessary speeches on any subject and I blame this largely to the fact that the president has persistently refused to recognize me and thus afford me an opportunity to express myself, as I had prepared to, on all the important proposals before this body. My object in speaking now is that I want this fact to become a matter of record. It is possible the president will try to excuse himself by saying that on account of my size he failed to see me over FitzSimon's and Stilwell's broad shoulders or on account of Kunkel's safeguards, despite the fact that I occasionally stood on a chair and other furniture to attract his attention.

I have seriously thought of asking the Convention to pass a vote of censure on the president for his conduct toward me, but have been advised by the delegates that it is best to forgive and forget. I have decided to do so, and on behalf of your friends in the Fourth Constitutional Convention I now present to your President, Herbert S. Bigelow, this gold watch, and trust it will be accepted by you as a token of the esteem in which you are held by your fellow delegates.

Mr. BIGELOW: If I try to make a speech now I am sure that you would not have any trouble in applying the proper descriptive adjective at this time. As I look back over my life, it is exceedingly difficult for me to take a position anywhere along the past years and look forward to the time when I should be the recipient of such a tribute as this. I know it is a great mistake for men ever to be seekers of preferment or political or social honors. If one can be useful and these things come as a recognition of usefulness he is indeed blessed. If we seek our own elevation we may succeed temporarily, but defeat comes ultimately, for the time comes when personal ambition must fail, but if our aim is to be of service to mankind, then we may also be sure of victory, no matter what our personal fortunes may be. I have this reward today that I do not believe I would have been placed in this position as president of this honored body and that I would have ever received this tribute of your good will and confidence if I had not succeeded in some degree in considering others as well as myself and had not had some motive to control my action other than motives of personal ambition. I find it exceedingly difficult to tell you, my friends, what is in my heart today. It is going to be exceedingly difficult in the years to come to fight the battles that remain in a manner that shall be worthy of your esteem, and yet in those battles in the future there will be a great consideration and support in the knowledge that I have once known and that I have enjoyed your acquaintance, your friendship and the pleasure of your good will and esteem.

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Now, I offer a resolution of very profound gratitude for the courtesy and kindness that I have received from your hands and for your patience with my shortcomings, and I trust I may be pardoned for placing you all in a group as the recipients of my boundless good will and of placing in the midst of that group, down in the center of it, so that it may remain a picture in our minds forever, a group of the Fourth Constitutional Convention of Ohio with, in the front of it, those two grand old men, Judge Dwyer and Judge Peck.

The VICE PRESIDENT [who had taken the chair during the president's address]: The member from Hamilton [Mr. PECK] is recognized.

Mr. PECK: You know I cannot talk when people talk that way. My heart gets too full for words to flow. You have all tried it. A bottle with only little in it will flow much more freely than when it is full, and I am absolutely full. That is the way my heart is now, so full of good will and good and kindly feeling that I cannot say anything more.

The delegate from Montgomery [Judge DWYER] was recognized.

Mr. DWYER: Mr. President and Gentlemen of the Convention: What you did on the first day of your meeting put me under everlasting gratitude to you. We came here practically strangers on the 9th day of January. We practically adjourn today with each the friend of the other. There is not a man here today for whom I have not the highest regard. I admire you all for your ability and for your untiring industry in the service of the state. My only regret is that we have to part; but the best of friends must sometimes part, and on this occasion I shall carry with me during the few years that are left to me the fondest recollection of these days that we have here together. Always, as the president has said, this grand assembly of the Fourth Constitutional Convention of Ohio will be before me.

The PRESIDENT PRO TEM: The chair will recognize the member from Gallia.

Mr. MAUCK: I do not know of any reason why at this late day the chair should recognize the member from Gallia, for this is the only time that I have not wanted recognition. With others I may pay my respect and esteem to the member from Cuyahoga [Mr. DORV], because none of us know anything about the rules except that member from Cuyahoga, and but for him we should scarcely have been able to get along. But, seriously, I want to say that the members of this Convention owe a great deal to the member from Cuyahoga [Mr. DORV], and I am glad to express that sentiment, in which I am sure you will all join, because of his very careful and painstaking work in keeping us in working order.

The PRESIDENT PRO TEM: The chair will recognize anybody else.

Mr. CROSSER: This is the kind of a speech to which I am not at all adapted. It is not in my line, but after having heard some of these beautiful talks about various members, of course all of them thoroughly deserved, I want to offer a resolution of our confidence and respect to a man who is probably one of the oldest in the Convention, a man with whom I am very little acquainted, but such acquaintance as I have leads me to feel for him the deepest confidence and respect. I have in mind the dele-

gate from Geauga [Mr. SMITH], and I hope that the resolution will be adopted.

The resolution was read as follows:

Resolution No. 146:

Resolved, That our great respect and esteem be and is hereby expressed for one of the oldest members of the Convention, Mr. Smith, of Geauga county, who by his uniform kindness and modest manner has made himself one of the pleasing figures of the Convention.

The resolution was adopted.

Mr. SMITH, of Geauga: I thank the Convention very much for this tribute of respect. I did not expect to take a very active part in the affairs of this Convention when I came here. I am somewhat deaf and so I have sat by and did my best to help matters along the best way possible. I have been more than blessed with the pleasant acquaintanceship with delegates to this Convention. I had expected that there would be a wild-eyed set of men here ready to do almost anything that came in their way in any matter whatever, but I found quite to the contrary. I found a body of gentlemen who nearly all of them, were as anxious as I to do this work right and to vote right and to do what they regarded as for the best interests of the state of Ohio. I believe they have all done that and I shall regard as the crowning pleasure of my life the acquaintances I have made in the Convention. I would not if I could recall a single acquaintance that I have made here. I thank you very much.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 147:

Resolved, That the thanks of this Convention are tendered to the secretary of this Convention, Mr. C. B. Galbreath, for his uniform courtesy and efficient service.

The resolution was adopted.

Mr. MILLER, of Ottawa: I offer a resolution.

The resolution was read as follows:

Resolution No. 148:

Resolved, That the banquet committee be instructed to arrange for the first annual reunion of the delegates of this Convention at Put-in-Bay, Ohio.

Mr. MILLER, of Ottawa: On this occasion I desire to say that next year will be celebrated at that place the one hundredth anniversary of the battle of Lake Erie. At that time a monument will be dedicated in commemoration of that event, one of the most important in the history of Ohio. The dedication will also be participated in by the adjacent states of Michigan, Illinois and Wisconsin. At that time the monument will be dedicated and arrangements have been made that will bring together there men of national reputation. By that time we shall have another Ohio president of the United States and we will have Governor Anderson and his military staff there, where the waters which flow around that beautiful archipelago are the purest, and when they have been filtered through the vine for which that region is famous and properly taken, they will make even the most silent delegate loquacious. Those waters flow along the first

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city in Ohio, the home of Mr. Doty and the headquarters of the Progressive Constitutional League. Not far away is the greatest rifle range in the world, and next year that will be visited by representatives from the whole world, including South America, Australia and all the countries of Europe. Forty miles to the west is the home of the first politician in the land and we can show the delegates a good time.

The resolution was adopted.

Mr. HARTER, of Stark: This Convention owes and should return a vote of thanks to the historian of the Convention, Hon. Nelson W. Evans, and I offer a resolution.

The PRESIDENT: Just withhold that for a moment. The motion before the Convention is that of the member from Ottawa.

Mr. STOKES: I move that that invitation be received and referred to the committee on reunion.

The motion was carried.

Mr. WINN: It seems to me that these proceedings in which we are now engaged ought not to be a part of the record.

The PRESIDENT PRO TEM: The chair will rule that they are a part of the record. They are in regular session and are regularly made and are being adopted or rejected.

Now the member from Stark [Mr. HARTER] offers a resolution extending the thanks of the Convention to our historian, Mr. Evans.

The resolution was read as follows:

Resolution No. 149:

Resolved, That the hearty thanks of the Convention are due to the Hon. Nelson W. Evans, of Scioto county, for the historical service he has rendered this body.

The resolution was adopted.

Mr. EVANS: Gentlemen of the Convention: I certainly thank you for this compliment. I want to say that I part with you here with the greatest respect and consideration for every member of the Convention. I regard you all as independent figures. I must confess that I was greatly out of patience in the early sessions of the Convention with my friend Mr. Doty and with President Bigelow, but after their votes on the taxation question I have forgiven them and taken them to my bosom, and while I have been out of patience a good deal with the delegate from Medina and the delegate from Defiance I think it will be all over in a day or two. As I say, I entertain the highest respect for every member of the Convention, and it is very gratifying to me that I have the good will and the confidence of so many of the Convention. I have been disappointed in some things that we have done here, but I do not arrogate to myself all wisdom and I bow to the will of the majority, and I can truthfully say that I go away from this Convention without a single hostile thought against any single member or the body.

Mr. DOTY: I would like to state and have it go down in history that the member from Cuyahoga [HIMSELF] and our honored president have always been and are still progressives, while Mr. Evans has just become a progressive.

Mr. FESS: Gentlemen: I want to offer a resolution and I want to read it myself. Whatever has been done

or whatever has been said, good or bad, is permanently recorded here. If ever the time shall come that we pray for the power of forgetfulness, there is one person we shall have either to blame or to thank that we cannot have that prayer answered, for every minute of this Convention's sessions there has been one man who has taken in permanent form and made a permanent record, as accurately as possibly could be, everything that has been said. I deem it an honor to offer a resolution of thanks to the only man in the United States who has acted in the capacity of official reporter on three constitutional conventions.

The resolution was read as follows:

Resolution No. 150:

Resolved, That the thanks of this Convention are due and are hereby tendered to Mr. Clarence E. Walker, for the service he has rendered in preparing for the future a permanent and accurate record of these proceedings.

The resolution was adopted.

Mr. ANDERSON: Since we are saying such gracious things of the older men of the Convention, Judge Dwyer, Judge Smith, Judge Peck and Mr. Doty, I want to call attention to one of the members who has assisted greatly in the work of this Convention. I am reminded of it because I see his picture so often. Wherever you go, in the smoking room or anywhere else, the first picture that you see is the picture of that gentleman. You would hardly recognize it, however. Our president in the early days of the Convention referred to some gentleman being asked to come from behind the bushes. This man I have in mind was formerly behind the bushes, but he has come out from them. Joking aside, no man has helped more and no man has more of the confidence of this Convention for absolute fairness than Mr. Lampson, of Ashtabula county.

I offer a resolution.

The resolution was read as follows:

Resolution No. 151:

Resolved, That the thanks of the Constitutional Convention be extended to Hon. E. L. Lampson for his great assistance in the accomplishment of our work not only on the floor of the Convention, but also in committee.

Mr. DOTY [in the chair]: Before the chair puts that motion I think he may be pardoned for making a short speech on the motion. I think there has been no more welcome resolution to myself than that of the gentleman from Mahoning. I will really tell you a secret, inasmuch as the member from Mahoning has put it so that it is necessary for me to say something about it. They have given me credit for a good deal that Mr. Lampson has done. I do not think there is any member of the Convention, without any exception, that has done more for the orderly work of the Convention and more for its highest efficiency in every department than the member from Ashtabula [Mr. LAMPSON], and it is with very great pleasure that I put the resolution.

The resolution was adopted.

The PRESIDENT PRO TEM: The chair will recognize the gentleman from Ashtabula [Mr. LAMPSON].

Mr. LAMPSON: Fellow Delegates: I certainly thank you for this unexpected tribute which you have

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given me upon the motion of my friend from Mahoning [Mr. ANDERSON]. In my public life it has always been my motto and my aim to give to the public my best thought and service, and in so doing I have simply done what I thought to be my plain duty. I think it was Drummond who said that love was the greatest thing in the world, and outside of the lofty example of the Christ and the innumerable expressions which we find in the homes in the land, I have never seen any higher expression of human love than I have seen in parliamentary bodies on occasions like this. Why, gentlemen, after that struggle over the rules and the modification of the rules in the lower house of the national congress when upon one side was that great leader Mr. Cannon and upon the other side that splendid man Mr. Clark, and the two contending forces had fought there week in and week out, sometimes saying very bitter things, when the end of congress came Mr. Clark, forgetting all of those differences over the rules and regulations of congress, offered voluntarily a vote of thanks to his opponent, Mr. Cannon, and it was adopted, a simple expression that after all the love of the human heart is the greatest thing in the world. When I came here I thought my friend Mr. FitzSimons over there was particularly extreme in some of his ideas. He came before one of our committees and made what I regarded as a rather extreme speech, but as the days have gone on I have come to know that the heart of Mr. FitzSimons is greater than his strong body. And so, gentlemen, as we go out from this Convention we shall go out from it into the world outside and I hope and trust with only the fondest recollections and the strongest friendship for one another.

The PRESIDENT PRO TEM: The chair will recognize Mr. FitzSimons.

Mr. FITZSIMONS: This is so sudden! I want to say, however, that this is an epoch in my life that I shall always look back upon with fond recollection. We came in here on the 9th day of last January with no other bond to hold us together than that we were Buckeyes and had been selected by our grand and glorious old commonwealth to try and do a job to the best of our ability in behalf of the state. We met as strangers and sized each other up on the spur of the moment. We formed some likes and some dislikes, but as we came into touch with one another, as friction rose between us and we came down to measure each other intellectually, there was a new aspect. It was like a new sun rising over the hills of Chillicothe. We got to know one another and the more we became acquainted the greater our respect for each other, and we went on and on cementing friendships and respect for each other until now we are a compact and solid body against everything that stands for wrong. What we are doing here is not for ourselves. It is for the generations that will follow us. And the minute we began to think of that, we saw that we were representatives of our great commonwealth and got together as brothers, and we labored together for five or six months and we have accomplished our work.

Mr. TANNEHILL: I offer a resolution.

The resolution was read as follows:

Resolution No. 152:

Resolved, That the thanks of this Convention are due and the same are hereby tendered to the

clergymen who have responded to the invitation of the president to open the daily sessions of the Convention with prayer.

The PRESIDENT PRO TEM: I would like to announce, or rather call attention to, the fact that the Anderson resolution of thanks to Mr. Lampson was number 151.

Resolution No. 152, offered by Mr. Tannehill, was adopted.

Mr. HARTER, of Huron: I feel that we owe a vote of thanks to the committee on Phraseology, and, indeed, to all of the committees who have contributed so much to the good work of this Convention.

The PRESIDENT PRO TEM: The member from Huron [Mr. HARTER] moves that we return thanks to all of the committees for their work.

The motion was carried.

Mr. HARRIS, of Hamilton: I offer a resolution.

The resolution was read as follows:

Resolution No. 153:

Resolved, That the Convention expresses its esteem for Colonel Blankner, one of the employes of the Convention, and an employe of the convention of '73, with the hope that he may enjoy good health until, and be of service to, the next constitutional convention.

Mr. MAUCK: I desire to offer an amendment to include George Riley, one of the early fathers of the Convention and one of the employes who has served us faithfully and well and also served in the other convention. I ask that he be included.

The amendment was agreed to and the resolution as amended was adopted.

Mr. ANDERSON: There is one gentleman in this Convention who has done a great deal of work which the records do not show. The man to whom I refer is a gentleman of great ability. He is earnest, active, industrious worker. A few of us who have seen his work know what he has done, but the majority do not because he has not taken a very prominent part on the floor. I want to say that no man has done more of good, hard, efficient work for this Convention than my friend Cassidy and I move a vote of thanks to him for that work.

The motion was carried.

Mr. DEFREES: While you are passing bouquets you have missed a little bunch. Their work has not been on the floor, but there is not a member here who doesn't love them for the work that they have done. I speak of the bunch that does its work back in the stenographers' room. You know we all love them.

The PRESIDENT PRO TEM: Did the gentleman make a motion or did he just express a sentiment?

Mr. DEFREES: I move a vote of thanks to them.

The motion was carried.

Mr. FESS: I would like to move that we extend to our candidates for governor, Messrs. Anderson and Halfhill, a vote of thanks for their services and our best wishes for their success.

The motion was carried.

Mr. PARTINGTON: I now move that we recess until 1:15 o'clock p. m.

The motion was carried.

Resolution Extending Thanks of the Convention.

AFTERNOON SESSION.

The Convention was called to order by the president.

Mr. MILLER, of Crawford: I want to occupy just a moment expressing my appreciation to the members of the committee on Agriculture for the work they have done and the kindness they have shown me. Also I want to express my appreciation to the chairman of the committee on Public Works and the committee on Banking, the committees on which I served, for the many courtesies that have been extended to me. One of the most pleasant things that I shall have to look back to in the years that come are the pleasant memories of the many kindnesses and courtesies shown to me in this body.

Mr. MARRIOTT: In our hurry we have overlooked a very important part of the Convention. The press of the state, more than any other institution, molds the sentiment of the people. No higher calling can fall to the lot of a young man than to have an opportunity in the education of the people on public questions. No greater influence will be exerted in bringing to the people knowledge of the work of this Convention than that exerted by the public press of the state. I therefore,

in recognition of the able services of the correspondents of the state, offer a resolution.

The resolution was read as follows:

Resolution No. 154:

Resolved, That the thanks of the Convention are extended to James W. Faulkner and his able corps of accredited newspaper correspondents serving in this Convention, for their uniform courtesy, kindness to, and fair treatment of, the members of the Convention and the work sought to be accomplished by this body, and we bespeak for them each and all the greatest measure of success in their noble calling.

The printed form of Resolution No. 133—Mr. Doty, having been sent to the Convention, the president and secretary and nearly all of the members signed the same at the table on which the first constitution of Ohio was signed in Chillicothe, September 29, 1802.

[The portion of the resolution containing the amendments submitted to the people with the names of the members signing the same is found in the APPENDIX.]

On motion of Mr. Doty the Convention then adjourned until two o'clock Thursday, June 6, 1912.

EIGHTY-FIRST DAY

AFTERNOON SESSION.

THURSDAY, June 6, 1912.

The Convention met pursuant to adjournment and was called to order by the president.

Mr. PECK: I am informed that the committee on Submission and Address is not quite ready to report and that they ask an extra half hour. I move that the Convention recess for one-half hour.

The motion was carried and the Convention recessed accordingly, resuming its session at the time indicated.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 155:

Resolved, by the Constitutional Convention of Ohio, That an address to the people be and is hereby authorized to read as follows:

ADDRESS TO THE PEOPLE.

To the people of the state of Ohio:

The Fourth Constitutional Convention, having been authorized to draft a partial or complete revision of the fundamental law of the state, hereby announces the conclusion and result of its labors.

Forty-one amendments to the constitution have been agreed to. These, with an amendment on schedule, will be submitted to popular vote, September 3, 1912.

The form of the ballot will permit a separate vote on each amendment, and a majority of the votes cast upon any amendment will be sufficient for its adoption.

The members of the Convention appreciate profoundly the honor of the service they were called to render, and await, with hope of approval, the verdict of a sovereign people.

A facsimile of the ballot to be used at the special election and the text of each amendment to be submitted, accompanied by explanatory matter authorized by the Convention, are herewith set forth.

Mr. LAMPSON: Now I suggest that the secretary read the article and section simply and then omit the text and read the explanation.

Mr. THOMAS: And I suggest that we approve or disapprove as we go along.

The PRESIDENT: The members will understand that this report gives the text of each amendment in its order and then follows the address.

Mr. LAMPSON: I suggest that if there is no objection at the conclusion of the reading of each statement that it be considered as adopted.

The PRESIDENT: Is there any objection to that?

Mr. HALFHILL: I want to discuss the preliminary portion of that report.

The PRESIDENT: The matter is open for discussion, and the member from Allen is recognized.

Mr. HALFHILL: I have not seen the report and I do not know whether I can repeat it correctly.

Mr. STILWELL: It occurs to me that in the first line of the resolution the word "Fourth" has been left out.

Mr. DOTY: It was left out purposely. This is a Constitutional Convention, not the Fourth Constitutional Convention.

Mr. STILWELL: Why do you refer to it later on?

Mr. DOTY: We ought not.

Mr. STILWELL: There is a mistake in one place or the other then.

Mr. HALFHILL: I move to strike out of the fourth paragraph of the address the following: "With hope of approval."

There are some parts of our work here which a number of us do not agree to. A majority of the work we hope will meet with approval, but all we have to do is to submit this matter to the people. I do not see any reason why we should put that argument in there, because there are some things that this Convention has done that I will not support, although I will support a majority of the amendments.

Mr. WINN: I hope those words will not be stricken out. It may be true that some of us will not support every change in the constitution or every addition to it, but it required a majority of those who constitute this body to enact any of these proposals, and that majority for that purpose becomes the Convention. We deal in majorities and when a majority of this Convention says it awaits with hope the approval by the people the Convention does it. I ask the yeas and nays on this and if a majority of the members want these words to remain I want them to go on record as saying so.

Mr. PECK: I move the previous question on this matter.

The main question was ordered.

The PRESIDENT: The question is on striking out the words "with hope of approval," and on that the yeas and nays have been demanded.

The yeas and nays were taken, and resulted—yeas 32, nays 65, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Norris,
Brattain,	Harter, Stark,	Nye,
Brown, Lucas,	Johnson, Williams,	Peters,
Brown, Pike,	Kehoe,	Pierce,
Cody,	Kerr,	Read,
Collett,	King,	Riley,
Colton,	Knight,	Stokes,
Crites,	Kramer,	Taggart,
Cunningham,	Malin,	Tallman,
Dunlap,	Miller, Fairfield,	Walker,
Dunn,	Moore,	

Those who voted in the negative are:

Baum,	Crosser,	Earnhart,
Beatty, Morrow,	Davio,	Eby,
Beyer,	DeFrees,	Elson,
Brown, Highland,	Donahey,	Fackler,
Cassidy,	Doty,	Farrell,
Cordes,	Dwyer,	FitzSimons,

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Fluke,	Kunkel,	Roehm,
Fox,	Lambert,	Shaffer,
Hahn,	Lampson,	Smith, Geauga,
Halenkamp,	Leete,	Smith, Hamilton,
Harbarger,	Leslie,	Solether,
Harris, Ashtabula,	Longstreth,	Stevens,
Harter, Huron,	Ludey,	Stilwell,
Henderson,	Marshall,	Tannehill,
Hoffman,	McClelland,	Tetlow,
Holtz,	Miller, Crawford,	Thomas,
Hoskins,	Miller, Ottawa,	Watson,
Hursh,	Okey,	Weybrecht,
Johnson, Madison,	Partington,	Winn,
Jones,	Peck,	Wise,
Keller,	Pettit,	Mr. President.
Kilpatrick,	Redington,	

So the amendment was lost.

Mr. LAMPSON: I do not know but what the word "Fourth" should come out.

Mr. CASSIDY: I think not. In the address to the people it is proper to let it remain.

Mr. LAMPSON: Then I withdraw the suggestion.

Mr. COLTON: I move that we insert the word "general" before the word "approval" so as to make it read "with hope of general approval."

The amendment was not agreed to.

Mr. STOKES: It seems to me that we should add at the end of the words "Constitutional Convention" the words "of 1912" and then eliminate the "Fourth". I move that as an amendment.

The PRESIDENT: The resolution has that date.

Mr. STOKES: Then I withdraw the motion.

The following part of the address was then read.

ARTICLE I.

SEC. 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

Under this amendment no change is made in the right or method of trial by jury in criminal cases, but if the law-making body so desires, provision may be made that in civil cases a verdict may be rendered in the event that not less than nine of the jurymen agree thereon.

Mr. DWYER: Should not that word "thereon" be "thereof"?

Mr. PECK: No; the word "thereon" is the best word.

Mr. DWYER: I am willing to let it go as it is then.

The PRESIDENT: The member doesn't insist on the change.

Mr. PIERCE: Take that article I, where it says "except that." Why would it not be well to just simply use the word "but" and strike out the words "except that"?

Mr. LAMPSON: A proposal cannot be amended. It is only the address that we are considering.

The PRESIDENT: That will be the ruling of the chair.

Mr. JONES: It occurs to me that the first word in this explanation is not a very appropriate one. The word is "Under". I think "By" would be better and I move that the change be made.

The motion was carried and the word "By" substituted for the word "Under".

Mr. HARBARGER: I call attention to the phrase "lawmaking body." Does that interfere with the initiative and referendum?

Mr. CASSIDY: No, sir. It could not. It covers both the legislature and the initiative and referendum.

The PRESIDENT: If there is no further objection the secretary will read the next portion of the report.

ARTICLE I.

SEC. 9. All persons shall be bailable by sufficient sureties, except those charged with murder in the first degree, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime. Until otherwise provided by law, persons convicted of crimes heretofore punishable by death shall be punished by imprisonment in the penitentiary during life.

The foregoing amendment, if adopted by the electorate of the state, will substitute life imprisonment for the death penalty. There will be no more legal executions in the state for crime of any kind.

The PRESIDENT: If there is no objection that will be considered as adopted.

The next portion of the resolution was read as follows:

ARTICLE I.

SEC. 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

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This amendment proposes:

First. That the number of persons to constitute a grand jury and the number necessary to concur in finding an indictment shall be determined by law. At present a grand jury is composed of fifteen persons, at least twelve of whom are necessary to concur in finding an indictment.

Second. Provision may be made by law for the taking by the accused and also by the state of the deposition of any witness whose attendance cannot be had at the trial. It is also provided in the amendment that if such depositions are taken, the means and the opportunity must always be secured to the accused to be present in person and with counsel at such taking and to examine the witness, whose deposition is so being taken, in the same manner as if present in court.

Third. This amendment further provides that if the accused fails to testify such failure may be considered by the court and jury and may be made the subject of comment by counsel, none of which may be done at present.

The PRESIDENT: If there is no objection that portion will be considered as adopted.

The next portion of the resolution was read as follows:

ARTICLE I.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Under our present system of procedure persons having debatable claims against the state must either have them allowed by the general assembly or must secure permission by special law to bring suit against the state. To simplify this and to prevent unnecessary legislation this amendment is proposed. If adopted, it will authorize individuals to bring suit, under general laws, against the state the same as against private persons.

Mr. PECK: I don't like that word "debatable", I think that ought to be "disputed."

The amendment was put in writing and read as follows:

Strike out the word "debatable" and insert in lieu thereof "disputed."

The amendment was agreed to.

Mr. HOSKINS: Does this convey the idea that legislation is necessary to confer that right, or is the right given by this article itself? I don't think the latter part is clear. The amendment says that the legislature shall provide the method of bringing suit. Will the amendment itself confer the right to bring the suit?

Mr. PECK: The amendment does confer that right.

Mr. STOKES: I offer the following amendment.

The amendment was read as follows:

Article I, section 16, strike out "under general laws," change period to comma at end of proposal and insert: "in such courts and in such manner as may be provided by law."

Mr. PECK: Those words "under general laws" should come out.

Mr. STOKES: Strike out the words "general laws" and leave it as it is then.

The SECRETARY [reading]: If adopted, it will authorize individuals to bring suit against the state the same as against private persons in such courts and in such manner as may be provided by law.

The amendment was agreed to.

The PRESIDENT: If there is no further objection the foregoing portion of the resolution will be adopted. The next portion of the resolution was read as follows:

ARTICLE I.

SEC. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

This amendment forbids the placing of any limit on the amount of damages recoverable for death by wrongful act or neglect of another. This same provision appears in the constitution of a number of states, and it has been the constitutional law of New York and Pennsylvania for years.

Mr. ROEHM: I had understood there was to be no argument made. I had prepared a very fine argument for Proposal No. 242, but I bowed to the will of the committee.

Mr. HOSKINS: I desire to have time to write out an amendment to strike out that sentence.

Mr. PECK: Notwithstanding that it is argumentative, I think that it is proper to go in there.

Mr. LAMPSON: It is not necessarily an argument either way. It is simply information.

Mr. PECK: And very proper information.

Mr. KING: Then you should put in the states in which there is a limitation.

The amendment of Mr. Hoskins was read as follows:

Strike out the last sentence beginning with the word "This".

Mr. HOSKINS: The sentence is clearly argumentative, and if we start in on that proposition we shall have no end to it. If we are going to give the states in which there is no limitation then we should give the states in which there is a limitation.

Mr. PECK: I do not think that follows:

The amendment was agreed to.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Article I, section 19a, after the word "recoverable" insert "in the courts,".

Mr. WINN: What words are left out by that Hoskins amendment?

The PRESIDENT: It leaves out the whole of the last sentence.

Mr. WINN: In the proposal the word "default" is used. It should be repeated in the explanation.

The amendment offered by Mr. Fackler was agreed to.

Mr. JONES: It occurs to me that the purpose of this proposed amendment should be stated in the explanation. The average voter will not know whether there is a limitation at present or not. It should be stated that this amendment is to remove the present limitation upon the right to recover.

Mr. PECK: I am quite of the opinion that this article explains itself as well as could be.

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Mr. WINN: I agree with the gentleman from Fayette, that that explanation should be rewritten. I move that the explanation to this portion be referred to a select committee of three to be appointed by the president to report as soon as possible.

Mr. CASSIDY: What has been read from the desk has been written by the author of the proposal, Mr. Anderson.

Mr. WINN: But all of the words have been taken out of it.

Mr. CASSIDY: It was his pet proposal and the committee didn't want to change any part of it.

The motion to appoint the committee was carried and the president appointed Mr. Winn, Mr. Hoskins and Mr. King on said committee.

The PRESIDENT: If there is no further objection the matter will be passed informally until the committee is ready to report and the secretary will read the next section.

The next section was read as follows:

ARTICLE II.

SEC. I. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

SEC. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the constitution proposed by initiative petition to be submitted directly to the electors."

SEC. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been

filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law proposed by initiative petition first to be submitted to the general assembly". Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved

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by the electors shall be subject to the veto of the governor.

SEC. 1c. The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

SEC. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

SEC. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

SEC. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

SEC. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereon shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both,

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for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it enacted by the people of the state of Ohio," and of all constitutional amendments: "Be it resolved by the people of the state of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

SCHEDULE.

The foregoing amendment, if adopted by the electors, shall take effect October 1, 1912.

The purpose of this amendment is to enable the people to propose amendments to the constitution, to propose laws to the general assembly for enactment and also to enable the electors to require any law passed by the general assembly to be submitted to a popular vote.

The amendment provides:

1. That if ten per centum of the electors sign a petition to be filed with the secretary of state proposing an amendment to the constitution, such proposed amendment shall be submitted to the electors at the next election held subsequent to ninety days after the filing of such petition. If the majority of those voting upon the proposed amendment vote in the affirmative, the amendment becomes a part of the constitution.

2. That if at any time not less than ten days prior to the commencement of any session of the general assembly three per centum of the electors shall sign

a petition proposing a bill and shall file the same with the secretary of state, it shall be transmitted by him to the general assembly. If the general assembly passes the bill as petitioned for, it shall become a law, subject always to the referendum as hereinafter defined. If the general assembly fails to pass the law petitioned for, or passes it in an amended form, a petition containing the signatures of three per centum of the electors in addition to the original three per centum may require the submission to the voters for approval or rejection of the law originally petitioned for, or as modified by any of the amendments proposed by the general assembly. If a majority of those voting on the proposed measure vote in favor of it then it shall become a law and the law passed by the legislature, if any, pursuant to the petition presented to the general assembly shall become void.

3. That at any time within ninety days after a law passed by the general assembly has been filed with the secretary of state, six per centum of the electors may sign and file with the secretary of state a petition demanding the submission of such law to the people at their next election for their approval or rejection. If a majority of those voting upon the measure vote against the same, it shall be void.

4. That laws providing for tax levies, appropriations for the current expenses of the state government and institutions and emergency laws necessary for the immediate preservation of the public peace, health or safety shall go into effect immediately if they receive a two-thirds vote of all the members elected to the general assembly.

5. That the initiative and referendum shall not be used to pass laws authorizing the classification of property for taxation or for the levy of any single tax on land or land values. It provides that the initiative and referendum powers are reserved to the people of each municipality to be exercised in the manner now or hereafter provided by law.

6. That each of one-half of the counties of the state must furnish the signatures of not less than one-half of the designated percentage of the electors of such county.

7. That a true copy of all laws or proposed laws or proposed amendments to the constitution and an argument for or against the same shall be prepared and mailed as far as possible to all of the electors of the state.

8. That if this amendment is approved by the people it becomes effective as an amendment to the constitution on October 1, 1912.

Mr. HALFHILL: I move that the statement be added that the proposal does not prohibit an initiative petition being filed for an amendment to the constitution so as to establish the single tax.

Mr. DOTY: I make the point of order that the amendment is not in writing.

The PRESIDENT PRO TEM [Mr. KILPATRICK]: Put the amendment in writing.

Mr. HALFHILL: I will write it out.

Mr. SMITH, of Hamilton: I move that the amendment be laid on the table.

Mr. DOTY: That motion is out of order because the gentleman is just reducing that amendment to writing and it is not an amendment until so written.

Mr. SMITH, of Hamilton: I insist that my motion shall prevail. I want to renew it after the amendment is written out.

Mr. DOTY: I make the point of order that the member has not the floor to make the motion. The gentleman from Allen has the floor.

The PRESIDENT PRO TEM: I thought we were going forward until he reduced it to writing, but if you

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so desire we can wait. The chair will rule, however, that we will wait until the gentleman from Allen has reduced his amendment to writing.

Mr. STOKES: I wish to offer an amendment in line four of section 1, which says "the next election." I want to add "regular or general election."

The PRESIDENT PRO TEM: You are out of order at this time.

Mr. CASSIDY: The committee had that matter up and decided to leave the words as they are.

The amendment by Mr. Halfhill was reduced to writing by this time and was read as follows:

Article II, section 1.

Add to the explanation: "The proposal does not inhibit the use of the initiative petition for the purpose of amending the constitution to permit the classification of property for taxation purposes or to establish the single tax or exclusive land tax."

Mr. PECK: I hope that amendment won't prevail. Why don't you say that this hasn't got the ten commandments in it?

Mr. HALFHILL: Parliamentary rules do not permit me to unceremoniously express myself on that.

Now, gentlemen, you ought at least be fair to yourselves, as well as to the electors of the state of Ohio. We introduced an amendment to the proposal whereby we attempted to prevent the use of the initiative petition for the purpose of amending the constitution so that you could either classify property or establish the single or exclusive land tax. Now, in the compromise the gentlemen on the other side of it had all the best of the arrangement. They have the proposal before you in form so it is an absolute failure to do what we attempted to do. It is so much of a failure that if time permitted I would like to read you what the single tax journals say about what we have done here. They make fun of it. They show that we have directed our attention to the single tax or exclusive land tax, that we have laid down in the face of the singletaxers and that we have done nothing except to inhibit the passing of a statute. Were I in favor of the uniform rule of taxation on property the way you gentlemen have voted here, I would be ashamed to go out to the people of Ohio with this sort of a milk-and-water proposition. Strike it out altogether, as the good brother from Summit [Mr. READ] proposes, or do something else. Don't be made the laughingstock of the singletaxers in this Convention and in the country at large. I tried to have the proposal amended. I failed in that, but at least let the people of Ohio know that you have submitted here that which provides only against the passing of statutory classification or statutory single tax. You ought to have put a constitutional inhibition in the proposal itself if you intended to do anything worth while, but inasmuch as you have not put it in there at least make a reasonable explanation of it. That is the situation. I maintain that on a question like taxation the sovereign power of the state ought to be exercised through the legislature, and I think that any constitutional amendment ought to be submitted through the legislature and not by initiative petition. That is where all the trouble has come from in Oregon, and while a good many of us may not realize

the distinction, yet it is very apparent that when you submit three or four constitutional amendments relating to taxation and submit them by initiative petition it is very easy to confuse the electors. Therefore, I think we ought to have put in this proposal the prohibition that no amendment to the constitution can be submitted except through the legislature, when such amendment relates to the great power of taxation. But we did not do that. Now at least be consistent enough to take both sides of the question. If you are going to refer to it at all state the whole situation.

Mr. STILWELL: What trouble do you refer to in Oregon?

Mr. HALFHILL: I refer to the forty-odd constitutional amendments to be submitted.

Mr. STILWELL: Do you object to the people doing that out there?

Mr. HALFHILL: Yes, I do, because I think these amendments should be submitted by the legislature and not by initiative petition.

Mr. CASSIDY: A point of order. What has all this to do with amending this report?

The PRESIDENT PRO TEM: The point is well taken and the gentleman will confine himself to the matter before the Convention.

Mr. DOTY: I rise to a point of order. The gentleman's time is up.

Mr. PECK: Is the time of the gentleman up?

The PRESIDENT PRO TEM: Yes; and I recognize the gentleman from Cincinnati [Mr. SMITH].

Mr. SMITH, of Hamilton: I move that the amendment be laid on the table.

Mr. HALFHILL: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 67, nays 28, as follows:

Those who voted in the affirmative are:

Beatty, Wood,	Harter, Huron,	Partington,
Beyer,	Henderson,	Peck,
Cassidy,	Hoffman,	Peters,
Cody,	Hursh,	Pettit,
Crites,	Johnson, Madison,	Pierce,
Crosser,	Johnson, Williams,	Read,
Davio,	Kehoe,	Roehm,
DeFrees,	Keller,	Shaffer,
Donahey,	Kerr,	Smith, Geauga,
Doty,	Kilpatrick,	Smith, Hamilton,
Dunn,	Knight,	Solether,
Dwyer,	Kramer,	Stilwell,
Earnhart,	Kunkel,	Stokes,
Elson,	Lambert,	Tallman,
Fackler,	Leete,	Tannehill,
Farrell,	Leslie,	Tetlow,
FitzSimons,	Ludey,	Thomas,
Fluke,	Malin,	Wagner,
Fox,	McClelland,	Weybrecht,
Hahn,	Miller, Crawford,	Winn,
Halenkamp,	Miller, aFirfield,	Wise,
Harbarger,	Moore,	Mr. President.
Harris, Ashtabula,		

Those who voted in the negative are:

Antrim,	Cunningham,	Lampson,
Baum,	Donlap,	Longstreth,
Beatty, Morrow,	Eby,	Marriott,
Brattain,	Evans,	Marshall,
Brown, Pike,	Halfhill,	Miller, Ottawa,
Collett,	Jones,	Norris,
Colton,	King,	Nye,

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Okey,
Riley,
Stalter,

Stevens,
Taggart,

Walker,
Watson.

So the motion to table was carried.

Mr. STOKES: I offer an amendment.

The amendment was read as follows.

After the word "next" in line 4 add "regular or general".

Mr. STOKES: These amendments can only be submitted at a regular or general election under the proposal.

The statement says that they can be submitted at the next election, which may be a special election, and that would be misleading. I put in the words "regular or general" to make the statement comply with the proposal.

Mr. CROSSER: When I drew this statement I had the words suggested by the gentleman from Montgomery, but upon further reflection the committee thought it was unnecessary to use the words "regular or general," because the people generally understand that the next election means the next general or regular election which shall follow, and this is in the proposal itself. Your position would be entirely well taken if it were not for that. I was thoroughly satisfied with the language as it is in this proposal and I do not think it is necessary to encumber the explanation with these words.

Mr. CASSIDY: And if they should go in there they would have to go in every place where the word "election" is used.

Mr. CROSSER: I move to lay this amendment on the table.

The motion was carried.

Mr. HURSH: I think it should be "each branch of the general assembly".

Mr. DOTY: No, sir; the general assembly is made up of two branches and we mean both branches.

The report of the committee was agreed to.

The PRESIDENT: We will take up No. 5, article I, section 19a, on which a committee was to make a report.

Mr. Hoskins submitted the following report:

The special committee reports the following amendment to the explanation to art. I, section 19a:

Strike out the explanation and insert the following:

Under the present constitution in a civil action for death caused by the wrongful act, neglect or default of another, the legislature may limit the amount of the recovery and has exercised that right. If this amendment is adopted, the law-making power can place no limit on the amount of recovery in such cases.

The report of the committee was agreed to and that portion of the resolution was agreed to as amended.

The next part of the resolution was read as follows:

ARTICLE II.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and,

with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

This amendment confers on each branch of the general assembly a power, not possessed by either under the present constitution, of securing information along all lines of proposed legislative action. In particular it grants authority to investigate alleged misconduct on the part of its members through the compulsory attendance of witnesses and the production of books and papers, or other evidence bearing on the case.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE II.

SEC. 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by the yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove

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any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

The amendment provides that a bill may be passed over the governor's veto by a three-fifths vote of all the members elected to each house instead of two-thirds as required at present, except always in the case of measures which by the constitution require a two-thirds vote on their original passage. The provision of the present constitution that a bill vetoed by the governor shall have as many votes in each house as it had on its first passage in order to be passed over the veto and become a law, is entirely omitted in the new amendment. Any item or items appropriating money may be vetoed and the remainder of the bill approved, as at present. Under the proposed amendment, when a bill is vetoed after adjournment of the general assembly it cannot be carried over to the next session as is now done.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE II.

SEC. 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

This amendment is necessary to permit laws to be passed securing to laborers, mechanics and sub-contractors their wages for work done and to materialmen the amount justly due them for material furnished. It is the prevailing opinion that under decisions of the supreme court of this state the general assembly has not the power at present to pass a mechanics' lien law which will furnish adequate protection for the persons named above.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE II.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

This amendment will permit the passage of humane laws in conformity with modern industrial development to improve the conditions of employment of men, women and children. In the absence of such a provision in our state constitution a number of such laws have heretofore been held void.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

SEC. 35. For the purpose of providing compensation to workmen and their dependents,* for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determin-

ing the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employes and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employes. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

This amendment provides that workmen who have been injured or have contracted a disease in the course of their employment, and the dependents of workmen who have been killed in such employment shall be cared for out of a fund maintained by the industries existing in the state and under state control and supervision.

Mr. WINN: I believe that is altogether misleading.

Mr. LAMPSON: I suggest that this be informally passed while the gentleman is examining it.

This was agreed to.

The PRESIDENT PRO TEM: If there is no objection this will be passed and we will take up article II, section 36.

The next part of the resolution was read as follows:

ARTICLE II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

This amendment confers on the law-making power of the state authority to encourage and promote forestry, to protect streams and lakes and to regulate the use of water power. Provision may also be made by law for the drainage of submerged and swamp lands and the regulation of the methods of mining, weighing and marketing all minerals.

Mr. HOSKINS: There is one important feature of the proposal that is not touched on in the explanation, and that is that lands devoted exclusively to forestry may be exempt from taxation. I feel that a full explanation of that proposed amendment ought to include in it that lands devoted exclusively to forestry purposes may be exempted from taxation because I think that is a very important feature of it. I favor it, but I concede that it might become a serious abuse, and the people ought to be informed about it.

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The PRESIDENT PRO TEM: Have you an amendment prepared to that effect.

Mr. HOSKINS: I have not, but I will prepare one.

The PRESIDENT PRO TEM: We will wait until you prepare it.

Mr. FITZSIMONS: Why not pass to the next?

The PRESIDENT PRO TEM: The secretary informs me that they cannot keep proper track of things unless they come consecutively.

Mr. HOSKINS: I have the amendment prepared now.

The amendment was read as follows:

Add to the end of the explanation the following:

"If this amendment is approved laws may be passed exempting from taxation in whole or in part lands devoted exclusively to forestry."

Mr. CASSIDY: We have been trying to get this down to the fewest possible words to save expense. That can be reduced considerably.

Mr. PECK: Oh, let it go.

Mr. TETLOW: The adoption of this amendment simply means we are reiterating the provisions that we are submitting to the voters. My idea of the proposition was that we were going to make these explanations of the proposal itself in a few brief words, and that under this explanation and to that end these explanations were drafted, and I am opposed to restating the proposal itself in the explanation. It seems to me that it is foolish to do so. Therefore, I move that the amendment be laid on the table.

Mr. HOSKINS: That is hardly fair. I would like to say a word. I voted for this proposal, but I do think this explanation should embrace the salient points of the proposal, and it does not do that now. I do not think it is fair to the people of the state not to have the explanation at least state substantially what is in the proposal.

Mr. LEETE: While the facts are that under this proposal certain lands can be exempted from taxation, yet to put that in a fair square way before the people, so that they can fully understand the provisions of it, would take a long explanation. Therefore I feel that it should be left out and for that reason I now move to lay the amendment upon the table.

Mr. HOSKINS: On that I demand the yeas and nays—no, I will take a division.

The amendment was laid on the table.

The next part of the resolution was read as follows:

ARTICLE II.

SEC. 37. Except in cases of extraordinary emergency, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise.

This amendment is made necessary by a decision of the supreme court of Ohio declaring unconstitutional the eight-hour law for public work which was passed by the general assembly in 1904.

The foregoing portion of the resolution was adopted. The next part of the proposal was read as follows:

ARTICLE II.

SEC. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

This amendment makes mandatory the passage of laws, for the removal from office, upon complaint and hearing, of all public officers for any misconduct in office involving moral turpitude or for other cause prescribed by law. It is in addition to impeachment. The foregoing part of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

This amendment will allow the general assembly at any time to enact laws giving to the courts power to name the experts in a criminal case, and to regulate the introduction of expert testimony in criminal cases.

Mr. HOSKINS: I move to strike out the entire explanation because it is simply a reiteration of the language of the proposal. If you want to follow the rule it should be stricken out. The amendment itself is fully as explanatory as the explanation.

Mr. CASSIDY: Some words should be put in there. It is not well to slight an amendment because you are against it.

Mr. JONES: I think the explanation is entirely proper. To the person reading the proposal the first inquiry suggested is, Cannot the legislature regulate expert witnesses now? Every lawyer will say it can, within certain limits. The object of this proposal was to enable the court to select the person who should act as an expert witness. It is contended and believed by many lawyers in Ohio that that cannot now be done, and the purpose of this was to provide for the legislature, if it desires, to have the court appoint or select the expert witnesses, or make a provision to that effect. It would be a great mistake to strike this explanation out, because the average person would not get any idea at all what the purpose of the amendment is.

Mr. HOSKINS: My reason for moving to strike the explanation out was not any objection to the explanation, but was based entirely upon the action of the Convention a moment ago in eliminating from the explanation of a proposal the most important thing in it. Just as some member said, when the voter goes to the polls he is going to look at your explanation more thoroughly than at the proposal itself. I believe that is true, and if you are going to rely upon that, and if you are going to ask the people of the state of Ohio to vote in ignorance upon the most important proposition, all right. All I want to know is the rule. In four words you can put down all that is necessary to put down on this proposal.

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"This amendment is self-explanatory." Then the person will go back and look at the proposal itself. If you are going to rely upon this explanation, then you are asking the people to vote to exempt forest lands from taxation without telling them that you are doing it. That is unfair. If you are trying to explain put in an explanation that does explain.

Mr. STALTER: It appears to me that the explanation is as broad as the proposal itself, because the proposal says the legislature may pass laws and it appears from the explanation that the people could do it by petition. I think the proposal is better than the explanation.

The motion to strike out the explanation was lost.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE II.

SEC. 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof, and for settling and determining adverse or other claims to and interests in; lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

The purpose of this amendment is to remove the constitutional objections found by the supreme court to exist against the adoption in Ohio of what is known as the "Torrens Land Title System" which has been in use in many jurisdictions for from fifteen to fifty years. Its principal features are:

1. Registering of the title in the name of the owner, upon his application and the decree of a court, and issuing to him a certificate of title good as against all the world.
2. The creation of a guarantee fund by fees to be paid by the applicants to register, out of which fund are made good the losses, if any, of persons who may be wrongfully cut out of interests in the registered land.
3. The registering in the registrar's office of all things which affect the title as they occur from time to time after registration, and the noting of these, upon request, on the duplicate certificate held by the owner.
4. The issuing of new certificates of title by the registrar upon each sale and transfer of land.
5. Registration is voluntary upon the part of owners of land. When a title is once registered no further abstracts or examinations of the title are necessary.

Mr. WATSON: I offer an amendment.
The amendment was read as follows:

Strike out the first paragraph of the explanation the following: "which has been in use in many jurisdictions for the past fifteen to fifty years."

Mr. WATSON: That is in line with what we have been striking out, anything argumentative. I think this should be stricken out.

Mr. JONES: I do not think it is in any way argumentative. It is merely a statement of fact, in reference to the system. When this reaches the eye of the average voter he will not understand what the Torrens system is. He will not understand whether it is entirely new or whether it has been tried in other places, and it is fair to the voter to let him know that it has been tried in other places for fifteen to fifty years. I therefore move to lay the amendment on the table.

The motion was lost.

Mr. DOTY: I apprehend that this is what is going to happen on this particular question: To any of you who may find it necessary or proper to address public meetings on the work of this Convention, when you come to this proposal, the very question will be asked you, "Has the Torrens system or this system been used anywhere else?" Why is it improper for the Convention to answer that question and proper for a member to answer the very natural question that will arise in the minds of the voter? I cannot see why we cannot state what is the fact, if it is a fact, and I understand it is.

Mr. HARRIS, of Ashtabula: I want to develop some information on this matter. This so-called Torrens land system was enacted into law by the legislature and held to be unconstitutional. In its history it is supposed to have originated in Australia where the Australian ballot came from. It was introduced in this country by way of the British Possessions of the Northwest. I cannot say anything about its introduction into the United States, but as long as we are in the line of informing members who are to speak in furtherance of the matter, I think we ought to get all the information that we can.

Mr. PECK: What is before the Convention?

The PRESIDENT PRO TEM: The amendment offered by the gentleman from Guernsey.

Mr. PECK: I thought we had voted on that.

The PRESIDENT PRO TEM: No; a motion to table it was voted on and the motion was lost. The gentleman from Cuyahoga [Mr. Doty] has one minute more time.

Mr. WATSON: I don't like that word "jurisdiction"; is that a proper word?

Mr. DOTY: "Jurisdiction" is a blanket word. It means the state or county or municipality or most anything. It is any part of the government that does something. I have no objection to changing it if you can suggest a better word.

Mr. CASSIDY: Just a word or two with regard to this explanation. I do not know of any proposal outside of the municipal home rule, or perhaps the liquor proposal, that gave the committee more trouble and more anxiety than the explanation of this particular proposal. Mr. Jones, the author of the proposal, furnished a very clear historical account of the former law, its being held unconstitutional, the volume and page, and some other data. We were afraid that under the terms of the resolution we could not incorporate all that Mr. Jones furnished us in his explanation so we reduced it as much as we could. We did endeavor to make such an explanation as would enable the average voter to understand something about what the Torrens land system means or what it would mean if adopted in Ohio. We did not strike out that part—"from fifteen to fifty years"—because we knew the question would immediately occur to any voter voting on the amendment, "Has this thing ever been tried?"

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and we allowed that to go in to make an answer to that very obvious question.

Mr. NORRIS: Does the fact that it was used in Australia explain the nature of it?

Mr. CASSIDY: We don't know where it was used. We say it has been used.

Mr. NORRIS: Does the fact that it has been used explain the proposal?

Mr. CASSIDY: No, sir.

Mr. NORRIS: Then is it not argumentative to say it has been used some place else for from fifteen to fifty years and therefore it is a good thing to use here because it has been used some place else?

Mr. CASSIDY: Not necessarily.

Mr. NORRIS: Is not that an argument? That is not an explanation of the proposal, and what else can it be but an argument?

Mr. CASSIDY: It was just a bald statement of fact, that it has been tried.

Mr. PETTIT: I demand the previous question.

The main question was ordered.

The PRESIDENT: The question is on the amendment of the member from Guernsey.

The amendment was agreed to.

Mr. KNIGHT: It seems to me that the explanation should contain a statement, in view of what is already there, that the adoption of the amendment does not require the abolition of the present system of recording land titles. I therefore offer an amendment.

The amendment was read as follows:

At the end of the explanation add: "The adoption of this amendment will not abolish nor require the abolition of the present system of recording land titles and transfers."

Mr. NYE: It seems to me that explanation expresses a good deal of opinion. It is my understanding that we could just give a short statement of facts. It seems to me that if that explanation goes in there should be a statement that to register titles there will have to be a proceeding in court to quiet the title and a decree quieting the title.

Mr. JONES: Did you observe that the very thing you mention is incorporated in the first paragraph of the statement, "registering of the title in the name of the owner upon his application and the decree of a court?"

Mr. NYE: It seems to me it is indistinct and imperfect and very misleading to the public. It ought to be amended to show that every party who is entitled to register his land has to have a proceeding in court and a trial in court for the purpose of getting his title registered.

Mr. KRAMER: And would it not be altogether fair to put in that statement that it would cost every owner probably from \$25 to \$150 to get it registered?

Mr. NYE: That is true, but whether it can go in I do not undertake to say. It ought to show that everybody who gets his title registered must go into court and have a proceeding in court.

Mr. HOSKINS: I call attention to section 40 of article II and the explanation. The explanation goes on to say that it is to be the Torrens land system and that it is not mandatory but voluntary, and a lot of other arguments for the proposition, whereas the proposal itself

does not contain anything of the sort and there might be forty other systems devised by the legislature.

Mr. DWYER: I want to ask the gentleman from Fayette one question: In the transfer of real estate under your system does the certificate show the consideration—the purchase price?

Mr. JONES: It may or may not.

Mr. DWYER: The taxing officer should know that.

Mr. JONES: That is a matter of detail that the legislature will provide for.

The foregoing portion of the resolution as amended was adopted.

The next portion of the resolution was read as follows:

ARTICLE II.

SEC. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the state of Ohio, and such goods made within the state of Ohio, excepting those disposed of to the state or any political sub-division thereof or to any public institution owned, managed or controlled by the state or any political subdivision thereof, shall not be sold within this state unless the same are conspicuously marked "prison made". Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof.

This amendment will eliminate the element of private profit from the labor of inmates of the prisons and reformatories of Ohio. It will permit the employment of prisoners, in the production of things needed by any state, county or municipal institution. It will also compel the conspicuous marking as "Prison Made", of all goods offered for sale in this state which have been made in prisons outside of Ohio.

The PRESIDENT PRO TEM: Without objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE III.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

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The object of this amendment is to restrict the general assembly in special session to the consideration of such business only as may be stated in the proclamation under which it was convened, or as may be submitted to it by any further proclamation which the governor may issue during such session.

The PRESIDENT PRO TEM: Without objection the foregoing portion of the resolution will be adopted. The next part of the resolution was read as follows:

ARTICLE IV.

SEC. 1. "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmation of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmation of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be

prevented from invoking the original jurisdiction of the supreme court.

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions, shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof, and the circuit court shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its records to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judge-

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ment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court.

Under the existing judicial system which this amendment proposes to change, an action first tried in the court of common pleas, is carried thence to the circuit court for review, and thence to the supreme court for the same purpose, and either of the two courts may reverse the judgment and send it all back to the beginning in the court of common pleas. The proposal is to shorten that process by converting the circuit court into a court of appeals of three judges, and providing that its judgment in ordinary cases shall be final. This reduces proceedings to "one trial and one review," and eliminates the expensive proceeding in the supreme court with its long delay due to the overcrowded condition of the docket of that court, and will leave that high tribunal with work enough to occupy its time fairly, and permit it to dispose of its cases with greater promptness. A chief justice is added to the supreme court with power to direct the movements of the judges of the inferior courts so as to place them where they are most needed. No other new judge of any sort is created by this amendment and no one is legislated out of office. Cases involving constitutional questions may be carried directly from the court of appeals to the supreme court, but the latter can not reverse the former and hold a statute unconstitutional if more than one of its judges object, but a judgment of the court below holding a statute unconstitutional, may be affirmed by a majority of the supreme court. The latter may also cause any case of public or great general interest to be certified up to it from the court of appeals, for final decision. This is a practice akin to that which prevails in the supreme court of the United States and in fact the system proposed is modeled upon the federal system which has been operating with much success for the past twenty years.

The foregoing portion of the resolution was adopted.

The next part of the resolution was read as follows:

ARTICLE IV.

SEC. 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein.

SEC. 7. There shall be established in each county, a probate court, which shall be a court

of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per centum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined.

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years.

SEC. 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

SCHEDULE.

"If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and sub-division thereof, until one resident judge of the court of common pleas is elected and qualified therein.

The changes in sections 3, 7, 12 and 15 of article IV, are intended to abolish the nine common pleas districts designated in the constitution and all existing sub-divisions thereof; to make an election district of each county which shall have at least one common pleas judge who shall be elected and reside therein during his term. The common pleas judges are to be state officials and where their services are needed outside of their own county, they may be assigned for duty by the chief justice of the supreme court. If a judge is disabled by illness or disqualified to try a case by reason of interest or prejudice or otherwise, some other judge may be assigned to his place. The proposed change will add only twenty-two common pleas judges to the present number in the state; but

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as counties of less than sixty thousand population are authorized to combine the probate court with the court of common pleas, it is thought the increase will not be quite that many. The constitution forbids the general assembly to subdivide a common pleas judicial district into less than three divisions, and the unequal growth of counties in population and business makes these restrictions work great hindrances and delays in the trial of causes in many counties of the state. Other proposed changes in sections 1, 2 and 6 of article IV, will add materially to the volume of work to be done by the common pleas judges, and there will be greater need than at present for at least one resident judge in each county, and such additional number for the larger counties as may be authorized by the general assembly. No change is made in the probate court except in counties having a population of less than 60,000 in which the voters so desire.

Mr. KING: I move to strike out the word "nine" in the first line. While that is the number of common pleas districts now by the constitution, the constitution has given the legislature the right to provide others, and this provision should be stricken out.

The amendment was agreed to.

Mr. NYE: I think a word should be put in here to show that it is the old constitution and not the one that is being adopted here.

Mr. DOTY: Is not the constitution now the present constitution and is it not going to be enforced all of the time up to six o'clock on election night?

Mr. NYE: I suppose so.

Mr. DOTY: Then is it not the present constitution? The constitution of 1802 was the old constitution.

Mr. NYE: Somebody might be misled by referring to this part of the constitution that we are now adopting.

Mr. DOTY: I don't see how they could.

The PRESIDENT PRO TEM: If there is no other objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE IV.

SEC. 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law. Their term of office shall be for four years and their powers and duties shall be regulated by law: provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise, jurisdiction in such township.

SCHEDULE.

If the amendment to article IV, section 1, 2 and 6, be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing amendment, if adopted, shall be of no effect.

This amendment prohibits the election of justices of the peace in municipalities where municipal courts, other than mayor's courts, have been or may be established. It applies only to certain large cities.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

Mr. MOORE: I move a reconsideration of the vote by which the explanation of section 41 of article II was accepted. I would like to have in that explanation that convict labor can be used in the building of public roads. I think that is important and I have an amendment to that effect.

The motion to reconsider was carried.

Mr. MOORE: I now offer an amendment to section 41 of article II.

The amendment was read as follows:

Insert after the word "institution" the words "or in the building of public roads."

Mr. DOTY: I would like to ask a question. I am in favor of the amendment, but do you think this amendment is necessary?

Mr. MOORE: It explains the matter thoroughly and shows that prison labor can be put on the public roads.

Mr. DOTY: Therefore it is a good argument in favor of it?

Mr. MOORE: If you want to take it that way.

Mr. DOTY: I am not trying to criticise the member, but I want to bring out the fact. We voted down a statement of fact on another proposal. I am in favor of this, but it seems that we are reversing ourselves.

Mr. HOSKINS: Is it not a fact that the statement of the member is an argument against the proposition?

Mr. DOTY: It would not be to me.

Mr. HOSKINS: Would it not be to a great many of the people?

Mr. DOTY: I don't know.

Mr. HOSKINS: Is it not a statement of fact that can be used, and will not a lot of people vote against it on that account?

Mr. DOTY: It might be in your county. Are you in favor of the democratic platform adopted yesterday?

Mr. HOSKINS: Yes.

Mr. DOTY: Did you notice it was in favor of the short ballot?

Mr. HOSKINS: Yes, and that short ballot referred to the tail-end of the ballot—not to Cleveland or Cincinnati.

The PRESIDENT PRO TEM: Does the member from Muskingum [Mr. MOORE] yield to this discussion?

Mr. MOORE: Yes.

Mr. HOSKINS: I rise to a question of personal privilege. It was specifically limited to the tail of the ticket and didn't refer to the offices in Cleveland or Cincinnati.

Mr. LAMPSON: May I inquire what all this has to do with the unit rule?

Mr. HOSKINS: Just as much as the fight between Taft and Teddy.

Mr. NORRIS: Might not that platform be construed as wanting to make short work instead of short ballot?

Mr. MOORE: The interest in the country over the employment of prison labor is not so intense as in the city. Country people don't care so much about it and I want to attract their attention to this use of prison labor. I think the putting of this amendment in there will be a good thing.

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The amendment was agreed to and the explanation as amended was adopted.

The PRESIDENT PRO TEM: If there is no further objection the foregoing portion of the resolution will be adopted.

The next part of the report was read as follows:

ARTICLE IV.

SEC. 21. Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating proceedings in contempt, and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in such controversies shall, upon demand, be granted a trial by jury as in criminal cases.

This amendment provides that laws may be passed prescribing rules and regulations for the conduct of cases and business of the courts, and further provides that no injunction shall be issued in labor disputes except to protect physical property, and that persons charged with contempt shall be entitled to a trial by jury.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE V.

SEC. 1. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he or she resides such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

This amendment takes out of article V, section 1, of the present constitution two words, which are, "white male," the purpose being to give the women of the state the right to vote on the same conditions under which the suffrage is exercised by men.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE V.

SEC. 1. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he resides, such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

SCHEDULE.

If the amendment to article V, section 1, to the constitution—woman suffrage, be adopted by the electors and become a part of the constitution, then the foregoing amendment, if adopted, shall be of no effect.

This amendment takes out of article V, section 1, the one word "white". Its adoption is desirable, in case the woman's suffrage amendment should be defeated, to make the state constitution conform to that of the United States.

The object in adding the schedule is to make the foregoing amendment unnecessary in case the woman's suffrage should be ratified by the electors.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE V.

SEC. 2. All elections shall be either by ballot or by mechanical device, or by both, preserving the secrecy of the vote. Laws may be enacted to regulate the preparation of the ballot and to determine the application of such mechanical device.

This amendment permits laws to be passed authorizing the use of ballots or voting machines at elections. Under a recent decision of the supreme court of this state voting machines can not be used for the reason that the constitution now requires all elections to be by ballot.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

Mr. COLTON: I move that the vote whereby the explanation of section 1, article V, was adopted be reconsidered.

The motion was carried.

Mr. COLTON: I now move to amend the explanation to the proposal by striking out the word "white". I have no objection to the word, but it is an argument. Strike out the last sentence of the first paragraph.

Mr. DOTY: A good argument.

Mr. PECK: There is another reason for striking out that word. It does not confer any rights on any body.

The amendment was agreed to and the portion of the resolution was again adopted.

The next part of the resolution was read as follows:

ARTICLE V.

SEC. 7. All nominations for elective state, district, county and municipal officers shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers or municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

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Under this amendment all nominations for offices of the state or any subdivision thereof having a population of over two thousand, must be made by primary election. But nominations for offices in districts with a population less than the number named are not so made unless the qualified electors thereof so desire. It is further provided that all delegates to national conventions of the different political parties are to be chosen by primary and provision is made for a preferential vote for United States senator and also to require that candidates for the office of delegate to national conventions shall state their preferences as between different candidates for the presidency.

Mr. TANNEHILL: According to the plan we are pursuing I would like to add as exhibits A and B the records of the two recent state conventions, in one of which they jammed down the obnoxious unit rule and in the other of which they perpetrated highway robbery.

Mr. DOTY: Is there anything in this proposal to show that we are not going to have the unit rule or to jam something else down somebody's throat?

Mr. TANNEHILL: How can you jam anything down anybody's throat in a state convention if there is no state convention?

Mr. KING: I rise to a point of order. The gentlemen are not discussing anything before the Convention.

Mr. STOKES: I offer an amendment.

The amendment was read as follows:

At the end of the first sentence strike out the period, insert a comma and add "or by petition."

The amendment was agreed to and the foregoing portion of the resolution was adopted.

The next part of the resolution was read as follows:

ARTICLE VI.

SEC. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

This amendment, if adopted, will give the law making body of the state complete control over the organization and administration of the state's public school system, and is designed to make clear that local communities cannot destroy the unity of the state system.

The second part of the amendment applies to city school districts only, and allows the electors of each city district to determine, as shall be provided by law, the size and organization of its board of education. The powers of such city boards of education are not enlarged by this amendment.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE VI.

SEC. 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the

governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

If the foregoing amendment be adopted by the electors it shall take effect and become a part of the constitution on the second Monday of July, 1913.

This amendment provides for a more effective supervision of the public school system of the state, by creating the office of superintendent of public instruction as one of the state executive departments. At present there is no provision in the constitution on the subject, the state commissionership of public schools being a statutory office subject to abolition at any time by the general assembly. The new office provided in this amendment will be appointive by the governor and the term will be four years. The amendment, if adopted will take effect July 1st, 1913, at which time the first superintendent of public instruction will take the place of the commissioner of common schools, whose term expires on that date, and the latter office will then cease to exist.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out "July 1st, 1913." and insert "on the second Monday of July, 1913."

The amendment was agreed to.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next part of the resolution was read as follows:

ARTICLE VIII.

SEC. 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever: provided, however, that laws may be passed to contract debts and authorize issues of bonds to an amount which in the aggregate of all issues shall not exceed fifty million dollars for the purpose of constructing, rebuilding, improving and repairing a system of inter-county wagon roads throughout the state. Not to exceed ten million dollars of such bonds shall be issued in any one year, and there shall be levied and collected annually by taxation an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their redemption at maturity, and laws shall be passed to provide for the maintenance of said roads. Such wagon roads shall be determined under general laws and the cost of constructing, rebuilding, improving, re-

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pairing and maintaining the same shall be paid by the state. The provisions of this section shall not be limited or controlled by section 6, of article XII.

Section 1, article VIII, of the constitution limits state indebtedness to seven hundred and fifty thousand dollars.

This amendment raises the limit of indebtedness for the specific purpose of constructing, rebuilding, improving and repairing a system of inter-county wagon roads, to fifty million dollars, and, if adopted, will authorize legislation providing for an issue of state bonds, not to exceed, in the aggregate of all issues, fifty million dollars. Not more than ten million dollars in bonds can be issued in any one year. The cost of constructing and maintaining this system of inter-county wagon roads shall be paid by the state and provision shall be made for the redemption of said bonds. The object is to authorize and empower the state to construct and maintain an inter-county system of permanent wagon roads, the cost of which shall be levied upon the entire tax duplicate.

Based upon statistics given by the Ohio tax commission and computing interest and sinking fund charges on fifty million dollars at three and one-half per cent., on thirty-five year bonds, issued in amounts of five million dollars each year, the proportion of the tax, on account of such bonds, borne by the different classes of property within the state will be as follows:

	Duplicate.	Proportion.
		per cent.
Real estate in cities and villages.....	\$2,544,547,115	41.0
Farm lands	1,676,590,965	27.1
Public utilities	912,862,833	14.7
Banks	174,693,439	2.8
Personal property	891,437,728	14.4
State tax duplicate.....	\$6,202,132,080	100.0
Average per capita cost per year, 53 cents.		
Average annual tax on each \$1,000:		
For first 10 years, 26½ cents.		
For next 10 years, 43 cents.		
For the last 10 years, 20 cents.		

Mr. DOTY: I move that where it says \$50,000,000 it be printed in great big black type.

Mr. LAMPSON: No objection at all. All I want is for the people to be fully informed.

Mr. DOTY: What is that mass of figures at the end?

Mr. LAMPSON: They are interesting and you can use them on the one side or the other. They are matters about which the voters will ask. They are material whether regarded as an argument or not; they are for or against; they have bearing on the subject. I understand discussion as to that matter is going on over the state now.

Mr. HOSKINS: A few minutes ago the member from Logan [Mr. CASSIDY] said they were trying to save money and he raised an objection to about four words that someone wanted to put in to tell the truth about a proposal so that the people might know the truth. Now we have a whole column of figures that the state is going to have to pay for and it seems to me they ought to be omitted.

Mr. LAMPSON: Doesn't the gentleman think after all that a matter involving \$50,000,000 might well deserve a column of figures?

Mr. HOSKINS: Comparatively speaking this is not as important a matter as exempting a whole lot of property from taxation and not telling the people that you are going to do it.

Mr. LAMPSON: If the gentleman will examine the table he will find that he can use it on one side just as well as on the other.

Mr. DOTY: That may be a good thing and it may be that it ought to stand, but is there any place where we are paying taxes per capita?

Mr. LAMPSON: You can strike that out if you want to.

Mr. PIERCE: I move to strike out all after the first paragraph beginning with the words "Based upon".

Mr. LAMPSON: I don't think that amendment ought to prevail. This gives the voter a lot of information in a compact form upon a proposition involving \$50,000,000.

Mr. PIERCE: Perhaps it does give a great deal of information. I could have given a great deal of information on my proposal too, but I was limited to three hundred words and I was told that there could be no argument for or against.

Mr. LAMPSON: This is limited to three hundred words.

Mr. PIERCE: The gentleman does not confine himself to the rule though. He makes an argument, which he says can be construed for or against. I think this should be stricken out.

Mr. BROWN, of Highland: I hope this amendment will be voted down. These figures are important. This is a popular movement. It is in the interest of all the people and full explanation ought to be given. I don't see why anybody can object to this explanation.

Mr. HARRIS, of Ashtabula: I hope this amendment will not prevail. There is a good deal of force in the suggestion urged that this is something entirely new in the history of Ohio. The very points that are brought out there will be brought out in the discussion of this question in public meetings and the orators will bring them out. Everybody will want this explanation, and if it is not given here it will have to be given by the orators and speakers all over the state.

Mr. DOTY: I think these figures should stay in as a matter of education on taxation. It looks to me as if it were worth while to publish these figures so that the people may know where they are coming out on this thing. For instance, those who own bank stock and personal property ought to know that they are going to be taxed as much as these figures show the proportion to be for the purpose of increasing the property of somebody else, because the full effect of the value of these roads will be reflected not upon personal property, not upon banks or upon public utilities, but entirely upon land values. The owners of the present land values are going to get all the benefit of this \$50,000,000, and therefore the amendment should not prevail, so that we may all know just how much the owners of land values are going to get.

Mr. HALFHILL: Will you yield to a question?

Mr. DOTY: Yes; I won't dodge it as you have been in the habit of doing.

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Mr. HALFHILL: Suppose the merchant and the banker make profits in their business—

Mr. DOTY: All of the profit will go to the land owner.

Mr. HALFHILL: You are a singletaxer?

Mr. DOTY: You bet I am and these figures ought to be published so that there would be more singletaxers, as you will be if you will take three evenings to study the subject.

Mr. BROWN, of Highland: If it costs ten cents to move a ton on good roads and costs on a bad road twenty-five cents to move that ton, who suffers? Does the man who produces or the man who buys pay it?

Mr. DOTY: I don't think anybody suffers so far as that is concerned.

Mr. BROWN, of Highland: But who has to pay it?

Mr. DOTY: Of course, the consumer.

Mr. FACKLER: I rise to a point of order. The discussion is not on the matter that is before us.

Mr. DOTY: I think the gentleman was out of order, but I was not.

Mr. BROWN, of Highland: The gentleman's time is up.

Mr. DOTY: I was calling attention to the fact that this gives us some very good information. As the member from Ashtabula says, it may be used both for and against good roads. I shall use it in favor of good roads, but I want these figures so that I can have them at hand. Then if somebody gets up and tries to put me in a hole by asking me, "Are you in favor of the landowner getting all of the benefit?" I will know what I am doing. These figures don't show exactly, but they show approximately, who is getting the benefit of this. That is not the reason why we should not have good roads—because under fool laws somebody gets the whole benefit—but I do not want somebody to get up and say that the landowner is not getting all of the benefit. He is going to get it and he always does. He has never failed yet, and I am not talking about the farmers being the only landowners. They always bring that up, that the farmer is the landowner. The farmer owns very little land value. He owns mostly labor value.

Mr. WINN: Do you say that if a man does not own any land that he does not receive any benefit from good roads?

Mr. DOTY: I didn't say that. I said the value of that benefit would be reflected back on the land value.

Mr. WINN: You said the landowner would receive all the benefit.

Mr. DOTY: I meant the value. I meant that the usefulness of good roads is reflected back in the value and that value goes into land value.

Mr. LAMPSON: And that may be land value all over the state.

Mr. DOTY: Land value is going to get the value of all of that.

Mr. LAMPSON: It will get on the tax duplicate.

Mr. DOTY: I have my doubts. I hope so, but it will not increase the value of bank stocks or utilities or personal property, and yet they have to pay on the basis of that ownership.

Mr. LAMPSON: Don't you think the value of bank stocks has been going up reasonably well?

Mr. DOTY: Not on account of good roads, but rather on account of some other fool laws that I can name.

Mr. MARRIOTT: I move the previous question.

The main question was ordered.

The PRESIDENT PRO TEM: The question is on the adoption of the amendment offered by the gentleman from Butler.

Mr. PIERCE: On that I demand the yeas and nays.

Mr. BROWN, of Highland: I move to lay the amendment on the table.

The PRESIDENT PRO TEM: The previous question has been ordered and the motion is out of order. The secretary will call the roll on the motion to strike out.

The yeas and nays were taken, and resulted—yeas 25, nays 61, as follows:

Those who voted in the affirmative are:

Baum,	Hoffman,	Marshall,
Beatty, Morrow,	Hursh,	Moore,
Brown, Pike,	Johnson, Williams,	Pierce,
Cody,	Jones,	Shaffer,
Earnhart,	Kehoe,	Smith, Hamilton,
Fluke,	Keller,	Stevens,
Halenkamp,	Knight,	Taggart,
Harbarger,	Kunkel,	Watson.
Harter, Huron,		

Those who voted in the negative are:

Antrim,	Harris, Ashtabula,	Okey,
Brown, Highland,	Henderson,	Peck,
Collett,	Holtz,	Pettit,
Colton,	Johnson, Madison,	Read,
Cordes,	Kerr,	Riley,
Crites,	Kilpatrick,	Rorick,
Crosser,	King,	Smith, Geauga,
Davio,	Kramer,	Solether,
Donahay,	Lambert,	Stilwell,
Doty,	Lampson,	Stokes,
Dunlap,	Leete,	Tallman,
Dunn,	Leslie,	Tannehill,
Dwyer,	Ludey,	Tetlow,
Elson,	Malin,	Thomas,
Evans,	Marriott,	Wagner,
Fackler,	McClelland,	Walker,
Farrell,	Miller, Crawford,	Weybrecht,
FitzSimons,	Miller, Fairfield,	Winn,
Fox,	Miller, Ottawa,	Wise,
Hahn,	Nye,	Mr. President.
Halfhill,		

So the amendment was not agreed to.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

The next portion of the resolution was read as follows:

ARTICLE VIII.

SEC. 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed provid-

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ing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

This proposed amendment will permit public property to be insured in mutual insurance associations, a right which has been questioned under the present constitution. Mutual insurance will thus be placed on an equality with all other kinds and the state will also be authorized to regulate insurance rates.

Mr. DOTY: I think that says if this is adopted it will place insurance upon an equality. Now that is not true. I think that is too strong an expression to be used.

Mr. KNIGHT: The "same basis" might be better. By unanimous consent this change was agreed to.

Mr. HOSKINS: I want to criticise the member from Cuyahoga. His statement seems to be unfavorable to mutual insurance companies. I think he must be an agent for an old-line fire insurance company.

Mr. DOTY: I would like to correct the member from Auglaize while we are in the correcting business. I would like to read this which is a part of the democratic platform—

Mr. FACKLER: I rise to a point of order. Democratic platforms are out of order here.

Mr. DOTY: If I have the floor I have a right to read anything I want to for the purpose of correction.

Mr. WINN: Mr. Doty has had the floor all day. Will he not kindly let someone else have a chance?

Mr. PECK: What are you trying to correct?

Mr. DOTY: Correct the member from Auglaize, who made a misstatement.

Mr. PECK: Well what difference does it make whether he is correct or not?

Mr. DOTY: This is important. This is a plank of the democratic platform which the gentleman from Auglaize favors.

Mr. PECK: This ribald discussion of the democratic platform is rasping on one of proper sensibilities.

Mr. HOSKINS: If you read part of the platform will you allow me to read it all?

Mr. DOTY: I will allow you to do anything you want when you get the floor. Here is one thing that the democratic platform stands for: "A short ballot in the selection of administrative officers as a means for insuring greater scrutiny in the selection of public officials and for fixing and centralizing responsibility."

I contend that does not agree with the statement that the gentleman made less than an hour ago, and I stand here and correct him.

Mr. DWYER: As equally pertinent I move an amendment to this resolution as follows:

Resolved by the republican party, That we are so badly off that we do not want to make any nominations until after the Chicago convention.

DELEGATES: Agreed.

Mr. MILLER, of Crawford: I object to having these explanations of the political platforms in our proceedings.

Mr. WINN: "This proposed amendment will permit public property to be insured by mutual insurance associations and companies, a right which has been questioned under the present constitution." That is about as false a statement as could be made. This only purports to authorize insurance of public property by mutual insurance associations. Besides, that statement is misleading in other respects. From the reading of it you would think that is the only thing dealt with. It is a reenactment of the present part of the constitution with some additions. It seems to me as though particularly that part is a misstatement which says, "In this respect mutual insurance will thus be placed on the same basis with all other kinds."

Mr. MILLER, of Crawford: That is with reference to insuring public property.

Mr. WINN: It should be so stated.

Mr. MILLER, of Crawford: It is so stated.

Mr. WINN: Then it wasn't read.

Mr. PECK: I move to strike out all of that last sentence.

Mr. WINN: It should also include the word "companies" as well as "associations." It authorizes those having the matter in charge to insure public property in mutual companies or mutual insurance associations both, but it certainly does not put mutual associations on an equality with other companies.

By unanimous consent "and companies" was inserted after "associations."

Mr. WATSON: I move that that be sent to a committee of three to straighten the tangles out.

Mr. CASSIDY: I hope the amendment will not prevail because the last sentence calls attention to the fact that this amendment gives the state authority to regulate insurance rates.

Mr. PECK: Read the whole of it.

Mr. CASSIDY: "Mutual insurance will thus be placed on the same basis—"

Mr. PECK: But the first part is not true, that mutual insurance companies will be thus placed on the same basis as other companies.

Mr. WINN: If you put in "in this respect", it will be all right.

Mr. MILLER, of Crawford: That is entirely satisfactory.

Mr. CASSIDY: We will put in that amendment.

The SECRETARY: If that is agreed to it will read "In this respect mutual insurance will be placed on the same basis with all other kinds and the state will also be authorized to regulate insurance rates."

This was agreed to.

Mr. HOSKINS: The word "associations" will not do. There is a difference between an association and a company. It would be very unfair. I would suggest that it would be a good idea to adopt the suggestion of the member from Guernsey. This matter will attract a great deal of attention and we do not want anything except something that can be thoroughly understood.

Mr. HALFHILL: In the interest of accuracy that last statement ought to be stricken out because the state is now authorized to regulate insurance rates, and always has been authorized, and the statement in that respect is not true. There has never been anything else existing in our memory.

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Mr. BROWN, of Highland: It has been a purely statutory provision and not a constitutional one. If it is a constitutional provision it would be well enough to refer to it.

Mr. HALFHILL: The legislature has always had and exercised that right in the state of Ohio. This is nothing but a duplication.

Mr. SHAFFER: You know that the last part of the proposal adds "laws shall be passed providing for the regulation of all rates."

Mr. HALFHILL: Yes.

Mr. PECK: Your criticism goes to the proposal itself.

Mr. HALFHILL: That is a mere statement of the power which the state of Ohio has always been able to exercise.

The PRESIDENT PRO TEM: The question is on the adoption of this part of the resolution.

The foregoing part of the resolution was adopted.

Mr. DOTY: For the purpose of making the motion to refer Resolution No. 134 to the committee on Employes I move that the further consideration of this resolution be postponed until 5:40.

The motion was carried.

Mr. DOTY: I now move that Resolution No. 134 be taken from the calendar and referred to the committee on Employes.

The motion was carried.

Mr. DOTY: Now I call up Resolution No. 155.

The next part of the resolution was read as follows:

ARTICLE VIII.

SEC. 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

Section 13 of article VIII is hereby repealed.

This amendment abolishes the state board of public works and provides that the powers and duties now exercised by that board, together with such other duties as may be prescribed by law, shall be exercised by a superintendent of public works, to be appointed by the governor for a period of one year.

The foregoing portion of the resolution was agreed to. The next part of the resolution was read as follows:

ARTICLE XII.

SEC. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds

so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but, all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SEC. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

SEC. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

SEC. 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

SEC. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

SEC. 11. No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for the levying and collecting annually by taxation of an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

Section 1 of this amendment seeks to abolish the poll tax including the tax which one may "work out" on the road and in lieu of which he may pay a sum of money.

Section 2 differs from the corresponding sections of the present constitution in but two particulars. It makes taxable all state, municipal and school bonds hereafter issued, while the present constitution exempts them. It also makes it possible for the general assembly to exempt \$500.00 from the personal property of each individual while the present constitution permits only \$200.00 to be thus exempted.

Both the present constitution and this amendment require that all property shall be taxed by a uniform rule.

The remaining sections of this amendment authorize the general assembly to pass laws levying income and inheritance taxes, graduated or otherwise, on condi-

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tion that at least fifty per centum of the revenue thus obtained shall be returned to the city, village or township from which it came. Excise and franchise taxes and a tax on the gas, oil, coal and other minerals produced in the state are also authorized.

The last section requires any subdivision of the state which issues bonds to make immediate preparation for their payment by levying an annual tax sufficient to pay the interest as it accrues and to provide a sinking, or reserve fund which, at the time when the bonds become due, shall be sufficient to pay them.

The PRESIDENT PRO TEM: If there is no objection the foregoing portion of the resolution will be adopted.

Mr. DOTY: It is apparent that it will be impossible for us to finish in good order by this evening and I therefore move that we adjourn until tomorrow morning at nine o'clock.

Mr. LAMPSON: I think we had better go ahead and finish this work and meet early in the morning so as to get away on the early trains.

Mr. DOTY: Then I move that we recess until 7:30 o'clock p. m.

The motion was carried.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. ROEHM: I would like to ask permission for the Employes committee to be excused to consider the resolution that has been referred to it. I do not know how long it will take.

The PRESIDENT: If there is no objection permission will be granted. The members of the Employes committee will retire. The secretary will read the next statement.

Mr. JONES: I was wondering if this Convention after its action on several of these other proposals, to wit, the prison contract proposal, the educational proposal and the good roads proposal, in which statements of fact which might be used as argument one way or the other were incorporated, thus abandoning the rule we had originally started out with against any argument, would be in a position to entertain a motion to reconsider the vote by which they struck out certain language in the statement as to the proposal relating to the registration of land titles. That is a very material matter, and as has been said here, one upon which every voter will want information from some source. I therefore move to reconsider the vote by which that amendment was carried.

Mr. PETTIT: I do not know why my friend Jones is so persistent about this pet measure of his. We might just as well go on and say how many states have the initiative and referendum and in how many of them it is operating successfully. There was no such proposition with reference to that, and I do not know why the gentleman from Fayette is so persistent in wanting the statement that the Torrens system has been used fifty years somewhere else, and I insist that the motion for reconsideration be voted down. The people can read the proposal and the instructions given and form their own

opinion without wanting any argument such as the gentleman from Fayette wants to insert.

Mr. LEETE: If we are to reconsider this, I want to serve notice that I want to call attention to the reconsideration of another one of these proposals, and that I have a substitute for the one that has already been put in.

Mr. PIERCE: I think we ought to reconsider this matter. Since the gentleman from Ashtabula has got in his stump speech as to his proposal, everybody else should be given the same privilege.

The motion to reconsider was lost.

The next part of the resolution was read as follows:

ARTICLE XIII.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

The purpose of this amendment is to authorize the control and regulation by law of the sale of stocks, bonds and securities of corporations.

The amendment further recognizes the right of the law making power to regulate the sale of other forms of personal property.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank", "banker" or "banking", or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

This amendment provides, first, that single liability shall apply to the stocks of all Ohio corporations, except those authorized to receive money on deposit, to which class double liability shall apply; and second, that all private persons or associations using a busi-

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ness name including the word "bank", "banker" or "banking", must submit to inspection, examination and regulation.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE XV.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

The constitution at present requires that the printing for the executive and other departments of the state shall be let on contract to the lowest responsible bidder. This power is still retained in the foregoing section, but the state is given the added authority to do its own printing.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE XV.

SEC. 4. No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector: provided that women who are citizens may be appointed, as notaries public, or as members of boards of, or to positions in, those departments and institutions established by the state or any political sub-division thereof involving the interests or care of women or children or both.

This amendment will permit the appointment of women as superintendents and members of boards of those institutions of the state, or any of its subdivisions, where the interests and care of women and children are involved. It will also allow the appointment of women as notaries public.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

ARTICLE XV.

SEC. 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law, and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local sub-division while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to

repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word "saloon" as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

At said election a ballot shall be in the following form:

INTOXICATING LIQUORS.

	For License to traffic in intoxicating liquors.
	Against License to traffic in intoxicating liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License," if he desires to vote in favor of the article above mentioned and opposite the word "Against License," within the blank space if he desires to vote against said article. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV, of the constitution, and the present section 9 of said article, also known as section 18 of the schedule shall be repealed.

LICENSE PROPOSAL 151 AND ITS PROVISIONS.

1. License to traffic in intoxicating liquors shall hereafter be granted and license laws shall be passed operative throughout the state with such restrictions and regulations as may be provided by law.

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2. No alien or person not of good moral character can secure a license.

3. License cannot be granted to any person pecuniarily interested in the liquor business conducted at any other place.

4. Any licensee more than once convicted, shall have his license revoked and not thereafter granted.

5. There shall not be more than one saloon to each 500 population in a municipality or township.

6. A municipality may further decrease the number of saloons in the municipality.

7. The licensing authority shall be located in the county, or in a county adjoining thereto.

8. Where the traffic is prohibited under local option laws, or other districts now prescribed by law, license shall not be granted while the prohibitory law is operative therein.

9. Nothing contained in the proposal repeals, or modifies existing prohibitory or regulatory laws, or [prevents] their future repeal or enactment.

10. There is added to the above provisions, that nothing contained in the proposal prevents—"The future enactment of any prohibitory or regulatory laws."

Mr. ROEHM: I would like to have the secretary read that section 8 again.

The section referred to was read again.

Mr. KING: There is no sense in that, it doesn't mean anything.

Mr. ROEHM: I wish to offer an amendment to that paragraph 8.

The amendment was read as follows:

Strike out paragraph 8, and substitute the following therefor:

"Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts or other districts now prescribed by law license shall not be granted therein while such prohibitory law is operative therein."

Mr. ROEHM: That amendment explains itself. It follows to a certain extent the wording of the proposal.

Mr. WINN: Where does that come in the proposal?

Mr. ROEHM: Lines 16, 17 and 18.

Mr. WINN: Does that cover the paragraph at the bottom of 18 and the forepart of 19?

Mr. ROEHM: That is the paragraph.

Mr. WINN: Something has been read out. The explanation which was drafted by Mr. Anderson was not taken, and this one was taken on motion of Mr. Hahn. I have not examined it.

Mr. ROEHM: Just a word of explanation. That merely follows the real reading of the proposal, and is to a certain extent the wording of the proposal.

The amendment offered by Mr. Roehm was agreed to.

Mr. ROEHM: I offer another amendment.

The amendment was read as follows:

Amend the explanation to article XV, section 9, as follows:

In paragraph 10 strike out the quotation marks before the word "The" and after the word "laws" at the end of the explanation and after the word "enactment" insert the words "modification or repeal."

Change the word "The" to "the".

Strike out the dash after the word "prevents".

Mr. ROEHM: I would prefer that to be out entirely, but if it is going to be in the way that clause reads, "The future enactment of any prohibitory or regulatory laws," it seems to me, it would be apparently a pull for the votes of those who are opposed to the liquor traffic entirely. It does not prevent the further enactment of any prohibitory or regulatory laws, and at the same time it would look as though it were intended to arouse the antagonism of the liberal element. Now, as one of the liberals, I want to say I am in favor of the proposal as we passed it, but I want the liberal people to know how it was passed—"The future enactment, modification or repeal". The words "modification or repeal" have been added and the quotation marks stricken out. It follows the proposal, as you see on page 19 of the grand resolution.

Mr. WINN: I do not think there is any objection to that amendment.

The amendment was agreed to.

Mr. ROEHM: Now, I have another small amendment.

The amendment was read as follows:

Amend explanation to article XV, section 9 as follows:

Strike out all after the word "further" in paragraph 6 and substitute the following:
"limit the number of saloons therein."

Mr. WINN: That is all right.

The amendment was agreed to.

Mr. DOTY: There is one word that ought to be changed there, and I offer an amendment. This is a perfectly neutral amendment. It is neither wet nor dry.

The amendment was read as follows:

In the tenth paragraph change the word "proposal" to the word "amendment".

The amendment was agreed to and the foregoing portion of the resolution was adopted.

The next portion of the resolution was read as follows:

ARTICLE XV.

SEC. 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

This amendment makes mandatory the passage of laws placing, as far as practicable, all appointive officers in the service of the state and the several counties and cities, under civil service regulation and subject to competitive examination.

The foregoing portion of the resolution was adopted. The next portion of the resolution was read as follows:

ARTICLE XV.

SEC. 11. Laws may be passed regulating and limiting the use of property on or near public ways and grounds for erecting bill-boards thereon and for the public display of posters, pictures and other forms of advertising.

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This amendment authorizes the passage of laws, regulating and limiting the use of property on or near public ways and grounds for display posters and advertising. It enlarges existing power.

Mr. PECK: I move to insert the word "legislative" before the word "power".

The amendment was agreed to.

The next portion of the resolution was read as follows:

ARTICLE XV.

SEC. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SEC. 3. At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter or amend the constitution", shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any

convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

At present when the general assembly submits to the electors for their approval or rejection any proposed amendment to the constitution the same has to be published in newspapers for a period of six months prior to a general election and then becomes a part of the constitution if a majority of the electors voting at such general election vote in favor of the same. Under the above amendment, if it is adopted, the time of publication is reduced from six months to five weeks and in lieu of requiring a majority of all the electors who vote at such general election, any submitted amendment will become a part of the constitution if a majority of the electors voting thereon shall vote in its favor. In addition all proposed amendments must be submitted on a separate ballot without party designation thereon and at either a special or general election.

This amendment also makes mandatory what formerly was optional with the general assembly as to the method of selecting members of future constitutional conventions. It requires that they shall be nominated by petition only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever.

This amendment further provides, as does the present constitution, for the submission to the people every twenty years of the question as to whether or not a convention shall be held to revise the constitution. Under the existing provision it requires a majority of the electors voting at such election to decide such questions but under this proposed amendment a majority of the electors who vote on this particular issue will be sufficient for such purpose.

Mr. SMITH, of Hamilton: I want to offer an amendment.

The amendment was read as follows:

In the third paragraph, strike out last sentence and add:

"Under the present constitution a majority of the electors voting at the election is required to decide the question but under this proposed amendment only a majority of those voting on the question is required to decide it."

The amendment was agreed to and the explanation as thus amended was adopted.

The next portion of the resolution was read as follows:

ARTICLE XVIII.

Municipal Corporations.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

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SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter". The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame

a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

SEC. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SEC. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SEC. 12. Any municipality which acquires, constructs or extends any public utility and desires to

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raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SEC. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

SCHEDULE.

If the foregoing amendment to the constitution be adopted by the electors and become a part of the constitution, it shall take effect on November 15th, 1912.

Cities and villages under the proposed amendment are given the right to frame their own charters, own and regulate their own public utilities, and to adopt by ordinances such regulations, not in conflict with general laws, as they may deem necessary. To the general assembly is specifically reserved the authority to limit the power of cities to levy taxes and incur debts for local purposes, to control elections, to examine into the financial condition and transactions of all municipalities, and, by general laws, to make such provisions for education, police and sanitary regulations and other similar matters as may be for the general welfare of the state.

FORM OF GOVERNMENT.

Municipalities may determine their form of government by either of three methods:

a.—They may, upon vote of the people, elect fifteen citizens to frame a charter, which must be submitted to the voters for approval.

b.—They may adopt, by a majority vote, a form of government provided by the general assembly. This may be the commission form of government, the federal plan, the so-called Newport plan, or as many other plans as the general assembly may provide.

c.—They may decide to be governed as at present, by a municipal code, framed and adopted by the general assembly. Such a code automatically takes effect in all municipalities which do not frame their own charters or take the trouble to submit to the people one or the other of the forms provided by the general assembly.

CONTROL OF PUBLIC UTILITIES.

Municipalities are given the power to acquire, construct, own, lease and operate any or all of their public utilities. This authority is subject to the limitations fixed by the general assembly on the power of the city to levy taxes and incur indebtedness. A city may raise money for such purpose by issuing mortgage bonds beyond the limit of bonded indebtedness fixed by law, provided that such mortgage bonds are made a lien only on the property and service of the utility itself.

IMPROVEMENTS AND EXCESS CONDEMNATION.

Cities are given the right to appropriate private property for a public use and at the same time to appropriate an excess over that actually to be occupied by the improvement in order to protect the improvement made. Bonds, however, for such excess must be a lien only on the property acquired for the improvement and the excess.

This will enable a city to take property for a civic center, a park or street opening and a sufficient amount of the adjacent property to protect the improvement. This excess can then be sold under proper restrictions by the city.

Mr. King moved to amend Resolution No. 155 as follows:

After the word "indebtedness" in line four of paragraph immediately following the caption "Control of Public Utilities" insert the following:

"Municipalities may enter into competition without condemning, or they may enter into competition and subsequently acquire by condemnation."

Mr. KING: The object of this is to give a true statement of exactly what may be done by the municipality under section 4 of this act. It is entirely fair to let the voters know exactly what can be done.

Mr. DOTY: Does your amendment strike out anything in the statement?

Mr. KING: Not a word, it just adds to it.

Mr. DOTY: The first phrase in that amendment is certainly obscure: "Municipalities may enter into competition." Competition with whom? It should be in competition with private corporations operating public utilities, or it does not mean anything.

Mr. SMITH, of Hamilton: I hope the amendment will not prevail. It goes without saying that municipalities may enter into competition in running a public utility. They have that right now. What is the use of serving notice on the public that that is so? There is no need of telling the people something that they already know. All we want to do in this explanation is to make clear what this proposal intends to do, and, as it appears to me, this explanation does excellently well. Why go out of the way and emphasize a fact that they may go into competition with private utilities? We know they are doing that today. What is the use of stating that? That is not a right given by this proposal.

Mr. HOSKINS: In adopting that explanation we ought to bear in mind the fact that we are enlarging the powers of municipalities to acquire public utilities. They can now acquire, if this is adopted, public utilities without obligating themselves beyond a mortgage securing their indebtedness upon the utility acquired. It is true that at present we have a right to acquire public utilities, but that right is now limited in the very nature of affairs by the taxation limit. You have removed the

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taxation limit so far as public utilities are concerned, and there is no limit.

Mr. FACKLER: You say that we could remove the bond limitation so far as acquiring public utilities is concerned altogether?

Mr. HOSKINS: We have removed the limitation so far as acquiring public utilities in this, that you can go on and acquire all of the public utilities you can so far as you can procure them on the utilities alone.

Mr. FACKLER: As long as you can mortgage them for 100 per cent of the cost?

Mr. SMITH, of Hamilton: Did the gentleman hear the explanation read where it specifically mentions that the city may do the very thing he speaks of. That is mentioned in the explanation.

Mr. HOSKINS: There is one part that I want to hear before it is adopted, and that is what was read just prior to the last sentence.

The secretary read as follows:

A city may raise money for such purpose by issuing mortgage bonds beyond the limit of bonded indebtedness fixed by law, provided that such mortgage bonds are made a lien only on the property and service of the utility itself.

Mr. CASSIDY: There were furnished to the committee two explanations of this particular proposed amendment. There was no other explanation or set of explanations on which the committee spent as much time as on this. The proposal is very important and the committee tried to devote as much time as possible to the consideration and explanation of the same. One of these explanations was furnished by Mr. Harris, of the committee, and another by one of the gentlemen from Cleveland. The explanation furnished by Mr. Harris was gone over very carefully, corrected and changed and finally dropped aside. The explanation of the gentleman from Cleveland was gone over carefully and cut in two and half of it preserved. It is a mistake to add on the amendment offered by Judge King. The exact amendment, although in quite different words, was discussed in the committee. The wording of the amendment was offered in the committee was this: "Municipalities may condemn private utilities without first entering into competition, or they may enter into competition and subsequently condemn." The committee decided it was unnecessary to add this explanation as suggested in this amendment.

Mr. BROWN, of Highland: If this is true, why is any statement necessary?

Mr. CASSIDY: The proposal is there and everybody understands it.

Mr. BROWN, of Highland: All of the persons who vote are not lawyers, and it seems to me that all of the explanations should explain, whether they do explain or not.

Mr. SMITH, of Hamilton: I do not think you would want this explanation now when it does not change the proposal.

Mr. BROWN, of Highland: The proposal can be changed.

Mr. THOMAS: I move to lay the amendment on the table.

The motion was carried.

Mr. DOTY: Now, I have heard it stated that the first part of the address to the people does not state the facts, and I would like to have that cleared up before we go any further. I would like to know whether the first paragraph, sentence by sentence, states facts:

Cities and villages under the proposed amendment are given the right to frame their own charters, own and regulate their own public utilities, and to adopt by ordinances such regulations, not in conflict with general laws, as they may deem necessary.

Now, that is all in one sentence.

To the generally assembly is specifically reserved the authority to limit the power of cities to levy taxes and incur debts for local purposes, to control elections, to examine into the financial condition and transactions of all municipalities, and, by general laws, to make such provisions for education, police and sanitary regulations and other similar matters as may be for the general welfare of the state.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

Amend the first paragraph under the caption "form of government" as follows:

Strike out the words "either of three methods" and insert "any one of three ways."

The amendment was agreed to.

Mr. DOTY: Now, I come back again, and I would like to know from some member of the committee if this states the truth: "Municipalities are given the power to acquire, construct, own, lease and operate any or all of their public utilities." Is that true?

Mr. PECK: It is true indirectly.

Mr. DOTY: Then we give them the power to do it. Now the next sentence is this: "This authority is subject to the limitations fixed by the general assembly on the power of the city to levy taxes and incur indebtedness." Is that true?

Mr. KNIGHT: No more subject to that than any other power. Section 13 of the amendment itself specifically says that laws may be passed to limit the powers of municipalities to levy taxes and incur debts. It limits that as much as any other.

Mr. DOTY: Is that true in connection with what follows: "A city may raise money for such purpose by issuing mortgage bonds beyond the limit of bonded indebtedness fixed by law, provided that such mortgage bonds are made a lien only on the property and service of the utility itself."

Mr. WINN: Is that all in one paragraph?

Mr. DOTY: Yes, sir; three sentences in one paragraph.

Mr. KNIGHT: Provided they remain a lien on such utilities.

Mr. DOTY: "Provided that such mortgage bonds are made a lien only on the property and service of the utility itself."

Mr. THOMAS: Turn to section 12. What does the word "service" mean?

Mr. KNIGHT: That word "service" is self-explanatory.

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Mr. DWYER: Suppose you had this. I do not believe a city should be allowed to do things just as it wishes at any time and on any occasion. I will read this amendment:

Before any municipality shall construct a public utility plant, where there is one operating under a franchise from such municipality, an effort shall be first made by said municipality to acquire said plant by purchase, and on failure shall make an effort to acquire same by arbitration before constructing said competing plant.

Mr. DOTY: But it is too late for that.

Mr. JONES: As you read that, any city might acquire

Mr. DOTY: Municipalities are given the power to acquire, construct, own, lease and operate any or all of their public utilities. That is just what this explanation says of this proposal.

Mr. DWYER: Is that true?

Mr. CASSIDY: Yes.

Mr. JONES: That word "a city" should be changed to "a municipality."

Mr. DOTY: All I wanted was to be sure that what this states is true. By the way, Mr. Jones said the word "city" should be changed to municipality.

Mr. KNIGHT: I have not seen a copy of this statement, but it seems to me as I have read that statement, that it should be secured on the property and service of the utility, is meaningless. What is the lien on the service of the utility? The proposal says "revenues, including franchise."

Mr. DOTY: Is not that the service?

Mr. KNIGHT: I don't know whether it is or not.

Mr. DOTY: That is what it was meant for.

Mr. KNIGHT: I do not think it is very lucid as a statement for the average voter to try to find out what is in the proposal. I think it should be revenues in place of service.

The amendment offered by Mr. Doty was read as follows:

Strike out the word "city" and insert the word "municipality."

The PRESIDENT: If there is no objection, this amendment will be accepted.

Mr. KNIGHT: Where they speak of a mortgage being a lien only upon the property and service of such public utility, I move to amend by striking out the word "service" and inserting in lieu thereof "revenues."

The amendment was agreed to.

Mr. KNIGHT: We would like to ask to see that entire statement.

Mr. CASSIDY: I suggest instead of taking up the Convention's time, that we let Professor Knight take the paper and read it and let the Convention go on with other business.

This was agreed to.

The foregoing portion of the resolution was adopted. The next part of the resolution was read as follows:

SCHEDULE.

The several amendments passed and submitted by this Convention when adopted at the election

shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized by law. Any provision of the amendments passed and submitted by this Convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail.

No issue is or can be raised on the adoption of this amendment. Its object is to fix the interval which must elapse between date of submission of these amendments and the time at which, if adopted, they shall go into effect, in order that different departments of the state government may have an opportunity to adjust themselves to any change that may be made. All electors are respectfully requested to vote "Yes" on this particular matter.

The PRESIDENT: If there is no objection to that, that part of the resolution will be agreed to.

Mr. STILWELL: The address upon article II, section 35, at the top of page 8, relative to workmen's compensation was informally passed for the purpose of giving the gentleman from Defiance an opportunity to offer an amendment, and he agrees to one that I now offer.

The amendment was read as follows:

Strike out the explanation and insert the following:

This amendment will permit legislation providing that workmen, who have been injured or who have contracted disease in the course of their employment, and the dependents of workmen, who have been killed or who may have died from injuries received or diseases contracted in the course of such employment, shall be compensated out of a fund maintained by the industries in the state, which fund shall be under the control and supervision of the state.

Mr. WINN: That is a little misleading—the way of stating the diseases in order to entitle the workmen to the benefit of the law.

Mr. STILWELL: Diseases contracted during employment?

Mr. WINN: This signifies any disease contracted during employment.

Mr. STILWELL: That is not the intention of the amendment.

Mr. WINN: It has reference to occupational diseases, and it is not plain here. It might mean if a workman while working had contracted any disease.

Mr. STILWELL: The insertion of the word "occupational" will correct the error complained of.

The PRESIDENT: The insertion of the words "an occupational" before the word "disease" will put the matter in proper form. The secretary will write that change in.

Mr. DOTY: Before we go further, I have an amendment to the whole resolution.

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'The PRESIDENT: Let the secretary read the clause as now amended.

The SECRETARY [reading]: "This amendment will permit legislation providing that workmen, who have been injured, or who have contracted an occupational disease in the course of their employment," etc.

Mr. JONES: I think that explanation omits the most material thing in this proposed amendment. The main thing to be accomplished by it is to clear the way for the enactment of laws providing for compulsory compensation, compulsory contribution by employers to a fund for compensation to injured employees. Now this explanation does not convey to the voter any such idea at all, but that is the foundation of the proposal. It ought to be so stated that under our present constitution compulsory compensation cannot be provided for and this is simply to enable the legislature to compel contributions to a fund for the compensation of injured persons. It should be remedied by the insertion of the word "compulsory."

Mr. STILWELL: I do not think the point raised by the member from Fayette is pertinent to the question.

The PRESIDENT: The statement will be informally passed to give the member from Fayette an opportunity to put his amendment in writing.

Mr. DOTY: Here is another perfectly innocent amendment, neither wet nor dry.

The amendment was read as follows:

Insert over each proposal in the address to the people the index number opposite the title thereof on the official ballot except that over the proposal concerning the liquor traffic, there shall be no index number.

Mr. DOTY: This simply provides that whatever printed explanation there is will carry the same number as on the ballot.

Mr. CASSIDY: How is that indicated?

Mr. DOTY: There will be a number each place. I could go on and say at such and such a line and such and such a line, but when I would get through with that I would have done only what I would have accomplished here in these lines.

Mr. CASSIDY: Your amendment is all right, but it is not an amendment to this resolution, and it will have to be done separately.

Mr. DOTY: It has been done for fifty years. If you prefer to have me write out line so and so and so and so, I can do it.

Mr. CASSIDY: This cannot come in as an amendment to this resolution. The amendment should be a separate resolution.

Mr. DOTY: A separate resolution would not do at all. We have a resolution here trying to get things here out in shape. If we want these numbers at those places the only way to get them in is to amend them in.

Mr. KNIGHT: Will you withdraw your amendment until we get through?

Mr. DOTY: I will withhold it. I thought we were through.

Mr. KNIGHT: I would like to offer an amendment to the explanation affecting the municipal corporation proposal whenever it is in order.

The PRESIDENT: If this amendment by Mr. Doty is withdrawn your amendment is in order.

The amendment was read as follows:

In line 3 of the first paragraph, after the "such" insert "local, police, sanitary and other similar".

In line 9 strike out the word "education".

Mr. KNIGHT: Just a moment: The first paragraph of the explanation is a little broader than the proposal itself. It reads as follows: "Cities and villages under the proposed amendment are given the right to frame their own charters, own and regulate their own public utilities adopt by ordinance such regulations not in conflict with general law when they may deem it necessary." The proposal says "such local, police, sanitary and other similar regulations," and the statement is so broad as to be misleading. I have consulted with some members of the committee on Municipal Government, and they think that this amendment should be introduced. A little further down it says, by way of illustration, that the general assembly has specifically reserved power to limit, etc., to make certain provisions for education, police, sanitary and other matters as may be for the general welfare of the state. There is nothing in the proposal touching education. There seems to be no necessity for the insertion of that word, and the amendment is to strike out that word.

The amendment was agreed to.

Mr. STILWELL: On the subject of article II, section 35, to meet the objection that was raised to the address upon the matter of workmen's compensation it has been agreed to insert the words "by compulsory contributions" after the word "maintained."

The amendment was agreed to.

Mr. HOSKINS: Before this part of the matter is concluded I want to call the attention of the Convention to article XIII, section 2. We passed that. I don't know whether it was voted on or not, but the explanation of that was rather colorless. I know that nothing was given to the committee for explanatory purposes. That proposal was passed by almost the unanimous vote of the Convention. Now there were just two sentences given in explanation of that. I regard that as one of the very important proposals and one on which we ought to have some light and if it is not out of order I would like to offer a substitute for the first sentence. There are only two sentences. The last sentence says it can regulate the sale of personal property. The other is that it can regulate the issue and sale of stocks and bonds. I want to insert here in lieu of the first sentence of that explanation:

This amendment is offered for the purpose of authorizing legislation that will permit the classification of corporations and the regulation by law of the issue and sale of stocks and bonds as well as supervision over their organization and business. The further purpose is to authorize such legislation as will prevent the sale of fraudulent stocks and bonds by either domestic or foreign corporations.

That is specifically provided for in the amendment and nothing said about classification. That will permit the classification of corporations and the regulation by

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law of the issue and sale of stocks and bonds as well as the supervision over their organization and business. The further purpose is to authorize such legislation as will prevent the sale of fraudulent stocks and bonds. So I move that the vote by which the explanation to article XIII, section 2, was adopted be reconsidered.

The motion was carried.

Mr. HOSKINS: Now I offer this amendment in lieu of the first sentence of that amendment.

Mr. JONES: I notice in the first few lines a reversal of the order of statement which should be corrected.

Mr. HOSKINS: I do not understand that.

Mr. JONES: The point is this. The supervision is over the stocks and bonds. That should come first, as well as the control over the issue and sale of the stock.

Mr. HOSKINS: The issue and sale of stocks should come first.

Mr. JONES: It should not. You should first classify the corporations.

Mr. HOSKINS: I beg your pardon. The regulation of the issue and sale of stocks and bonds is first in the proposal.

Mr. JONES: No, sir. The proposal has corporations classified, and then there may be conferred such supervisory and regulatory powers over their organization and business, etc.

Mr. HOSKINS: I think that is very important.

Mr. CASSIDY: I do not think, following the rule that we have adopted, that this amendment is a fair one. There is not a word in the proposal about the sale of fraudulent stocks and bonds. That is an argument pure and simple. The attempt of this committee and of this report was to state fairly and squarely what the proposal does. It gives the legislature or lawmaking body power to regulate the business and the sale of stocks and securities of foreign corporations and joint stock companies. Take the following proposal. You might as well say that the object of the proposal was to prevent fraudulent banking. If we would attempt to do anything like that, certain members would be objecting. I don't see why "fraudulent" should be allowed in one place and not in the other.

Mr. HOSKINS: The whole discussion of that proposal was to reach that point, and while I did not have much time to consider the language, I submit you have not adhered to any rule and that the committee did not adhere to the rule. You started out to make no argument, and you have argued every proposal, some of them by stump speeches. The whole argument in favor of this proposal was that we could prevent the fraudulent issue and sale of stocks and bonds. The people will understand that language and would not understand the language used by the committee. I think it is a fair statement. If the word "fraudulent" is cut out and a milder word used, all right. That is the purpose, and why not state it to the people?

Mr. DOTY: It will not hurt it.

Mr. HOSKINS: No, sir; if you say it is to prevent fraudulent stocks and bonds they will understand you. The point is in regard to the sale, and that is what should be submitted.

Mr. CASSIDY: Probably you had better say the blue-sky laws of Kansas; then they will understand it, I suppose.

Mr. WINN: The proposal is that the board created shall have such supervisory and regulatory powers over their organization and business and the issue and sale of stocks and securities as may be prescribed by law. You are limiting it, are you not, to the fraudulent sale of stocks?

Mr. HOSKINS: No, sir.

The amendment was agreed to.

Mr. DOTY: Now, I want to move to amend this resolution now pending so that the index numbers on the bills will be placed over the proposal in the address to the people.

The PRESIDENT: Let the amendment be read.

The amendment was read as follows:

Insert over each proposal in the address to the people the index number opposite the title thereof on the official ballot except that over the proposal concerning the liquor traffic, there shall be no index number.

The amendment was agreed to.

The PRESIDENT: The secretary will proceed with the reading of the resolution.

The secretary continued reading as follows:

Resolved, That the committee on Submission and Address to the People be, and is hereby, authorized to have the foregoing address printed in the form of a newspaper supplement and sent free to publishers agreeing to circulate the same; that an advertisement be placed in at least two newspapers of opposite politics in each county of the state, once a week for five weeks preceding the special election, to occupy three columns and to contain a facsimile of the ballot, the date of the election and such explanatory matter only as has been authorized by the Convention the rate for the same to be the commercial rate or not to exceed fifty per centum of the legal rate for official advertising.

Resolver further, That contracts for printing and advertising be entered into by the committee on submission and Address to the People and that vouchers for the payment of the same be signed by the president and secretary who are hereby authorized by the Convention to sign such contracts and vouchers subject only to the following conditions: first, that said advertising bills shall not be paid out of the funds of the Convention until all other obligations of the Convention have been paid; second, that when all other obligations of the Convention have been met said advertising bills shall be paid out of the balance of money on hand and if said balance is not sufficient that each advertiser shall receive his ratable share of the available funds; third, that the committee on Submission and Address to the people is hereby authorized to certify to the auditor of state, to be by him filed with the house of representatives of the next general assembly, the exact amount, if any, due to each newspaper publisher after the appropriation for the expense of this Convention is exhausted; fourth, that all advertising contracts made shall stipulate that in the event the funds are insufficient creditors agree to rely on

Address to the People.

the legislature to make an appropriation to satisfy their claims; and, fifth, that no advertising or printing contracts be authorized by the committee on Submission and Address to the People save and except on the foregoing conditions.

Resolved further, That the same matter to be included in the supplement, be published in pamphlet form and that one thousand copies of said pamphlet be furnished each member of the Convention.

Resolver further, That all that part of Resolution No. 141 adopted June 1, 1912, after the word "resolved" up to and including the figure "4" in the last paragraph is hereby rescinded.

Mr. LAMPSON: This resolution is the result of a good deal of consideration upon the part of the committee on Submission, and is partially the result of the action of the associated daily newspapers of Ohio. Their representatives appeared before the committee and made certain propositions. They feel that the newspapers of the state will play an important part in the advertising of the work of the Convention and that they ought to be recognized. Now, in the resolution which we adopted the other day we proceeded upon the theory that we would advertise our work by the distribution through the mails, and otherwise, of a very large number of pamphlets. If we were to reach every voter in the state by mailing each voter a pamphlet it would take twelve hundred thousand or thirteen hundred thousand pamphlets. If it took twelve hundred thousand, and we mailed them to the voters the cost would be \$12,000 for the postage. It would require a large number of clerks and a great deal of work to obtain the addresses of a million or twelve hundred thousand voters, and it would take an army of clerks from thirty to sixty days to address the pamphlets. If you will make a few figures on that subject you will see where we would be. An expert clerk indorsing pamphlets will not address more than a thousand in a day, and probably will not average that. He would have to work very hard to do that, and the result would be it would take forty or fifty clerks to address a million or twelve hundred thousand pamphlets to the voters of Ohio within the next thirty to sixty days. The printing of such a large number of pamphlets would cost a good many thousand dollars, and in the end, in my judgment, will not be as satisfactory as the method outlined in this resolution. The newspaper representatives, representing more than one hundred daily papers, have offered to circulate the statements provided for in the resolution free if we print it, placing the name of each paper over the head of it, so that they can fold it into their papers. They will fold it into their papers and distribute it to their readers free. Beyond that they want some recognition, and therefore we want to carry a three-column advertisement in certain newspapers designated by the committee on Submission for five weeks prior to the election, giving the date of the election and a facsimile ballot, and such other matters as the Convention may authorize. In one of the proposals which we have passed we provide for advertising for a period of five weeks of constitutional amendments. I see no reason why we should not at least advertise our work for the same length of time. It would not cost as much as provided in that proposal either, for that proposal pro-

vides for the printing of the amendments in full for five weeks before the election. In addition to that we provide for a thousand copies of the matter in pamphlet form to each delegate for distribution in his own county.

Mr. ELSON: How will these newspapers be chosen, and will there be any trouble with those who are not chosen, but which distribute the supplement?

Mr. LAMPSON: Those who take the supplement will receive the advertisement. We will first correspond and ascertain those willing to take it, and those that are will to receive it. The usual method is to have a paper of each political faith in the county, and in addition to that I have no doubt arrangements have been made for papers in the German language and perhaps other languages. The resolution leaves some discretion to the committee on Submission as far as that is concerned, but the aim would be to deal fairly with the newspapers, and when we get through with it, in my judgment, it would not cost as much as the pamphlet method would cost.

Mr. MILLER, of Crawford: Give me some idea as to the cost.

Mr. LAMPSON: I have been trying to figure it, and I have been in the newspaper business a good many years myself. I am not in it much recently. I think perhaps \$30,000 or \$40,000 would be the cost; perhaps something like \$400 to the county. I have some figures that I have been making here. A column is something like twenty-five squares. Is that about right?

Mr. TANNEHILL: It strikes me as correct.

Mr. LAMPSON: The proposition by the newspapers is to publish the advertising matter at one-half of the legal rate and charge nothing for the circulation of the supplement.

Mr. MILLER, of Crawford: How many inches.

Mr. LAMPSON: Seventy-five squares at \$37.50 a column. We have to print the supplement at the job office and the supplement will contain the entire matter—all of these proposals, with the explanatory matter and a facsimile of the ballot.

Mr. MILLER, of Crawford: The papers in our county will publish all of the amendments, one hundred and thirty inches for \$50 per paper.

Mr. LAMPSON: That is about what it will figure. Do you mean publish the amendments and the advertising matter too, or just the amendments?

Mr. MILLER, of Crawford: To publish the amendments would take one hundred and thirty inches.

Mr. LAMPSON: That would be more costly than the manner I suggest.

Mr. ELSON: Would it not be better for the committee to have the option of getting an independent paper here and there?

Mr. LAMPSON: They have that option.

Mr. ELSON: And must it be a daily paper?

Mr. LAMPSON: No, sir; any paper.

Mr. TALLMAN: Could not that be charged to the member, the duty of selecting the papers in his county?

Mr. LAMPSON: The delegate could suggest to the committee on Submission, and the committee would pay attention to what the delegate says.

Mr. DOTY: That is really the way it would work out.

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Mr. NYE: What was to be included in the supplement?

Mr. LAMPSON: All of the amendments and the explanations and the address to the people.

Mr. KNIGHT: Simply what we have been working on today.

Mr. LAMPSON: Yes.

Mr. READ: Giving to each delegate one thousand copies to distribute is not fair as far as the delegates are concerned. The number of constituents of each delegate is different. Summit county has only one delegate here, and there are counties that have three delegates that haven't as many voters as Summit county. Your county. Mr. Lampson, has two delegates, and yet I represent a great many more votes than both of you delegates. I know I could distribute more than one thousand.

Mr. LAMPSON: I do not think there will be any trouble in any delegate getting what he is entitled to. My disposition is to give the fullest publicity to these matters, and I know that will be the aim of the committee.

Mr. KING: Do you not provide for publishing the advertisement in only two newspapers?

Mr. LAMPSON: No, sir; there is no limit, but the committee on Submission will have to make some reasonable limit on it in practice.

Mr. KING: Would they allow advertising in one German paper?

Mr. LAMPSON: Yes; that is within the discretion of the committee on Submission.

Mr. TANNEHILL: This plan does not contemplate the mailing of individual copies?

Mr. LAMPSON: It does not. The one thousand copies will be sent in bulk to each delegate.

Mr. TANNEHILL: I think the people do not understand what that would cost. I do not believe it can be done short of \$100,000.

Mr. LAMPSON: It will cost double what this plan will cost if carried out, and it would take a great deal more time to carry it out.

Mr. BROWN, of Pike: What method have you for choosing the papers?

Mr. LAMPSON: The delegates can make suggestions as to the papers from their county and the committee on Submission will endeavor to be fair in the distribution.

Mr. BROWN, of Pike: I suggest that that be included in the resolution.

Mr. LAMPSON: You could fix it any way you please, but the trouble about fixing it that way is that the conditions in different counties vary. The conditions in Pike county would be very different from the conditions in Cuyahoga and many other counties. It would be much better to trust it to the fairness of the committee on Submission in my judgment.

Mr. HOSKINS: Each member would be allowed one thousand copies?

Mr. LAMPSON: Yes.

Mr. HOSKINS: The resolution does not provide for the publication of anything but the address?

Mr. LAMPSON: It does not. It is proposed to include the address and the amendments and explanations and a facsimile ballot.

Mr. HOSKINS: A thousand copies of that would be sent by express or otherwise to each member?

Mr. LAMPSON: Yes.

Mr. HOSKINS: And they would use their own discretion as to how to distribute them?

Mr. LAMPSON: Yes.

Mr. HOSKINS: The probabilities are, are they not, that there would be more or less wasting of these unless some arrangement is made to mail to the constituents? Would it not be advisable to let the members furnish a thousand names of persons whom they could be mailed to, and in that way the expense of distribution could be taken care of, and a much better distribution had than if a thousand copies were shipped to each man's office and thrown as junk in the back room?

Mr. LAMPSON: I hardly think that would happen. If members do not want them they could give them to other members.

Mr. HOSKINS: But can the members distribute as well as they could be distributed from here?

Mr. LAMPSON: As soon as we enter upon the mailing business, we shall have an army of clerks and it will take a good deal of time and expense, much more than what we contemplate here.

Mr. RORICK: Each member can arrange with the newspapers in his county to leave a certain number there and the newspapers can distribute them.

Mr. LAMPSON: Certainly.

Mr. PETTIT: What will these pamphlets cost apiece?

Mr. LAMPSON: That depends on the number that we print. It will not be very expensive, one or two cents.

Mr. PETTIT: Have there been estimates on that?

Mr. LAMPSON: Yes; on a million copies.

Mr. PETTIT: You couldn't get them at two cents apiece?

Mr. LAMPSON: Yes—two, three, four or five cents, somewhere in there.

Mr. PECK: State again just exactly what you propose to have in these pamphlets.

Mr. LAMPSON: The address, which has been under consideration tonight, all the amendments and explanations, and the facsimile ballot.

Mr. PECK: A copy of the constitution?

Mr. LAMPSON: It does not provide for a copy of the old constitution.

Mr. MOORE: The rural mail carrier would be a splendid avenue to distribute this matter.

Mr. LAMPSON: If one hundred and nineteen thousand copies are not sufficient the resolution is open to amendment in that respect.

Mr. HOSKINS: Do you propose by the resolution to print in the newspapers the full text of the amendments?

Mr. LAMPSON: Oh, not at all. We propose to furnish to the newspapers a supplement containing the full text, together with the explanations, but the advertisement that goes into the newspaper is to be a display advertisement covering three columns of space, and followed up with the ballot and some explanation as to the marking of the ballot.

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Mr. HOSKINS: And that explanation would have to come from the committee on Submission?

Mr. LAMPSON: Yes.

Mr. HOSKINS: The presumption being that they would furnish all of the papers exact duplicates?

Mr. LAMPSON: The same thing to all of the papers, to take three columns of space, to run for five weeks and to be paid for at the commercial rate, or not more than fifty per cent of the legal rate.

Mr. HOSKINS: Is this the proposition that comes from the organization of newspapers?

Mr. LAMPSON: Yes, the organization of the Ohio dailies embracing all of the dailies outside of the big cities and some in the big cities. They were represented here yesterday.

Mr. ELSON: Would it not be well for the committee to have power to divide it up?

Mr. LAMPSON: That is the way we want it.

Mr. ELSON: Why should two alone be chosen?

Mr. LAMPSON: It says at least two.

Mr. HALFHILL: Has any estimate been made as to the advertising and distribution as proposed by the committee?

Mr. LAMPSON: There has not been any official estimate, but it will run \$30,000 or \$40,000, and the representatives of the papers agreed to wait for any expense of advertising until the legislature convened, and they will take their chances with the legislature of getting an appropriation to pay it.

Mr. HALFHILL: I do not think they would be taking much chance.

Mr. LAMPSON: Oh, no; none whatever.

Mr. HALFHILL: Do I understand that the committee selects the papers?

Mr. LAMPSON: Yes, the committee selects the papers; somebody will have to select them. The committee, I have no doubt, will be ready to listen to suggestions from delegates representing the counties where the papers are located.

Mr. HALFHILL: What does this advertising mean?

Mr. LAMPSON: The proposition is to advertise the ballot until the date of the election in a display ad. for five weeks preceding the election, giving the date of the election and the body of the ballot right in the newspapers.

Mr. HALFHILL: Now, I am well content with that resolution; it looks as though it had been framed with some care, but I want to make one exception. I would like to know what is going into that advertisement, and I do not believe the Convention ought to leave that an open matter.

Mr. LAMPSON: My understanding from the talks we have had—I don't know whether the resolution fixes this sufficiently or not.

Mr. HALFHILL: That is still an open matter. You say "such explanatory matter authorized by the Convention." Therefore the committee draws its own conclusions as to what has been authorized.

Mr. PECK: The result will show.

Mr. HALFHILL: We have agreed to what has been done, except that you prepare your own advertisement and put your own construction on it.

Mr. LAMPSON: My understanding is that nothing will go into the advertisement except what has been

agreed to by the Convention, and that it is to include a facsimile of the ballot, the date of the election and the explanation as to the marking of the ballot, which is at the head of it, and I do not see why there should be anything more put on.

Mr. HALFHILL: We all agree to that part, but we ought to adopt here the explanatory things that are to go out. You don't mean all that we have adopted?

Mr. LAMPSON: No; there would not be any room for it. It has been estimated it would take about three columns to put in this facsimile ballot, together with the display advertisement, the date of the election and the explanation.

Mr. HALFHILL: Therefore, this committee draws its own conclusions as to what this Convention has agreed upon, and you add that?

Mr. LAMPSON: We had to draw that conclusion from the records of the Convention.

Mr. HALFHILL: I understand that very well, but there are conclusions and conclusions, and why cannot something be submitted for the Convention to act upon?

Mr. LAMPSON: Is not this what you are figuring on, that in making this up, if there is any spare room, the committee may put something on there—is that what you fear?

Mr. HALFHILL: I fear that the committee in that advertisement will put in its own conclusion as to what this Convention wants, and I want the Convention to act on that itself.

Mr. WINN: Is it not a fact that you are afraid they will put in something favorable to the initiative and referendum?

Mr. PECK: No; he is afraid they will put in the single tax.

Mr. HALFHILL: As long as you have inquired on that, I will answer you definitely. The matter is for the Convention to decide, and is the most important matter that can come before us, and it seems to me that the Convention should decide it and that no committee should be entrusted with that power.

Mr. ELSON: Is it understood that no explanation specifically shall go in the advertisement?

Mr. LAMPSON: There is no room for it.

Mr. HALFHILL: The trouble is that the committee draws its own conclusions on what we have done. Now, another matter. This amendment is for the purpose of presenting the matter to the voter?

Mr. LAMPSON: Yes.

Mr. HALFHILL: Calling his attention to each one of these propositions? Now will there be an argument made by the committee on this advertisement?

Mr. LAMPSON: None whatever.

Mr. TALLMAN: I move that the member from Allen be added to that committee so that he will know what action is taken.

The PRESIDENT: If there is no objection, that motion will be considered agreed to.

Mr. HALFHILL: I thank you.

Mr. WALKER: I offer an amendment.

The amendment was read as follows:

At the end of the resolution add:

"And resolved further that a copy of the present constitution be included as a part of said pamphlet.

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Mr. WALKER: That is sufficiently clear to everyone not to require any explanation. You will not find one constitution of the state of Ohio in five hundred homes throughout the state, and each voter, I think, should have the old constitution when he tries to pass on the amendments made to it. We should be able to see the old as well as the new.

Mr. TALLMAN: I move that the amendment be laid on the table.

The motion to table was lost.

Mr. KRAMER: I would like to say a word or two about spending money right here. This will cost twice as much or more than twice as much as the way it is now figured out. I don't think the money ought to be expended. I don't think simply because we have a little money left that we should go mad in spending it for everything.

Mr. JONES: We passed a resolution here the other day with reference to this matter, a resolution which provided for the printing of the present constitution in an extra edition and sending a copy to each voter of the state as far as possible.

DELEGATES: No.

Mr. JONES: I may be in error, but I got that understanding, that it was embodied in that report of the committee. I have had a great many inquiries since our previous session with reference to this matter of the committee, and I have made answers to all of the inquiries. I have gotten word that if the matter is submitted in the newspapers a large number of the voters will never see a word that this Convention has done. It seems to me that the expense of making this pamphlet has been very much overestimated. I undertook in my canvass for election to this Convention to mail a personal letter to each voter in the county, and I employed a couple of young women to address the envelopes, and the whole expense was very moderate.

Mr. DOTY: How much was it?

Mr. JONES: Ten or fifteen dollars.

Mr. DOTY: How many voters have you?

Mr. JONES: Five thousand.

Mr. DOTY: Where did you get the names?

Mr. JONES: From the tax returns and from the poll books.

Mr. LAMPSON: Did you pay for getting the names, or did they just do it for nothing?

Mr. JONES: I employed the young women to get the names from the auditor's office and the letters were addressed and directed from the books. They didn't take any copy of any list of names.

Mr. LAMPSON: Do you think that could be done in this case?

Mr. JONES: No, sir.

Mr. DOTY: Do you or not know that twenty per cent of the names now on the tax returns are wrong?

Mr. JONES: You will reach three times as many people that way as you will by your method.

Mr. ELSON: Do you realize that we must depend in a large measure upon free notices from the newspapers, and is it not right and proper that we should do something for them?

Mr. JONES: I am not talking about that. I am simply saying that the method I suggest is very little

more costly, while it is much more efficacious, than the manner suggested here?

Mr. ELSON: Do you not realize it would be a great deal easier to give the same information to each voter through the supplement in the newspapers?

Mr. JONES: The trouble is your newspapers won't go to half of the voters. Considerable number of people in the state don't take any newspapers.

Mr. ELSON: Do you not realize that to get that list of names you want to get you have to have an organization with men of ability and that it will take a whole lot of work and a great deal of time?

Mr. JONES: I venture to say that in the average rural county substantially a proper list of names of the voters could be gotten for from \$25 to \$50 at the outside.

Mr. LAMPSON: I venture to say it cannot be done for \$100.

Mr. DOTY: Now, who is going to do this? We haven't any bureau organized for work?

Mr. JONES: This committee on Submission.

Mr. DOTY: We are not rich as you are, Mr. Jones.

Mr. JONES: You are proposing to do a whole lot of work, but what I am objecting to is that your work won't have results. "You won't get to the people with it."

Mr. ELSON: I demand the previous question.

Mr. LAMPSON: I have an amendment which ought to be adopted, and I ask the secretary to read it. I want to offer it and have the secretary read it before the motion for the previous question is made.

The amendment was read as follows:

After the word "politics" in the first paragraph of the last page insert:
"and of general circulation".

The amendment was agreed to.

The PRESIDENT: The amendment of the delegate from Holmes is now in order. It is at the end of the proposal and proposes to add "And resolved further, That a copy of the present constitution be included as a part of said pamphlet."

Mr. DOTY: That ought not to be adopted. It would produce a very confusing pamphlet. I move to lay that amendment on the table.

The motion was carried.

Mr. READ: I offer an amendment.

The amendment was read as follows:

At the end of the third paragraph of the final page strike out the period and add the following: "and fifty thousand additional copies be printed for general distribution."

The amendment was agreed to.

Mr. BROWN, of Highland: I have been thinking for some half an hour—

Mr. DOTY: What is that?

Mr. BROWN, of Highland: —and without getting anything from Mr. Doty, and that is an extraordinary thing, that anybody should think differently from Mr. Doty. And I think this display advertisement to teach the people how to vote and not to teach them how to understand the proposals is unnecessary. I don't think it is necessary to have that published any five weeks. I

Address to the People—Resolution Expressing gratitude of Convention to Employes.

think two weeks will do just as much good as five weeks and it will cost a good deal less.

Mr. LAMPSON: The proposition was first eight weeks, and then this proposition came from the representatives of the newspapers, and it was cut down to five weeks. I do not want to change that time.

Mr. BROWN, of Highland: It does not seem to me that length of time is necessary, and I therefore move that the word "five" be stricken out and the word "three" substituted.

Mr. KING: I am opposed to sitting here all night quarreling with the committee that we ourselves have appointed and that has manifestly done the best it could. I therefore move the previous question.

The main question was ordered.

The amendment of the delegate from Highland was not agreed to.

The PRESIDENT: The question is "Shall Resolution No. 155 be adopted?"

The yeas and nays were taken, and resulted — yeas 80, nays 3, as follows:

Those who voted in the affirmative are:

Antrim,	Halenkamp,	Moore,
Beatty, Morrow,	Halfhill,	Nye,
Beyer,	Harbarger,	Okey,
Brown, Highland,	Harter, Huron,	Partington,
Brown, Pike,	Henderson,	Peck,
Cassidy,	Hoffman,	Pettit,
Cody,	Holtz,	Read,
Collett,	Hursh,	Riley,
Colton,	Johnson, Williams,	Roehm,
Cordes,	Kehoe,	Rorick,
Crosser,	Keller,	Shaffer,
Cunningham,	Kerr,	Smith, Geauga,
Davio,	Kilpatrick,	Smith, Hamilton,
Donahey,	King,	Stalter,
Doty,	Knight,	Stevens,
Dunlap,	Kramer,	Stilwell,
Dunn,	Kunkel,	Tallman,
Dwyer,	Lambert,	Tannehill,
Earnhart,	Lampson,	Tetlow,
Elson,	Leete,	Thomas,
Evans,	Leslie,	Wagner,
Fackler,	Longstreth,	Walker,
Farrell,	Malin,	Watson,
FitzSimons,	McClelland,	Winn,
Fluke,	Miller, Crawford,	Wise,
Fox,	Miller, Fairfield,	Mr. President.
Hahn,	Miller, Ottawa,	

Those who voted in the negative are: Brattain, Harter, of Stark, Jones.

So the resolution was adopted.

Mr. HALFHILL: I offer a resolution.

The resolution was read as follows:

Resolution No. 156:

WHEREAS, The employes of the Convention, viz.:

ASSISTANTS TO THE SECRETARY.

Will T. Blake, East Liverpool.
T. Harold Brown, Columbus.
Ira I. Morrison, Akron.
Ella M. Scriven, Columbus.
E. G. Wulff, Cincinnati.
Clément Kelly, Marion.
Harry L. Rebrassier, Louisville.
S. E. Neff, Bucyrus.

BILL CLERKS.

James B. Lewis, Rocky River.
H. S. Brown, Dowling.

STENOGRAPHERS.

Miletus Garner, Columbus.
Mrs. Ada Pemberton, New Vienna.
Florine Files, Wauseon.
Ethel North, Greenville.
Lida Judge, Columbus.
Ella Quigley, Zanesville.
Julia E. Kersting, Ottawa.
Anne L. Bower, Columbus.
Etheline Dille, Glouster.
Minnie Rodgers, Columbus.
Gertrude H. Lake, Cleveland.
Carl Mutschler, Wapakoneta.

CLERKS TO COMMITTEES.

Mary Turner, Hamilton.
Katherine Kellar, Lancaster.
Geo. Cartwright, Cleveland.

SERGEANT-AT-ARMS.

J. C. Sherlock, Bremen.
Assistant, William C. Reis, Hardin Co.
Custodian, Fred Blankner, Columbus.

POSTMASTER.

J. F. Cunningham, Montgomery Co.
Assistant, W. E. Childs, Cuyahoga Co.

DOORKEEPERS.

John B. Lewis, Erie Co.
O. S. Shetler, Stark Co.
James Vines, Butler Co.
James Mitchell, Ottawa Co.

CUSTODIANS OF COMMITTEE ROOMS.

Jas. E. Allen, Ashtabula Co.
Wm. B. Hassett, Stark Co.
D. M. Welty, Fairfield Co.
Alfred Jacobs, Clark Co.
Lewis Miller, Coshocton Co.

CLOAK ROOM ATTENDANTS.

Allen G. Atwill, Paulding Co.
William Crites, Tuscarawas Co.

PAGES.

J. C. Scott, Knox Co.
Howard Fordyce, Licking Co.
Glenn Emerson, Belmont Co.
R. J. Bartlett, Delaware Co.
Albert Goodyear, Clermont Co.
George C. Bond, Franklin Co.
Charles Abbott, Shelby Co.
H. D. Sites, Ashland Co.
Raymond Stremel, Greene Co.

Disposal of Property of Convention—Correction of Errors in Address to the People—Publication of Journal.

PORTERS.

Oliver Henson, Ashtabula Co.
Joseph Rosenberger, Lucas Co.
John Littlejohn, Jackson Co.
William Todd, Franklin Co.
C. M. Fisher, Gallia Co.
Nelson Winslow, Madison Co.
George Riley, Franklin Co.

have faithfully discharged their respective duties, therefore,

Resolved, That each and every one of the above named persons are entitled to the gratitude of the Convention and are commended for meritorious service.

Mr. HALFHILL: I think the committee which elected the employes is to be commended for the work they did.

The success of any man or any body of men depends a great deal upon the ability to secure proper helpers. We have been certainly fortunate in this respect, and I therefore move that the rules be suspended and that the resolution be adopted.

By unanimous consent the rules were suspended and the resolution considered at once.

The resolution was adopted.

Mr. ANTRIM: I offer a resolution.

The resolution was read as follows:

Resolution No. 157:

WHEREAS, There was purchased for the use of the Convention and its members a quantity of office furniture and fixtures together with a number of books and other supplies which will not be needed for use after the adjournment of this body; therefore

Be it resolved by this Convention, That the secretary be, and he hereby is, instructed immediately after adjournment to cause an inventory of all of such articles to be made and to sell the same as soon as there is no longer any use for them and account for the proceeds to the treasurer of state for the benefit of the proper fund.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. FACKLER: I offer a resolution.

The resolution was read as follows:

Resolution No. 158:

Resolved, That the committee on Submission and Address to the People be authorized to correct errors of punctuation and grammatical construction in the Address to the People.

By unanimous consent the rules were suspended and the resolution considered at once.

Mr. FACKLER: That is necessary by reason of a couple of errors in the ballot, where section numbers have been given incorrectly.

The SECRETARY: No; that is not so.

Mr. FACKLER: Yes; there are some errors.

Mr. COLTON: The word "in" is left out at one place.

Mr. DOTY: I move that we recess until 9:30.

The PRESIDENT: The member from Allen has the floor.

Mr. HALFHILL: I desire to call attention to something which is an error which is a surprise probably to all of us. It will relate to an amendment to section 15 of article IV, and it is very easy to understand how the error got in. If you will look at your copy of the grand resolution, on page five as this proposal was originally submitted, it used the words: "The general assembly may increase or diminish the number of judges of the supreme court," etc. Then you notice a little further on that it refers to the house, providing that laws may be passed. There you have an awkward situation and it ought to be amended by inserting after the word "house" the words "of the general assembly".

The PRESIDENT: Is the member from Allen speaking upon any pending question?

Mr. HALFHILL: I am suggesting an error, and I am a little at a loss to know how to remedy the situation.

The PRESIDENT: The question pending is that the committee on Address to the People be given authority to change the punctuation and other errors contained in the address to the people. The member from Allen is discussing something else.

Mr. HALFHILL: I beg the pardon of the Convention. I thought that matter was passed, and I was bringing this matter up for consideration.

The resolution offered by Mr. Fackler was adopted.

Mr. LAMPSON: Now, I offer a resolution.

The resolution was read as follows:

Resolution No. 159:

Resolved, That the F. J. Heer Printing Company is hereby authorized to publish and bind in buckram one thousand copies of the journal of the Convention, including an index estimated at two hundred pages, for fifteen hundred (\$1,500.00) dollars. If the index should exceed two hundred pages two (\$2.00) dollars in addition to the above estimate is to be allowed for each additional page. If the index should be less than two hundred pages a deduction of two (\$2.00) dollars per page is to be made from the above amount.

The rules were suspended and the resolution was considered at once.

The question being "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 67, nays 11, as follows:

Those who voted in the affirmative are:

Antrim,	Evans,	Johnson, Williams,
Beatty, Morrow,	Fackler,	Jones,
Beyer,	FitzSimons,	Kehoe,
Brown, Highland,	Fox,	Kerr,
Brown, Pike,	Hahn,	Kilpatrick,
Collett,	Halenkamp,	King,
Colton,	Halfhill,	Knight,
Cunningham,	Harbarger,	Kunkel,
Davio,	Harter, Huron,	Lambert,
Donahey,	Henderson,	Lampson,
Doty,	Hoffman,	Leete,
Dwyer,	Holtz,	Leslie,
Earnhart,	Hoskins,	Longstreth,
Elson,	Hursh,	Miller, Crawford,

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Miller, Fairfield,	Rorick,	Tetlow,
Miller, Ottawa,	Shaffer,	Thomas,
Norris,	Smith, Geauga,	Wagner,
Nye,	Stalter,	Walker,
Peck,	Stevens,	Watson,
Read,	Stilwell,	Winn,
Riley,	Tallman,	Wise,
Rochm,	Tannehill,	Mr. President.
Harris, Ashtabula,		

Those who voted in the negative are:

Brattain,	Farnsworth,	McClelland,
Cassidy,	Fluke,	Pettit,
Dunlap,	Kramer,	Solether.
Dunn,	Malin,	

Mr. Tetlow submitted the following report:

The standing committee on Employes, to which was referred Resolution No. 134 — Mr. Doty, having had the same under consideration, reports back the following substitute and recommends its adoption:

Resolved, Section 1. That when this Convention adjourns on June 6, 1912, it be to meet at 2 o'clock in the afternoon of Monday, August 26, 1912, unless a meeting of the Convention shall be called in the meantime; the written demand of any ten members of the Convention filed with the secretary of the Convention shall constitute a call for any such meeting, and the secretary shall notify each member of the Convention by mail of such call, provided that the time for convening the Convention for such called meeting, shall be not less than five days from the time when the notice therefor shall have been filed; and that such meeting shall be held in the city of Columbus, Ohio.

SECTION 2. The president and secretary shall continue to keep their present office rooms and shall have general charge of the issuing of such pamphlets and documents and the preparation and placing of such advertising matter, as the Convention shall authorize; the indexing, proof reading and publication of the journal of the Convention; the editing, proof reading, indexing and publication of the debates of the Convention. For this work the secretary of the Convention is hereby authorized to retain three employes of the present force to be continued at their present compensation for such length of time, not longer than August 26, 1912, as the president and secretary may find their services necessary; and in addition and at the same compensation and for the same time, H. L. Rebrassier, is hereby employed, to assist in the editorial and proof reading work upon the debates of this Convention; the services of J. B. Lewis and H. S. Brown, bill clerks, are hereby authorized during the month of June, for the purpose of sorting, filing and forwarding the documents of this Convention to the delegates and to the public and such other documents as may be authorized by the Convention; and their services may be continued by the president and secretary after the month of June for any distribution of documents that may be authorized by the Convention; the services of Carl A. Mutschler, clerk of the historian and reference librarian, are continued for thirty days from June 7th at his present compensa-

tion; the services of the postmaster are hereby continued up to June 16, 1912, at his present compensation.

SECTION 3. The services of the sergeant-at-arms, J. C. Sherlock, and of the custodian, Fred Blankner, are hereby continued for the period of seven days after June 7th, and they are hereby instructed to procure boxes and all necessary material for packing and shipping documents of the delegates; they are hereby authorized to retain Wm. C. Reis, John Littlejohn and Allen G. Atwill and they shall receive for such service the same per diem as is now being paid them by this Convention; the president of the Convention is hereby authorized and instructed to sign vouchers therefor and for necessary material and express charges.

SECTION 4. Seven days after June 7, 1912, the sergeant-at-arms of this Convention shall turn over the hall and committee rooms to the proper custodian thereof; except such rooms as may be required by the president and secretary for the work authorized by this Convention, which rooms are hereby retained until August 26, 1912.

SECTION 5. The bill clerk is hereby directed to cause to be filed one complete set of documents, proposals, reports and printed matter, except the daily journal, with the state librarian for preservation in the state library. The secretary of this Convention is hereby directed to deposit with the state librarian one complete printed journal and printed debates, after publication.

SECTION 6. The secretary of this Convention shall attest one printed copy of the journal of this Convention and file the same with the secretary of state as the official record of this Convention. He shall file with any certificate of proposed amendments, engrossed copies of the proposals as finally passed by the Convention and each engrossed copy shall be certified to by the secretary of the Convention, showing the date of final action.

SECTION 7. The service and compensation of all employes of the Convention, not provided for in this resolution, shall cease June 7, 1912.

Mr. DOTY: This resolution is substantially like the one I introduced, the chief difference being in the selection of the names of the clerks who are to assist the secretary in indexing and in the correction of the expert proofreader. I have no personal interest in the names contained in my first resolution. I anticipated that this Convention would follow the precedent that the Convention set itself in the beginning of our work in that it named the employes to assist all of our officers. The selection of the proofreader, an expert to prepare copy and read proof, ought not to be done hastily or at the dictation of some outsider. I made an investigation as to Mr. Nichols, and I found that, with the exception of the secretary himself, there was no one on our force who could do this work. Mr. Nichols is experienced in this line and has done this kind of work for Anderson & Company, the publishers of the Annotated General Code, and has done a great deal of other work of this kind for a great many years. There are comparatively,

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few men who can do this work. I presume in this Convention there are not over three or four of us who can do it. I do not know that I could do it now myself. There was a time when I had experience and would have been competent. Perhaps Mr. Tannehill and Mr. Lampson, and possibly one or two others, would be competent to do the work, but it is not a work that ordinary clerks can do. Now the committee has stricken out the name of Mr. Nichols and put in the name of Mr. Rebrassier. I think that Mr. Rebrassier is one of the clerks, and I do not want to make any invidious comparisons, but it is not saying anything against the gentleman to state he is not equal to this kind of a job. There are very few men who could do it. I am not at all concerned about the clerkships to assist the secretary. The names that I put in were the two women now in the office of the secretary. They know the work and certainly could do it, and then I put in Mr. Cartwright, who has been secretary to several of the committees. It is a question of how much help you want to give to the secretary. We are giving him a tremendous amount of work, and I doubt if there will be enough. Those of us who are here and have been here during sessions of the general assembly know the tremendous amount of work required to fix up this journal and properly index it. And to start to find anything without an index is just like looking for a needle in a haystack. This job that we are giving to the secretary is certainly not an easy job, and he should have enough help. Then the debates have to be indexed so that you can find your matter in there when it is wanted. At first blush no one can grasp the amount of work that we have left here, and I think we should certainly leave enough help.

The clerks that have been picked out are certainly competent. Mr. Morrison has had nine years and Mrs. Scriven has had three years of experience, and both are very competent and very obliging clerks. The two young women, Mrs. Scriven and Miss Kersting, have worked in the office this year and last year. Then I think the secretary ought to have at least one stenographer who is competent to do not only stenographic work but help in the next three months. I put in Miss Keller as a competent stenographer.

Mr. WINN: Are you amending this?

Mr. DOTY: No; the question is on agreeing with the report of the committee. I was setting forth for the benefit of the members of the Convention the difference between the original resolution and the report of the committee.

Mr. KRAMER: What are we going to do with a thousand volumes of this journal bound in buckram?

Mr. DOTY: Each member will get a copy.

Mr. KRAMER: That will be one hundred and nineteen. Suppose there are 800 left; what is going to be done with them?

Mr. DOTY: I don't know. Mr. Lampson introduced the resolution.

Mr. LAMPSON: They go to the different libraries. They are the official records of our proceedings. I think that number will be needed.

Mr. HALFHILL: What is the objection of having the resolution printed and having the regular copy here tomorrow morning so that we can look at it?

Mr. DOTY: None at all. I prefer to have the com-

mittee report not agreed upon until we have carefully considered it.

Mr. HALFHILL: Then make that motion.

Mr. DOTY: I move the resolution be printed as it would read if the report were adopted.

The motion was carried.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 160:

Resolved, That the president is empowered and directed, after the adjournment of the Convention, to sign all vouchers for all authorized expenditures, services of officers and employes and necessary incidental expenses incurred after the adjournment of this Convention; and the auditor of state is requested to honor such vouchers and issue warrants for same on the state treasury.

On motion of Mr. Lampson the rules were suspended and the resolution was considered at once.

The question being "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 67, nays 11, as follows:

Those who voted in the affirmative are:

Antrim,	Harter, Huron,	Norris,
Beatty, Morrow,	Henderson;	Nye,
Beyer,	Hoffman,	Peck,
Brown, Highland,	Holtz,	Read,
Brown, Pike,	Hoskins,	Riley,
Collett,	Hursh,	Roehm,
Colton,	Johnson, Williams,	Rorick,
Cunningham,	Jones,	Shaffer,
Davio,	Kehoe,	Smith, Geauga,
Donahay,	Kerr,	Stalter,
Doty,	Kilpatrick,	Stevens,
Dwyer,	King,	Stilwell,
Earnhart,	Knight,	Tallman,
Elson,	Kunkel,	Tannehill,
Evans,	Lambert,	Tetlow,
Fackler,	Lampson,	Thomas,
FitzSimons,	Leete,	Wagner,
Fox,	Leslie,	Walker,
Hahn,	Longstreth,	Watson,
Halenkamp,	Miller, Crawford,	Winn,
Halfhill,	Miller, Fairfield,	Wise,
Harbarger,	Miller, Ottawa,	Mr. President.
Harris, Ashtabula,		

Those who voted in the negative are:

Brattain,	Farnsworth,	McClelland,
Cassidy,	Fluke,	Pettit,
Dunlap,	Kramer,	Solether.
Dunn,	Malin,	

So the resolution was adopted.

Mr. CASSIDY: I offer a resolution.

The resolution was read as follows:

Resolution No. 161:

Resolved, That the president and secretary be and they are hereby appointed as a special committee to audit, allow and order paid such bills as have not yet been paid or filed with the secretary and are proper charges against the Convention.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. DOTY: I move to recess until nine o'clock in the morning.

The motion was carried and the Convention thereupon recessed until nine o'clock tomorrow morning.

EIGHTY-SECOND DAY

(LEGISLATIVE DAY OF JUNE 6)

MORNING SESSION.

FRIDAY, June 7, 1912.

The Convention met pursuant to recess and was called to order by the president and opened with prayer by the Rev. Mr. McClelland, the member from Knox county, as follows:

We come humbly into Thy presence, oh God, grateful for life's blessings. We bow gratefully to Thee as we go back over the days of our work here and see the many manifestations of Thy loving kindness. We thank Thee for the blessings of usefulness that Thou hast given us. We thank Thee for the wisdom to guide us in the right paths and to do the right things that Thou hast bestowed upon us. We acknowledge Thee today as the author and as the Lord of our being. Thou hast so blessed us. We thank Thee for what Thou hast done for us in the days that have gone by, and for the work that Thou hast permitted us to do for the upbuilding and advancement of our people, that we may secure a reign of law and of righteousness in the world. Direct us all and make us Thy own, that whatever we may do, whatever service we are called upon to render, may be well done until at last Thou shalt say to us in regard to all of our work, Well done, good and faithful servant, enter thou into the Kingdom of thy Lord. And to thy name shall be the glory, Amen.

Mr. DOTY: The Convention will remember that we ordered Resolution No. 134 printed as it would appear if amended. It will be about thirty minutes before this printed resolution will be here.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 162:

Resolved, That the secretary is authorized to receive all data collected by the historian and reference librarian, to put the same and other documents in his office in shape for convenient reference and permanent preservation, and at the conclusion of his work to transmit them with books and other material of historical value to the Ohio Archaeological and Historical Society.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. DOTY: On last Friday the Convention, in a moment of generosity to itself, authorized the secretary of the Convention to print an unlimited number of the constitution of 1851 with the present amendments, in such form that the original section and present amendment will be in different type. I do not know whether the Convention wants the secretary to print a million copies of that pamphlet or twenty-five copies, and I do not

think the secretary knows. Now, I move that that motion be rescinded. I do not think there is any necessity for this at all. I think the pamphlet that we are to publish will contain everything that this contains, and the secretary is so busy that he is going to have very little time to attend to the duty put on him, and for these two reasons I think this should be rescinded.

Mr. JONES: Why not fix the number that shall be sent, say one to each voter in the state?

Mr. DOTY: I simply say it is in indefinite shape now. I am not trying to put it in shape.

Mr. JONES: Can you conceive how the average man with some of these amendments can get a correct idea of them without referring to the original provision of the constitution?

Mr. DOTY: The average voter will be more confused by having the present constitution plus what you propose to do mixed up than to have just what you are trying to do. I think the amendment and the explanation will be all that is necessary. What could the average man do with the old constitution and Judge Peck's proposal? He wouldn't know anything about it. Then take your Torrens proposal; what could the average man know about that? You are simply putting up a Chinese puzzle to the voters.

Mr. WALKER: I hope the suggestion to the amendment by the gentleman from Cuyahoga will not prevail. I think the resolution or motion as adopted on May 31 was very wise. I suggested in what I said last night that the average voter of the state would be able to take the constitution as it now is and distinguish between it and the amendments. It may be possibly a little confusing to him, but in every community there are influential men entirely capable of handling these matters, and the only intelligent way to approach a comparison is to know what the present constitution is and compare it with what the amendments are. You can find a copy of the United States constitution in every home and in every school district, but you cannot find the state constitution. There are comparatively few of them. I say we have no right to withhold from the voters the constitution of the state of Ohio. This was not introduced for lawyers to stick into their libraries at all. I think the lawyers have an abundant supply of constitutions, but this is for the people. If we want to save any money I think we can curtail this large corps of employes they are trying to leave behind here and thereby save enough expense to take care of this item.

Mr. DOTY: Do you contend that it is wise for us to print the old constitution with the amendments in large quantities for the voters of the state?

Mr. WALKER: There should be as many copies of the state constitution as we print pamphlets under the resolution adopted last night. I understand this does not cover the same ground. That should not have been voted down last night. If you will agree to reconsider that resolution last night and incorporate it in this I shall vote with you in rescinding. I think the secretary

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ought to have some privilege of disseminating the constitution.

Mr. DOTY: Are you in favor of publishing a vast number of old constitutions with our amendments?

Mr. WALKER: Not an unreasonable number.

Mr. DOTY: Now another question: Suppose this constitution of 1851 with all of the amendments is printed and a large number scattered among the people of the state. After the election, at which some of the amendments would be adopted and others rejected, would not there be enough pamphlets left over and in the possession of the voters, and would it not be a bad thing to have something around that was not really the constitution?

Mr. WALKER: I think the voters would compare and would find out what had been adopted.

Mr. DOTY: Certainly, if he had the knowledge you and I have, but they have not been here as we have.

Mr. WALKER: There are leading men in communities and they will keep them straight on that.

Mr. DOTY: You are merely thinking up a scheme that will confuse them for years and years to come.

Mr. WALKER: I will risk the confusion.

Mr. PETTIT: I find myself for once in accord with Mr. Doty.

Mr. DOTY: This is not the only time. We were together about thirty days ago on something.

Mr. PETTIT: It seems to me that on this sheet or pamphlet we will have all the information necessary on the subject, and I think it would be an absolute useless expense to print the constitution as has been referred to.

Mr. READ: If we consider this matter carefully we will thoroughly agree with the gentleman from Holmes [Mr. WALKER] on this question. A number of my constituents have asked if we were not going to have the whole constitution printed along with the new part so that they could compare it. I told them I believed that was the intention, and they said that that was the right thing to do because they wanted to know what was in the old constitution when they came to vote upon an amendment changing the old constitution.

Mr. DOTY: I will withdraw the motion and will move that the number of copies of the constitution ordered be limited to five thousand.

The motion was carried.

Mr. ANTRIM: I want to call attention to three very serious defects in the initiative and referendum proposal as passed. Possibly some of you would like to mark them. Turn to page 2 in the grand resolution, article II, section 1. You will find in section 1 in the fourth line at the end of the line these words, "and amendments to the constitution." Those words should be stricken out altogether. I am referring now to the last grand resolution put on your desk that has the ballot at the end of it. These words should be stricken out for this reason: The amendment prepared by the special committee at the last reading cuts out altogether the indirect initiative method of proposing constitutional amendments. Of course, that was adopted and after it was adopted the change was not made in section 1 to correspond. The result is we have an inconsistency.

Mr. PECK: That does not refer only to the indirect method, but to both methods. It is a general provision.

Mr. ANTRIM: There is only one method of amending the constitution and that is by the direct method.

Mr. PECK: And they have reserved the power to do so.

Mr. ANTRIM: This says, "but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution." As a matter of fact we shall not be able to propose to the general assembly amendments to the constitution. The only method is the direct method on a petition of ten per cent, so the only correct thing to do is to strike out those words "amendments to the constitution."

Now, turn to the next page, three, about ten lines from the bottom of the page, beginning with the sentence "Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a, and section 1b."

The implication there is that both proposed laws and amendments have to do with section 1a and section 1b. As a matter of fact amendments have only to do with section 1a and proposed laws only to section 1b. Of course that resulted from the fact that this amendment was introduced by a special committee and this change was not made to correspond. That sentence would have to be entirely rewritten to make it correct.

This is not the fault of the committee on Arrangement and Phraseology, because they corrected only the amendment itself, section 1b. They did not look to the remainder of the proposal, which they had gone over carefully before. These are inconsistencies that arise as the result of the introduction of this new section, and I am calling attention to the error but not suggesting the change.

Now, there is one other one and you will find that on page 5, section 1g, not quite down to the middle of the page. The sentence, "No law or amendment to the constitution submitted to the electors by initiative and supplementary petition." The inference is that we submit both laws and amendments to the constitution by initiative petition and supplementary petitions. As a matter of fact we permit only amendments by initiative petition. Supplementary petitions have nothing to do with amendments and laws by both initiative and supplementary petitions, and the way to correct that is to introduce the word "or" between "initiative" and "supplementary" or rewrite the sentence.

Mr. LAMPSON: This matter came up last night and I thought a good deal about the parliamentary method of making the correction. I talked with Mr. Crosser and he felt that he would rather leave it just as it is, inasmuch as it does not affect the meaning and application of the amendment. The only way I can see out of that is to resolve that the secretary of the Convention be directed to enroll and print the proposal as adopted on final passage so that it would read "as follows:" and then set out in full the corrections. But that would afford a technical opportunity for some one to raise a question.

Mr. KING: If that motion were carried, could it be made to include the amendment relating to the courts, Judge Peck's proposal?

Mr. LAMPSON: It could, but that should be fixed by a separate amendment. I also took that matter into consideration. This is a simple direction to the secretary

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to enroll and cause to be printed as adopted on final passage, so as to read "as follows:" and that would be certified to the secretary of state as what has been enrolled under these directions and this sheet would have to be taken out and another sheet substituted.

Mr. JONES: Would the journal show that that was adopted in that form?

Mr. LAMPSON: Yes, but you would have to take in connection with it this direction, which must be adopted by a yea and nay vote, to get a correct understanding of the matter. Of course, it would be certified by the secretary of the state in accordance with a resolution directing the secretary to make the correction and enroll and cause the proposal to be printed in that way.

Mr. FESS: Could we not reconsider the final vote on this matter?

Mr. LAMPSON: The trouble about that is it has been signed by the president and secretary and a reconsideration comes too late.

Mr. DOTY: The trouble is that the minutes of the Convention show that the proposals have been enrolled and, so far as we know, filed with the secretary of state.

Mr. LAMPSON: I do not want to be understood as saying that this affords a clear way out of it. It is the only possible way. Our rules provide that we shall do whatever we do in the shape of proposals. I mean in the way of amending the constitution. We have provided these proposals shall have a certain number of readings and a certain consideration and all the proposals have gone through that grind. Then it came up to the place where we should officially certify or notify the secretary of state of what we have done. The way we did that was through what we call the grand resolution, which we signed last Saturday. We didn't have to sign it, but only the president and secretary. We did sign it, however, and for all we know that has gone to the secretary of state and it may be that the secretary of state actually has that copy in his possession. Technically that is where it belongs. If the secretary of this Convention has that enrolled copy he is holding it as his own risk.

Mr. HOSKINS: Suppose there is an error; could we direct the secretary to correct it?

Mr. DOTY: If you do it according to our rules that is possible. It is possible to introduce a proposal this morning now, to take number 2 and amend as follows. Then the resolution is put in with the correction, just as we have suspended the rules before, and we would suspend them again and order it to its second reading and to its third reading, and then pass another grand resolution which we would have to enroll. In connection with that we would have to rescind the one we have passed, enroll the second one and send it to the secretary of state with directions to substitute for the other one.

Mr. HOSKINS: If the matter were an error couldn't the secretary correct it on the original enrolled bill?

Mr. DOTY: The secretary of the Convention has no right to change a period or a comma or a word. That does not make any difference to him. He cannot change a thing.

Mr. HOSKINS: Except by direction of the Convention?

Mr. DOTY: And if he does it by direction of the Convention this Convention is directing him to certify

something to the secretary of state that has not passed or that did not pass.

Mr. MILLER, of Crawford: Would not that require signing again?

Mr. DOTY: All the signatures required were those of the president and secretary. I am not contending that we shouldn't make the corrections. I am willing to stay another week and correct them, but if they are corrected they must be corrected in a proper way.

Mr. ANTRIM: Do you not think the initiative and referendum proposal will be more widely read in this country than all the rest together, and therefore don't you believe that as far as possible we should free it from defects?

Mr. DOTY: Of course, I do.

Mr. ANTRIM: We are going to be judged in the other states more largely in what we have done in this proposal than anything else.

Mr. DOTY: That is true. I am not at all contending against making these corrections. I am only trying to point out the only possible way to make them. The method proposed by the member from Ashtabula [Mr. LAMPSON] may be right, but I don't think it is.

Mr. WINN: This Convention is a law unto itself except as it may be controlled by the rules, and it may be that we can suspend the rules and do what we please. We might suspend the rules and make new rules.

Mr. DOTY: We could not under the rules.

Mr. WINN: We could suspend the rules and undo everything we have done.

Mr. DOTY: You cannot suspend the rules of procedure except by a two-thirds vote and notice of three days.

Mr. WINN: Do you say it takes three days' notice to change the rules?

Mr. DOTY: Yes.

Mr. KING: I do not believe there can be any way devised by which these corrections can be made safely, nor do I believe they are material corrections at all. The words in the initiative and referendum proposal suggested by the gentleman who raised the question, will simply be rejected as mere surplusage. They say, as hereinafter provided, the affirmative grant of power is to be found in the subsequent section to tell how that power can be exercised, and it does not apply in the double-petition method at all. The suggestion of the gentleman from Allen as to the judicial amendment, section 15, article IV, does not lie at all. It could not be better written. The trouble arises because the committee used the expression "laws may be passed" wherever "general assembly" had been used. When they changed that expression they didn't change it so as to plainly indicate or express just what was intended by that section, but as it reads now laws may be passed. Now the legislative power is vested in the general assembly regardless of limitation or reservation. We reserve certain legislative powers, to be exercised in a certain way, to the people. But laws may be passed to increase the number of judges and establish other courts and so forth whenever two-thirds of the members elected to each house shall agree thereon. So that is the way and the only way now that laws can be passed to increase the number of judges and increase the number of districts or establish other courts, when two-thirds of the

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members of each house—that can mean but just one thing, and that is the general assembly, the only law-making power in Ohio that has two houses. That, therefore, will be construed to mean that the general assembly alone can act upon the subject of increasing or diminishing the number of judges. As I see it, it could have been better written to express the idea in connection with the initiative clause in our constitution, but at the same time it is a perfectly workable proposition and ought not in my judgment now be tinkered with.

Mr. HALFHILL: The way the proposal was written originally it had in the forefront of it the words "general assembly." Now the committee on Phraseology struck out the words "general assembly" and inserted "laws may be passed". It is very awkward looking. It is so awkward that there should be some way to remedy it. I admit that the construction would be just as contended for by Judge King, however.

Mr. KING: You say it is awkward. There is no doubt about the meaning of it?

Mr. HALFHILL: I do not think there is any doubt. The meaning is correct, but it is awkward.

Mr. PECK: But after it has been passed that way, is not that an end of it?

Mr. HALFHILL: We certainly have control of our own proceedings here. I do not see any force in the argument of the gentleman from Cuyahoga [Mr. Dory] that everything we have done here is so sacred that we cannot remedy it. I do not know of anybody who has made more fun of precedent and established things than the gentleman from Cuyahoga.

Mr. DOTY: I distinguish between the words "precedent" and "sacred".

Mr. PECK: Well, what is before the Convention?

Mr. DOTY: Nothing but to wait for the printer to bring up Resolution No. 134.

The PRESIDENT: The member from Cuyahoga has stated it correctly.

Mr. HALFHILL: I move that we insert in this provision after the word "house" the words "of the general assembly".

Mr. DOTY: There are several points of order that might be raised to that. One is that it is not in writing.

Mr. LAMPSON: Another point of order is that it is not before the Convention.

Mr. DOTY: And while the gentleman is reducing it to writing we will think of several others.

Mr. LAMPSON: I want to call the attention of the gentleman to the fact that if his motion is voted down it will be notice to future investigators that the Convention did not intend what the gentleman wants to insert.

Mr. HALFHILL: That may be true.

Mr. DOTY: I now call up Resolution No. 134.

The PRESIDENT: The question is upon agreeing to the report of the committee.

Mr. DOTY: The difference in the two resolutions, the one I introduced and the other, is not material except in two or three particulars. My notion that the best way to get the resolution in shape, if the Convention desires to do so, and I say it without reflection upon the committee, is to disagree with the report of the committee, which will leave the resolution as originally introduced and then amend that resolution to accord with the wishes of the Convention. I have some amendments for

correcting dates and one thing and another that in my judgment ought to be corrected and I think it will then be in proper shape.

The resolutions we adopted yesterday are going to make a tremendous amount of work. I do not mean mental work only, but down right mechanical manual work, to be done by somebody. The number of employes that I had provided in the original resolution in my judgment is not large enough to do this work and do it right. I went over in a hasty way the work of the secretary in indexing and printing and publishing the journals and debates and I do not suppose that many of you members can really realize what that work is. I do not want you to think I am trying to make a mountain out of a mole hill. It is a matter personally of no concern to me whatever. I am not charged with the responsibility. I do feel that I ought to tell you what I think about it because I have had experience. I do not suppose you can realize the amount of work the secretary is going to be charged with under the resolution we passed yesterday and under the resolutions concerning the publishing and printing of the debates and journals. The original resolution only provided for five people, one of whom would be engaged for the most part—although when he was not engaged he could be used elsewhere—in the work of the committee on Submission. That leaves three clerks and the secretary to do the work of indexing and proofreading. I provided a really expert proofreader, and in my judgment there ought to be at least one more clerk, and the amendment that I prepared provided for that. I will state to you frankly if you do not want any more clerks the resolution is easily amended. I have no personal interest in the name of any person inserted. Now my amendments are as follows:

In line 1, strike out "Saturday" and insert "Friday".

In line 2, strike out "1" and insert "7".

In line 29 strike out "the month of June" and insert "thirty days from June 7, 1912".

In line 23 strike out "during the month of June" and insert "until July 7".

In line 30 change "16" to "20".

In line 34 change "this date" to "June 7".

In line 41 change "1" to "7".

In line 58 change "1" to "7".

In line 17 after "Morrison" insert "S. E. Neff".

Now, if the committee's report is voted down and we return to my original resolution, we can as easily amend that as any other. I think it will be much easier to consider and we will fix the whole matter in a few moments.

Mr. KERR: Your resolution will be open to amendment?

Mr. DOTY: Yes; I have amendments to offer myself, which I have read.

Mr. RILEY: We have clean copies of the last resolution.

Mr. DOTY: Clean copies don't make so much difference.

Mr. RILEY: Well, we have no copies of the other at all.

Mr. DOTY: Resolution No. 134 is upon your desk

Retention of Employees through Recess of Convention.

and has been for a week or ten days. There are more members know what is in that than in the other resolution.

The PRESIDENT: The resolution is on page 50 of the journal.

Mr. DOTY: Yes, and it has been printed in bill form. It is pending before the Convention and is on everybody's desk, including that of the member from Washington.

Mr. ROEHM: This resolution was sent to the committee on Employees and we spent an hour and a half or two hours on it. We couldn't agree upon certain names and finally we did agree to report it back in the shape it is now, allowing the secretary to make the appointments. The remainder of the report is substantially the original resolution.

Mr. DOTY: You were just referring to us the part the committee couldn't settle?

Mr. ROEHM: That part will have to be attended to here.

Mr. WINN: I want to call attention to one very important thing. I notice that the services of the postmaster are continued for ten days. If I understand it the postmaster will be required to go to the postoffice and file a list with the postmaster of the delegates to the Convention and where to forward our mail. Do you not think it would be fair to put the assistant postmaster in to aid him in doing that arduous work?

Mr. ROEHM: We tried to follow that report as well as we could. The date, June 16, has not been changed, although it is a week later than when the resolution was first introduced.

Mr. MILLER, of Crawford: I hope the report of the committee will be agreed to. We have heard a great deal of argument during the Convention on short ballot and responsibility. Now place a man in charge and let him be responsible. The secretary should be allowed to select the help he needs.

Mr. LAMPSON: I am credibly informed that the secretary does not desire the responsibility of making these appointments. I am authorized to so state.

Mr. MILLER, of Crawford: That does not change my ideas. We should hold him responsible for the work, and he is the only one who should be required to appoint the employees.

Mr. DOTY: The gentleman from Crawford is entirely right. And if you go back to the beginning of the Convention you will find it is the very stand I took and one that the member from Crawford didn't take at that time. Members of the Convention said at that time to the secretary that he had no right to say who his help should be, but that they would hold him responsible for the work. That is the way we began and we put certain employees in his office and compelled him to take them whether he wanted them or not. I was against that. It is wrong in principle.

Mr. MILLER, of Crawford: It is wrong now.

Mr. DOTY: It is not wrong now if we were right then. If it is right then, why is it not right now? Why cannot the Convention pick out the helpers from that same set of people? Another thing, you say you are going to allow the secretary to appoint them and you only permit him to appoint half of them. Personally I don't care who appoints.

Mr. MILLER, of Crawford: The secretary knows who is best qualified.

Mr. DOTY: Yes, and he could have picked out a fair set of men at the beginning and he could have secured better work out of the employees than he has obtained if he had had the selection and control over them. Your directors don't come around and tell you whom to put in as paying teller.

Mr. BROWN, of Highland: What was it that determined the committee to remove from the resolution the name of the expert, Mr. Nichols, and replace him with an inexperienced proofreader?

Mr. ROEHM: In the first place, I do not believe that Rebrassier is so inexperienced a man. Secondly, we did not know who Mr. Nichols was.

Mr. BROWN, of Highland: It is generally conceded that Mr. Nichols is an expert in the business for which he was suggested in the report of the committee, and I have no idea that the gentleman who replaces him has anything like as large experience in that direction. I think that Mr. Nichols would certainly be the better man and I move that his name be replaced.

Mr. DOTY: Just vote down that report and you will do the same thing.

The report of the committee was disagreed to.

The PRESIDENT: The question is now on the adoption of the resolution.

Mr. DOTY: I now offer the amendment that I read a moment ago. Some of the proposed changes are made necessary by the postponement of the date of recess. After this is adopted we can make any further amendment if we so desire.

The amendment offered by Mr. Doty was again read.

The amendment was agreed to.

Mr. SMITH, of Hamilton: I want to offer an amendment to Mr. Doty's amendment. I do it with a certain amount of hesitancy and embarrassment because it involves striking out a name which is now in and substituting another. Before offering the amendment I want to testify to the hard work that Mr. Morrison has done and the good service he has rendered to the Convention and my high personal admiration for him as a man, but some of the friends of the other employees have handed this amendment to me and asked that they be given an opportunity to vote for Mr. Wulff, who is also at the desk. I have known Mr. Wulff for many years and worked with him in many special tasks and it gives me pleasure to offer this amendment which inserts Mr. Wulff's name in place of that of Mr. Morrison.

Mr. TANNEHILL: I want to second that for Mr. Wulff. I do not do it because I have anything against any other clerk. I think they have all been efficient and I think the Convention has a right to select whom they want to remain.

The amendment was read as follows:

Insert after "Ira I. Morrison" the name of S. E. Neff. Strike out in lines 16 and 17 the name of "Ira I. Morrison" and substitute in lieu thereof the name of "Ernest G. Wulff".

Retention of Employes through Recess of Convention.

Mr. DOTY: Mr. Morrison has been employed by this Convention and whatever efficiency he has had you have seen. He has been paid for his services and up to this moment, assuming he got his pay today, we owe him nothing. We are not under any obligation to hire him or any person else. There is no obligation about this at all. It is very embarrassing to stand here and attempt to compare two gentlemen who are right in front of us, and for both of whom I have high esteem, but we are up to the employment of a clerk for the work that he can do, not the work he has done, and, based upon the best experience we can find about our staff, I will take the judgment of any member of the Convention if he will take the time and trouble to investigate the efficiency and experience and knowledge that Mr. Morrison has. Mr. Wulff has had experience for one session upon a job that was absolutely created and absolutely unnecessary. That job over in the corner and that job at that desk ought to have been combined. Mr. Wulff ought to have done both of those jobs and he could have done it. He is a man of ability. But the kind of work the secretary has called upon Mr. Wulff to do has not given him the necessary experience. It was not his fault, but it has not given him the necessary experience to do the kind of work that Mr. Galbreath wants in the next three months.

Mr. SMITH, of Hamilton: Is there an employe by the name of Neff?

Mr. DOTY: Yes.

Mr. SMITH, of Hamilton: If there is no objection I would like to change my amendment and insert Mr. Wulff in place of Mr. Neff.

Mr. MILLER, of Crawford: I oppose this change in the amendment. Mr. Neff has been here during the Convention and I think the members will realize that he has been a very valuable assistant to the secretary. He is the one who has been doing the research work and has been very satisfactory all the way through. I shall oppose very much substituting Mr. Wulff's name for that of Mr. Neff.

Mr. SMITH, of Hamilton: I will offer an amendment.

The amendment was read as follows:

Insert after "S. E. Neff" the name of "Ernest G. Wulff".

Mr. SMITH, of Hamilton: I regret very much that we cannot keep every employe that we have permanently. And as it has been suggested that we have not retained quite enough assistance, I offer this amendment and will not move to strike out anything.

Mr. TETLOW: I would like to hear the names of those who are to be retained read.

The SECRETARY: Ira I. Morrison, S. E. Neff, Ernest G. Wulff, Ella M. Scriven, Julia E. Kersting, Katherine Kellar and George Cartwright.

Mr. TETLOW: Originally, employing these people was not a very small job. It was a thankless proposition and one that required a great deal of care and attention. We were able to select employes that have been efficient and good conscientious men and women. It seems to me, after looking over the entire work that this committee on Employes has done, that we made some mistakes. A person can see after he has had some experience in doing work that he might have done that which would

have been better. I think it is an outrage, I don't care who is retained for these positions, to employ seven people along with the secretary to carry on this work that has been laid down by our resolution. It is an expenditure of the state's money that is absolutely unnecessary. We reduced the time for which they were to be retained, and I can't figure out why the secretary with three good clerks cannot complete the work that has been laid down by August 26. Take the matter which we have upon our desks and in our desks. There is a resolution to pay a whole lot of money to have that packed up and sent home. One man can do it in a day or two. I think we had better not fight so much over who is to be retained as to keep down retaining too many. I want the work done right and done well, and I want to see the work of the Convention perfected, but I don't want to spend more money than is necessary to do it.

Mr. DOTY: There is a good deal of force in what the member from Columbiana [Mr. TETLOW] has said. I for one want at this time, probably the last time I shall ever have an opportunity to compliment the committee on Employes for the excellent work they did in the early part of this Convention. I think the Convention owes a debt of gratitude to that committee for the work it did. And there is a good deal of truth in what the member said about piling up expense. I am not much on piling up expense myself. My resolution called for five people and I think that is not enough. I made an amendment to add one and since then there has been an amendment to add another. There is just so much work to be done. You might put twenty-five on temporarily and they might get through it in a very short time. I think when the work is done that the employes will be discharged by whoever is in charge.

Mr. PETTIT: But will they do it?

Mr. DOTY: Of course they will. Nobody believes that the president and secretary of the Convention are going to keep anybody when they are not needed.

Mr. PETTIT: That is what is being done now.

Mr. DOTY: You may be right about that, but I think you will find that when the work is done the employes will be retired.

Mr. BROWN, of Highland: There cannot be any objection to the larger number if the provision is for them to be relieved from duty as soon as the work is done.

Mr. TETLOW: I don't see how seven employes can work in the secretary's office on the work that we have to do. I don't see how they can be used to advantage.

Mr. McCLELLAND: It is difficult to discharge any employes after they have rendered as efficient service as they have here. But that same situation may continue. The president and the secretary will find it hard work to discharge some of the employes and you will see that the whole bunch will be retained until the last advertisements are in, so that they will simply be employed for the whole time. I therefore move that the names in lines 16 and 17 of the Doty resolution be stricken out and the corresponding lines in the committee's report be substituted, "For this work, the secretary of the Convention is hereby authorized to retain three employes of the present force to be continued at their present compensation."

Retention of Employes through Recess of Convention.

Mr. DOTY: I do not want to raise a point of order to be captious, but that should be in writing.

Mr. McCLELLAND: It is in writing.

Mr. DOTY: The motion is not in writing, but I am willing to wait until it is and I do not want to hurry the member.

Mr. FESS: There is not anyone on the floor who would hesitate to vote for all the help that we need, but if there is any way by which we can get along with less, or by which we can find out just how much we need, we would like to know it. Every member would vote for any person who has been selected purely on account of efficiency. Now there is a person suggested as a proofreader and I would like to vote for that person. But at the same time I would like to know whether it is understood that when this work is done these people are to be discharged without continuing for an indefinite time. It seems to me that ought to be clearly understood by everybody here.

Mr. DOTY: I am preparing an amendment that will make that absolutely clear and definite and I will read it in just a moment.

Mr. FESS: With that point in view there is no use in higgling here and killing time. The Convention is ready and anxious to do whatever is necessary for a proper ending.

Mr. DOTY: I would ask the member from Knox if this amendment that I am proposing will not meet his approbation and settle the whole question to his satisfaction as well as to the satisfaction of everybody else: "The president, vice president and secretary are hereby authorized to discontinue the services of any employe provided in this resolution at any time."

Mr. McCLELLAND: I do not withdraw my amendment.

Mr. STILWELL: I move that the amendment of the delegate from Knox be laid on the table.

The motion was carried.

Mr. DOTY: Now I offer an amendment.

The amendment was read as follows:

After line 58 insert:

"Section 8. The president, vice president and secretary are hereby authorized to discontinue the services of any employe provided for in this resolution at any time."

Mr. DOTY: I now demand the previous question on the whole thing.

Mr. MILLER, of Fairfield: I hope the amendment will not be carried.

The PRESIDENT: The president would like to ask the member from Cuyahoga if he will not withdraw that motion, as the president stated to the member from Fairfield that he would give him an opportunity to offer an amendment.

Mr. DOTY: I have no objection to withdrawing the demand for the previous question for the gentleman to offer the amendment.

Mr. MILLER, of Crawford: I offer an amendment.

The amendment was read as follows:

In line 4 strike out "10" and insert "25".

The PRESIDENT: That amendment is not now in order.

Mr. DOTY: Let us dispose of my amendment.

The PRESIDENT: The question is on the adoption of the amendment of Mr. Doty.

The amendment was agreed to.

The PRESIDENT: Now the question is on the amendment of the gentleman from Crawford.

The amendment offered by Mr. Miller, of Crawford, was again read.

Mr. DOTY: I now demand the previous question on the whole thing.

The PRESIDENT: The president would like to ask the gentleman from Cuyahoga to withhold that. The president promised to recognize the member from Stark [Mr. WEYBRECHT].

Mr. DOTY: All right.

Mr. LAMPSON: Let us act on this amendment first.

The amendment offered by the delegate from Crawford [Mr. MILLER] was agreed to.

Mr. WEYBRECHT: I offer an amendment.

The amendment was read as follows:

In line 17 after "Ira I. Morrison" insert "H. L. Rebrassier".

The amendment was not agreed to.

Mr. DOTY: I demand the previous question on the whole resolution.

The main question was ordered.

The amendment offered by the delegate from Hamilton [Mr. SMITH] to insert "Ernest G. Wulff" after the name "S. E. Neff" was agreed to.

The amendment offered by the delegate from Cuyahoga [Mr. DOTY] was agreed to.

Mr. KRAMER: Now I think there should be a separation there, and that section 3 should be voted on separately.

The PRESIDENT: If there is no objection the separation will be made and the question is on the adoption of the resolution except section 3.

Mr. CASSIDY: There is an expenditure of money involved and the yeas and nays must be called upon that.

Mr. LAMPSON: Upon the resolution as a whole.

The resolution, except section 3, was agreed to.

The PRESIDENT: The question now is "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 60, nays 20, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Miller, Crawford,
Beyer,	Harbarger,	Moore,
Brown, Highland,	Harris Ashtabula,	Nye,
Brown, Pike,	Harter, Huron,	Okey,
Cody,	Harter, Stark,	Partington,
Cordes,	Henderson,	Peck,
Cunningham,	Hoffman,	Pettit,
Davio,	Hoskins,	Pierce,
Donahey,	Hursh,	Read,
Doty,	Kehoe,	Roehm,
Dunlap,	King,	Rorick,
Earnhart,	Kunkel,	Smith, Geauga,
Evans,	Lambert,	Smith, Hamilton,
Farrell,	Lampson,	Stalter,
Fess,	Leete,	Stevens,
FitzSimons,	Leslie,	Stilwell,
Fluke,	Longstreth,	Thomas,
Fox,	Ludey,	Watson,
Hahn,	Malin,	Weybrecht,
Halenkamp,	Marshall,	Mr. President.

Retention of Employes through Recess of Convention.

Those who voted in the negative are:

Beatty, Morrow,	Kramer,	Tannehill,
Cassidy,	Mauck,	Tetlow,
Colton,	McClelland,	Wagner,
Johnson, Madison,	Miller, Fairfield,	Walker,
Johnson, Williams,	Norris,	Winn,
Jones,	Riley,	Wise.
Keller,	Stokes,	

So the resolution was adopted.

Mr. TANNEHILL: A division was demanded and we have not voted on that section.

The PRESIDENT: The vote was taken first on the

resolution with the exception of section 3 and then a vote was taken upon the passage of the resolution as a whole, including section 3.

Mr. KRAMER: When did we have a chance to vote against section 3 by itself. I would like to know about that.

Mr. LAMPSON: There could not be any division of the resolution.

Mr. DOTY: I now move that we adjourn to reconvene August 26, 1912.

The motion was carried and the Convention adjourned to meet August 26, 1912, at two o'clock p. m.

EIGHTY-THIRD DAY

AFTERNOON SESSION.

MONDAY, August 26, 1912.

The Convention was called to order pursuant to adjournment and opened with prayer by the delegate from Knox county, the Rev. Mr. McClelland.

The journal of the legislative day of June 6 was read and approved.

Mr. LAMPSON: In a minute or two I shall be ready to offer a resolution which the secretary is now preparing.

Mr. DOTY: There is a resolution that it is necessary for us to pass and I would like to offer it at this time to get it out of the way.

The resolution was read as follows:
Resolution No. 163:

Resolved, That when the Convention adjourns on August 26, 1912, it be without day.

Mr. DOTY: This is merely to carry out the rule we adopted, and it will require at least a majority to adjourn; and so that we shall not be crowded at the end I offer the resolution at this time to get it out of the way.

Mr. HARRIS, of Ashtabula: There is no objection, provided there is no intention on the part of anyone to bring forward any matter of business and insist on it being acted upon this afternoon. I can conceive of a condition arising which would necessitate and render desirable an adjournment. I do not know that I am putting an interpretation upon it that is entirely warranted, but I do not see the necessity of such a resolution.

Mr. DOTY: I had supposed it was apparent to everybody why such a resolution was necessary. This Convention by special rule has declared that we cannot adjourn without day unless sixty members vote affirmatively on the roll call, and I am trying to get that roll call out of the way now. It seems to me that we all know that this Convention is quite capable of looking out for its own rights.

Mr. HARRIS, of Ashtabula: I was aware of that, but I thought it was a good thing to watch in time. I do not mean to assume that there is anything at all out of line. I supposed that it was the understanding of every member of the Convention that after a little formal discussion we would adjourn. That was my understanding, and from expressions I have heard from members I think it was the general understanding.

Mr. FESS: May I ask the gentleman from Cuyahoga [Mr. Dory] a question?

Mr. DOTY: Yes.

Mr. FESS: Is it the meaning of your resolution that when we adjourn today we adjourn without day?

Mr. DOTY: Yes.

Mr. FESS: That means that we must keep in session until we are ready to adjourn?

Mr. DOTY: We could recess until tomorrow if it were necessary. That could be determined later. The member from Ashtabula [Mr. HARRIS] has set forth my understanding of what is to be done, but if the Convention desires to do something that will take a week we

can recess from day to day, or we can reconsider and rescind this resolution.

Mr. FESS: I am in favor of the resolution.

The PRESIDENT: The question is on suspending the rules that the resolution may be put on its passage. The rules were suspended.

The PRESIDENT: Now the question is "Shall the resolution be adopted?"

The yeas and nays were regularly demanded, taken, and resulted—yeas 85, nays none, as follows:

Those who voted in the affirmative are:

Baum,	Harbarger,	Miller, Ottawa,
Beatty, Morrow,	Harris, Ashtabula,	Nye,
Beatty, Wood,	Harter, Huron,	Partington,
Beyer,	Henderson,	Peck,
Brown, Pike,	Hoffman,	Peters,
Cassidy,	Holtz,	Pierce,
Cody,	Hoskins,	Price,
Collett,	Hursh,	Read,
Colton,	Johnson, Madison,	Redington,
Cordes,	Johnson, Williams,	Rockel,
Crosser,	Kehoe,	Roehm,
Davio,	Kerr,	Shaffer,
DeFrees,	King,	Shaw,
Donahey,	Knight,	Smith, Geauga,
Doty,	Kunkel,	Solether,
Dunlap,	Lambert,	Stevens,
Dunn,	Lampson,	Stilwell,
Dwyer,	Leete,	Stokes,
Farnhart,	Leslie,	Taggart,
Eby,	Longstreth,	Tannehill,
Elson,	Ludey,	Tetlow,
Evans,	Malin,	Thomas,
Farnsworth,	Marriott,	Wagner,
Farrell,	Marshall,	Walker,
Fess,	Matthews,	Watson,
FitzSimons,	McClelland,	Winn,
Fox,	Miller, Crawford,	Wise,
Hahn,	Miller, Fairfield,	Mr. President.
Halfhill,		

So the resolution was adopted.

Mr. LAMPSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 164:

Resolved, That the president of the Convention is hereby authorized to certify to the next general assembly the following claims for payment:

Mr. LAMPSON: Right at that point the claims in detail would appear. I have three or four hundred of them in my hand and others have come to the office and are in process of being typewritten. I ask the secretary not to read the claims in detail, but that he read the rest of the resolution.

The remaining part of the resolution was read as follows:

That the president is authorized to make such additions to the above list as may be necessary to correct omissions growing out of lack of reports of claims for newspaper advertising.

Mr. LAMPSON: Under authority of the Convention contracts were made with four hundred and ninety-one newspapers to advertise three hundred inches of matter and to circulate the supplements containing the amend-

Newspaper Advertising of Work of Convention.

ments, together with the explanations—in other words, the address to the people. All but a few of these papers have reported the execution of their contract, but there are a few, perhaps half a dozen or so, that have made no report. Some of the reports have come in today and very likely the remainder will come in within a day or two. A few have neglected to include the supplement. That is the reason why the final paragraph of the resolution is made as it is so that the reports from those which have made these failures can be added. Nothing can be added except where they have contracts which they have executed, and they must prove their execution.

I do not know whether the Convention cares to hear one of these contracts read or not, but as it is very brief and as we have the time, I will read one. Here is one from Fulton county:

WAUSEON, OHIO, July 19, 1912.

The committee on Submission, of the Ohio Constitutional Convention, Herbert S. Bigelow, president, 52 Blymer building, Cincinnati, Ohio:

The Democratic Expositor hereby agrees to accept a contract for publishing the advertising matter of the Constitutional Convention upon the following terms:

Space: Three columns, 20 inches long, once a week for each of five weeks.

Price: Payment for the aggregate of fifteen columns (300 inches) to be \$108.

Date of: In weekly papers the advertisements to be inserted in each of the weeks beginning July 29, August 5, 12, 19 and 26.

In daily papers insertion to be made on five successive Saturdays, viz: August 3, 10, 17, 24 and 31.

Supplements: We will insert in all of the editions containing the second advertisement supplement as authorized by the Convention.

We hereby authorize your Convention committee to order for us one thousand copies of said supplement to be dated August 9, and to carry the name of our paper as follows: The Democratic Expositor.

We understand that the price for these supplements is to be \$6.25 a thousand, express prepaid, and that this price to be paid to the Western Newspaper Union by us, but that the amount paid by us for said supplement shall be added to our bill of \$108 to be paid by the Convention.

We understand that we are at liberty to purchase these supplements elsewhere, or to print them ourselves, and in this event we shall be allowed \$6.25 per thousand, but if we do so we agree to submit proof of same for approval of your committee before publication.

We further agree to terms of payment as provided by resolution of the Convention, viz., that each publisher shall accept his equal, ratable share of whatever funds the Convention may have left, and that the balance due each publisher shall be certified by the Constitutional Convention to the next Ohio legislature for payment, upon the usual proof of publication.

H. D. MEISTER.

As to the supplements, the option was given to the papers to purchase them or to print them themselves in their own offices, and a great many of them printed them themselves. If they purchased them from the Western Newspaper Union they paid for them.

Each newspaper has furnished in duplicate a statement of having executed the contract, the dates when the advertising was published, etc. The total is 491 newspapers and the space aggregates 141,300 inches, one column wide. The total number of supplements is 1,126,544. There are ten or a dozen papers that have not reported as to the supplements. They may have reported the advertisements but neglected to report the supplements, and that is the error we have to correct. The total cost is about \$62,000. We have had it added by the adding machine and as now reported it amounts to \$61,176.18. That is the total of all the advertising and for the circulation of a million or more supplements. The exact number of supplements, as I have said, is 1,126,544. The total cost of all that has been \$61,176.18, to which will be added the corrections for the supplements not reported and the very few papers that have not made reports.

All of these reports are on file in the president's office. The clerk in there worked until two o'clock this morning transcribing and they are in this form.

Now the advertising is the same in all the country papers and in all the city papers. The only difference is in the larger cities, where the charge would be larger, such papers as the Cincinnati Enquirer and the papers of Columbus and Cleveland. The cost does not exceed \$400 for any one of those large papers, even where they have 600,000 circulation. So far as I am concerned, being somewhat familiar with the newspaper business, I am ready to say this amount of advertising has been done for much less than any similar amount was ever done in the state of Ohio.

Mr. HALFHILL: May I ask the gentleman a question?

The PRESIDENT: Does the gentleman yield to a question from the gentleman from Allen?

Mr. LAMPSON: Certainly.

Mr. HALFHILL: The details of this matter were in the hands of a special committee?

Mr. LAMPSON: Yes.

Mr. HALFHILL: Who were the members of the special committee?

Mr. LAMPSON: The president, Mr. Stevens and myself.

Mr. HALFHILL: Are you familiar with all the contracts that were made?

Mr. LAMPSON: No, sir; I am not. I am fairly familiar with those applying to the country papers, with here and there an exception growing out of some misunderstanding or failure to get the advertising. There were one or two cases where the advertising failed to reach the paper in time. I only know of one such case, but there may be others.

Mr. HALFHILL: The resolution submitted by Mr. Doty, if I remember correctly, provided that commercial rates might be used.

Mr. LAMPSON: That was used in case of the city papers.

Mr. HALFHILL: What was that rate?

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Mr. LAMPSON: I do not know.

Mr. DOTY: That varied with each paper.

Mr. LAMPSON: It varied according to the circulation of the paper. In one case it was \$1.54 an inch. That was the Cleveland Plain Dealer. I do not carry all of those in my mind, but they are all here. All the contracts with the rates charged are on file. I can only say that I have looked at them only to the extent to satisfy myself that there was not anything exorbitant about them. I was surprised that a great newspaper like the Cincinnati Enquirer should have a bill of less than \$500.

Mr. HALFHILL: Another inquiry: Did the subcommittee approve of the advertising as it went in?

Mr. LAMPSON: The subcommittee individually went over the list of Ohio papers and checked off such papers as it was thought might fairly come within the rule. We were limited by the resolution to five hundred. We reached four hundred and ninety-one.

Mr. HALFHILL: I do not believe you caught my question. I want to know if the subcommittee passed upon and approved the form of the advertisement, the copy?

Mr. LAMPSON: I do not think they did entirely.

Mr. HALFHILL: I call attention to the advertisement in the Cleveland Plain Dealer of August 24, which sets forth how to vote affirmatively on the initiative and referendum and municipal home rule.

Mr. LAMPSON: I do not know that I have seen that. I do not know whether I have or have not. The subcommittee was kept very busy. I found when I answered the inquiries from the various newspapers over the state and the correspondence with the other members that I had very little time for anything else.

Mr. DOTY: There is nothing untrue in that advertisement, is there?

Mr. HALFHILL: But why put it in that way?

Mr. PECK: Do you know that that is official, Mr. Doty?

Mr. DOTY: Yes; it is.

Mr. HALFHILL: If the gentleman from Ashtabula [Mr. LAMPSON] is through with his remarks I want to say a few words.

Mr. LAMPSON: I want to make as complete a statement as I can. If any gentleman desires to ask a question I am at his service.

Mr. HALFHILL: Will you yield until I can state a matter of personal privilege?

Mr. LAMPSON: You can bring that up later if it is a matter of personal privilege. I don't know anything about it but the report should go in first.

The PRESIDENT: The member does not now yield.

Mr. LAMPSON: I do not yield until I see whether other members desire to ask questions.

Mr. MILLER, of Crawford: Was the same matter published in the daily and in the weekly paper and was it paid for at the same price?

Mr. LAMPSON: Every country paper was paid \$108. We found it impracticable to discriminate. We got a great deal more than our money's worth in some papers and less in some others, but that is true in all legal advertising. Every lawyer who has legal advertising to do knows that he often gives an advertisement to some little paper that circulates only in a township

or two, but the legal rate is the same as if it were published in a paper of much wider circulation.

Mr. KING: Was the copy of the advertising matter furnished the different papers prepared by the committee and was it the same in every paper, or was there a difference?

Mr. LAMPSON: As far as I know it was the same. In my part of the state it was the same.

Mr. KING: And is the bill presented from the newspapers of Ohio for advertising that copy?

Mr. LAMPSON: Yes, for advertising that copy.

Mr. KING: Does it have anything to do with this matter that the gentleman brought up?

Mr. LAMPSON: I don't think so.

Mr. KING: I understood that the resolution of the Convention near the closing day prescribed the form of the advertising explicitly.

Mr. LAMPSON: Yes, sir. For instance the form of the ballot was the same and the address was the same everywhere. As a matter of fact these papers circulated this address without any specific compensation at all. The price of \$6.25 per thousand copies was not expected to any more than cover the fair cost of printing, and if the paper printed them itself and it had a circulation of only two or three thousand it wouldn't pay for setting up the type. This \$108 in a general way was supposed to include that service, although no specific rate was made for it. Now are there any other questions? Anyone can see the contracts and the reports in the office if they desire to look at them. You will notice that the bills ran very much the same—\$111, \$109, \$108, \$118, \$116, \$111. They varied only according to the number of supplements circulated until you get down to the large city papers. If there are no other questions, I move that the rules be suspended and that we vote on the adoption of this resolution.

The rules were suspended.

Mr. HALFHILL: Now I desire to ask a few questions.

The PRESIDENT: Does the gentleman yield?

Mr. LAMPSON: Yes.

The PRESIDENT: The member yields.

Mr. HALFHILL: Your resolution is very much in blank form at the end. Does it contemplate giving authority to the president to add anything to that except newspaper contracts?

Mr. LAMPSON: Nothing whatever other than newspaper contracts that have been filled, but which have not yet reached the president's office. There are only a few of those. Some came in today and twenty or thirty came in last night. Today we have some telegrams from newspapers saying they will forward theirs.

Mr. FESS: I would like to ask whether the resolution that instructed this committee to proceed to get these contracts did not carry with it the authority on the part of the committee to do the work, and whether that committee didn't have Mr. Halfhill upon it, and whether we did not instruct this committee of three to proceed to do the work?

Mr. LAMPSON: The statement is correct.

Mr. FESS: I am in favor of it.

Mr. LAMPSON: I want to say one word farther. The other day a circular which is being circulated in my county and which emanates from Columbus was handed to me. It says that this advertising bill that was pro-

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vided for would amount to a half million dollars. That was simply a gross misrepresentation of the truth, a base slander. The fact is, as I have reported already, it reaches all told, including the million supplements, to about \$60,000.

Mr. MILLER, of Crawford: Do you know what the cost of publishing the advertising of the last amendments that were submitted by the legislature amounted to?

Mr. LAMPSON: It was away up in the thousands of dollars. I did know, but I do not carry those things in my mind.

Mr. DOTY: As I recall it, it was \$83,000. There were three or four amendments submitted under the same sort of arrangement. There was no appropriation in advance to pay for it. The secretary of state put the advertising in the newspapers and they had to wait until the legislature made the appropriation. The legislature appropriated the money and paid for it.

Mr. LAMPSON: That is not the one that I had in my mind. The one I was thinking of amounted to a great deal more than that. In the state of New York the advertising bill amounted to a million and a quarter.

Mr. MILLER, of Crawford: I wanted to get the comparison so that we can see that this is a very moderate amount.

Mr. LAMPSON: It certainly is. The secretary informs me that when the three amendments were submitted by the legislature a few years ago the amount was \$91,000.

Mr. DOTY: That is the one I was trying to remember.

Mr. LAMPSON: Referring to what I said a moment ago, the president has just received this telegram, which I will read simply to confirm what I have said in regard to a few of the reports yet out:

Cleveland, O, August 26, 1912.

HERBERT S. BIGELOW,

Constitutional Convention, Columbus, O.

Your letter of 14th referring to Convention advertising came while I was absent; was mislaid; shown me not five minutes ago. Our bill is \$108 advertising, \$81.25 for 13,000 supplements. Please include it and will send regular bill forms by special delivery at once.

The Catholic Universe.

A. H. LYON.

Mr. LAMPSON: Here are two more communications that have come by special delivery, and I think we shall have them all by night. The intention of the resolution is to confine this strictly to newspaper advertising. I will read it again:

Resolved, That the president of the Convention is hereby authorized to certify to the next general assembly the following claims for payment:

City or Town and County.	Newspaper.	Amount
Aberdeen (Brown)....	The Gretna Green.....	\$111 12
Adamsville (Muskogum)	The Adamsville Register	114 25

City or Town and County.	Newspaper.	Amount
Adelphi (Ross).....	Adelphi Border News.	115 50
Akron (Summit).....	The Akron Times.....	183 00
	The People	117 38
	Akron Germania	108 00
Alger (Hardin).....	The Alger Gazette.....	114 00
Alliance (Stark).....	The Review	142 37
	The Alliance Leader.....	126 75
Amanda (Fairfield)...	The Amanda Press.....	111 13
Andover (Ashtabula)..	The Andover Citizen..	115 18
Antwerp (Paulding)...	The Antwerp Bee.....	120 50
Archbold (Fulton)....	Archbold Advocate.....	114 25
Arlington (Hancock)...	The Arlingtonian.....	112 07
Ashville (Pickaway)...	The Ashville Home News	114 25
Ashland (Ashland)....	Ashland Press	128 62
	Times-Gazette	118 93
Ashtabula (Ashtabula).	American Sanomat.....	111 78
	Beacon-Record	145 50
	Democratic Standard..	115 50
Athens (Athens).....	The Athens Daily Messenger	126 75
	The Morning Journal..	116 13
	The Athens Daily Tribune	126 75
Bainbridge (Ross)....	The Bainbridge Observer	114 25
Barberton (Summit)..	The Barberton News...	120 50
	The Barberton Telegram	116 75
	The Barberton Leader..	114 25
Baltic (Tuscarawas)...	The Baltic American..	114 25
Barnesville (Belmont).	Barnesville Enterprise..	123 62
Batavia (Clermont)...	Clermont County Democrat	114 25
	The Clermont Courier..	117 38
	The Clermont Sun.....	120 50
Bellaire (Belmont)...	The Democrat	120 82
	Daily Herald-Tribune..	114 25
Belle Center (Logan)..	The Herald-Voice.....	115 50
Bellefontaine (Logan).	The Index-Republican..	123 62
	The Daily Examiner...	123 63
Bellville (Richland)...	Bellville Messenger...	117 37
Berea (Cuyahoga).....	The Berea Enterprise..	117 38
Bethel (Clermont)....	The Bethel Journal....	113 00
Blanchester (Clinton).	The Star-Republican...	114 25
Bluffton (Allen).....	The Bluffton News.....	120 50
Botkins (Shelby).....	The Botkins Herald...	114 25
Bowling Green (Wood)	The Daily Sentinel-Tribune	120 50
	The Wood County Democrat	126 75
Bradford (Darke and Miami)	The Morning Sentinel..	114 25
Bryan (Williams)....	The Bryan Democrat...	120 50
	The Bryan Press.....	116 13
Bucyrus (Crawford)...	The Bucyrus Evening Telegraph	120 50
	Bucyrus Courier (German)	109 00
	The Daily Forum.....	117 70
Burton (Geauga).....	The Geauga Leader.....	114 25
Butler (Richland)....	The Butler Times.....	115 50
Byesville (Guernsey)..	The Daily Enterprise..	111 13
Cadiz (Harrison).....	The Cadiz Republican..	126 12
	The Cadiz Democrat-Sentinel	118 34
Caldwell (Noble).....	The Caldwell Press....	113 62
	Noble County Leader..	123 63
	Republican Journal....	114 25
Cambridge (Guernsey).	The Guernsey Times...	120 50
	Jeffersonian	139 25
Canal Dover (Tuscarawas)	Daily Reporter.....	128 00

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City or Town and County.	Newspaper.	Amount	City or Town and County.	Newspaper.	Amount	
Canal Fulton (Stark) ..	Canal Fulton Signal...	114 25		Magyarok Vasarnapja (Hungarian Sunday)	117 38	
Canal Winchester (Franklin)	*The Buckeye News....	124 88		Die Neue Heimat (New Home—German)	108 00	
Canfield (Mahoning) ..	The Mahoning Dis- patch	120 50	Clyde (Sandusky)	The Clyde Enterprise..	116 12	
Canton (Stark)	The Ohio Volks-Zei- tung	108 00		Clyde Reporter.....	115 49	
	The News Democrat...	172 54	Coldwater (Mercer) ...	The Coldwater Chron- icle	119 13	
	The Evening Reposi- tory	208 00	College Corner (Preble and Butler)	College Corner News..	112 66	
Cardington (Morrow) ..	The Morrow County Independent	120 50	Columbus (Franklin) ..	The Catholic Colum- bian	201 75	
Carrollton (Carroll) ...	The Carroll Chronicle..	116 90		Express & Westbote...	109 50	
	Free Press-Standard...	121 43		The Ohio State Jour- nal	336 00	
Cedarville (Greene) ...	The Cedarville Herald..	113 00		The Columbus Dis- patch	336 00	
Celina (Mercer)	The Celina Democrat..	117 38		Putnam County Vidette	114 25	
	Der Mercer County Bote	108 92	Columbus Grove (Put- nam)	Conneaut News-Herald.	123 63	
	Mercer County Ob- server	115 50	Conneaut (Ashtabula) ..	The Union-News.....	118 00	
	The Daily Standard...	114 25	Continental (Putnam) ..	The Times	118 78	
Chardon (Geauga)	The Geauga County Record	114 46	Coshocton (Coshocton)	The Coshocton Daily Age	126 75	
	The Geauga Republican	118 00		Coshocton Morning Tribune	129 88	
Chicago Junction (Hu- ron)	The Chicago Times....	119 25		Coshocton Wochenblatt	108 45	
Chillicothe (Ross)	Unsere Zeit	109 00	Crestline (Crawford) ..	Crestline Advocate....	123 41	
	The Scioto Gazette....	123 63	Crooksville (Perry) ...	The Crooksville Ad- vance	114 25	
	Chillicothe News-Ad- vertiser	122 38	Cumberland (Guernsey)	The Cumberland Echo..	113 63	
Cincinnati (Hamilton) ..	Cincinnati Volksblatt...	110 50	Custar (Wood)	The Custar News.....	111 13	
	L'Imperziale	139 25	Dalton (Wayne)	The Dalton Gazette....	114 25	
	The Enquirer	432 00	Danville (Knox)	The Tri-County Leader	112 38	
	The Commercial Trib- une	420 00		Knox County Herald..	111 00	
	†The Avondale Journal.	123 62	Dayton (Montgomery) ..	Dayton Herald.....	239 25	
	The Daily Freie Presse.	201 25		Dayton Daily News...	296 30	
	The South-West.....	126 75		Dayton Journal.....	270 30	
Circleville (Pickaway) ..	Circleville Democrat & Watchman	115 50		Daytonor Volks Zeitung	109 07	
	The Circleville Herald.	123 00	Defiance (Defiance) ...	Daily Crescent-News...	118 63	
	The Daily Union-Her- ald	114 25		The Express	114 25	
Clarington (Monroe) ..	Clarington Independent	117 38	DeGraff (Logan)	Der Defiance Herald..	109 14	
Cleveland (Cuyahoga) ..	The German Press & Plate Co.....	283 00	Delaware (Delaware) ..	The DeGraff Journal...	114 25	
	The Cleveland Daily News	462 00		Delaware Daily Gazette	119 25	
	The Cleveland Leader..	546 00		The Daily Journal Herald	114 25	
	The Cleveland Plain Dealer	588 00	Delphos (Allen and Van Wert)	The Delphos Daily Herald	115 50	
	The Waechter und Anzeiger	294 00		Delta (Fulton)	Delta Atlas	121 13
	La Voce Del Popolo	139 25		Dennison (Tuscarawas)	The Daily Paragraph...	118 00
	Italiano	108 00	Deshler (Henry)	The Deshler Flag.....	118 63	
	The Echo (German)...	189 25	Dresden (Muskingum)	The Dresden Trans- script	115 50	
	The Catholic Universe.	189 25				
	Svet Printing & Pub- lishing Co.....	226 75	East Liverpool (Co- lumbiana)	The Potters' Herald...	120 50	
	Polonia W Ameryce...	183 00		The Evening Review...	139 25	
	Narodoweic	114 25		The Morning Tribune..	145 50	
	The Cleveland Citizen.	145 50	East Palestine (Co- lumbiana)			
	The American (Bohe- mian Daily)	164 25	Eaton (Preble)	The Reveille Echo....	117 38	
	The Jewish Independ- ent	145 50		The Eaton Herald....	121 13	
	Clevelandska Amerika.	126 75		The Eaton Register...	117 38	
				The Eaton Democrat...	117 38	
			Edgerton (Williams) ..	The Edgerton Earth...	115 81	
			Edon Williams)	Edon Commercial...	111 30	
			Elmore (Ottawa)	Elmore Tribune	113 63	
			Elmwood Place (Ham- ilton)			
				The Blade	123 62	

* This advertising and distribution of supplements was done jointly by this paper, The Times of Canal Winchester and The News Gazette of Reynoldsburg.

† This was a joint contract which includes circulation of supplements by The Price Hill Western Star and The Westwood Journal.

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City or Town and County.	Newspaper.	Amount	City or Town and County.	Newspaper.	Amount
Elyria (Lorain)	The Evening Telegram.	139 25	Jackson (Jackson)	The Semi-Weekly Sun.	117 38
	The Daily Chronicle...	131 72		The Jackson Herald...	117 38
	The Elyria Democrat..	117 38			
Fayette (Fulton).....	Fayette Review.....	114 25	Jamestown (Greene)..	Greene County Journal.	117 37
Findlay (Hancock)...	Findlay Courier.....	125 50	Jefferson (Ashtabula)..	Jefferson Gazette and Sentinel	126 75
	The Morning Republican	142 38	Jeffersonville (Fayette)	The Jeffersonville Citizen	113 20
Flushing (Belmont)...	The News-Advertiser..	112 06			
Fort Recovery (Mercer)	The Fort Recovery Tribune	115 50	Jewett (Harrison)....	The Jewett Sun.....	115 50
Fostoria (Seneca) ...	The Fostoria Times....	117 38	Johnstown (Licking)..	The Johnstown Independent	119 25
	The Fostoria Daily Review	116 75	Kent (Portage).....	The Kent Courier.....	122 37
Frankfort (Ross)	Frankfort Sun	113 31	Kenton (Hardin).....	The Kenton Democrat.	125 50
Franklin (Warren)...	The Franklin Chronicle	115 50		The Kenton Republican	126 12
	The Franklin News...	114 25			
Frazeyburg (Muskingum)	The Frazeyburg News.	114 25	Killbuck (Holmes)....	Killbuck News	111 13
Fredericktown (Knox)	Fredericktown Free Press	119 63	Kinsman (Trumbull)..	The Courier	117 38
	The Freeport Press....	118 62	Lake View (Logan)...	The Tri-County Sun...	113 31
Freeport (Harrison)..	The Fremont Journal..	117 38	Lancaster (Fairfield)..	Lancaster Daily Gazette	120 50
Fremont (Sandusky)..	Fremont Messenger...	134 87		Lancaster Daily Eagle.	126 75
	Fremont News	123 00		Fairfield County Democrat	122 50
	Fremont Courier.....	108 60	LaRue (Marion).....	LaRue News	113 62
Galion (Crawford)....	Galion Leader	120 03	Lebanon (Warren)....	The Western Star....	129 88
	The Galion Inquirer...	117 38		The Lebanon Patriot..	120 50
Gallipolis (Gallia)....	The Gallipolis Bulletin.	117 38		The Warren County Times	114 25
	The Gallipolis Daily Tribune	114 25	Leetonia (Columbiana)	Leetonia Reporter	114 25
	The Gallia Times....	117 38	Leipsic (Putnam)....	The Leipsic Free Press.	126 00
Garrettsville (Portage).	The Garrettsville Journal	114 25	Lima (Allen).....	The Republican-Gazette	134 56
Geneva (Ashtabula)...	The Geneva Free Press-Times	120 50		Allen County Republican Gazette	129 25
	The News Democrat..	126 75		Der Lima Courier.....	108 00
Georgetown (Brown)..	Georgetown Gazette...	118 63		The Lima Times-Democrat	139 25
Glouster (Athens)....	The Glouster Press...	117 38		The Lima Advertiser..	120 50
Greenfield (Highland).	The Greenfield Journal.	118 63		Lima Daily News.....	139 25
	The Greenfield Republican	118 94	Lisbon (Columbiana)..	The Buckeye State....	120 50
Greenville (Darke)....	The Greenville Courier.	114 88		The Ohio Patriot.....	123 63
	The Greenville Democrat	115 50	Lockland (Hamilton)..	The Millcreek Valley News	119 25
	Greenville Daily Tribune	117 38	Logan (Hocking)....	The Democrat-Sentinel	118 63
	Deutsche Umschau...	108 55		The Logan Republican.	119 25
	The Greenville Daily Advocate	120 50		The Journal Gazette...	117 38
Greenwich (Huron)...	The Greenwich Enterprise	112 37	London (Madison)....	The London Times....	116 13
Hamden (Vinton)....	The Hamden Enterprise	114 25		London Enterprise....	120 50
Hamilton (Butler)....	The Republican.....	153 00		Semi-Weekly Madison County Democrat...	139 25
	Der Deutsch-Amerikaner	108 82	Lorain (Lorain).....	The Lorain Post.....	108 50
	The Butler Co. Press.	120 50		The Lorain Times-Herald	133 00
	The Hamilton Socialist	120 50		Lorain Daily News....	133 00
	Hamilton Evening Journal	154 87	Loudonville (Ashland).	The Loudonville Advocate	120 50
Hicksville (Defiance)..	The Tribune.....	117 38		The Loudonville Democrat	123 63
	The Hicksville News...	116 75			
Hillsboro (Highland)..	The Hillsboro Gazette.	120 50	Louisville (Stark)....	The Louisville Herald..	117 38
	The Hillsboro Dispatch	123 00	Loveland (Clermont)..	Tri-County Press.....	111 13
	The News-Herald....	122 06	Lynchburg (Highland).	The Lynchburg Record	111 13
Hudson (Summit)....	Hudson Independent...	111 75	McArthur (Vinton)...	The Republican-Tribune	117 38
Huntsville (Logan)...	The Huntsville News..	111 13		The McArthur Democrat-Enquirer	117 38
Ironton (Lawrence)...	The Ironton News....	119 25	McClure (Henry)....	The McClure Trio.....	114 25
	The Register.....	121 75	McComb (Hancock)...	The Hancock County Herald	114 25
	The Irontonian.....	125 19			
	The Semi-Weekly Sun.	117 38	McConnellsville (Morgan)	The Daily Herald.....	113 00
	The Jackson Herald...	117 38		Morgan County Democrat	126 75
			Magnolia (Stark, Carroll and Tuscarawas)	Sandy Valley Press....	117 38

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City or Town and County.	Newspaper.	Amount	City or Town and County.	Newspaper.	Amount
Manchester (Adams) ..	The Manchester Signal	114 25	New Lexington (Perry)	New Lexington Herald	114 25
Mansfield (Richland) ..	The Courier	108 65		The New Lexington Tribune	118 00
	The Mansfield Daily Shield	129 25	New Matamoras (Washington)	Matamoras Enterprise	115 50
Mantua (Portage)	The Mansfield News	153 63	New Paris (Preble)	New Paris Mirror	114 85
Marietta (Washington)	The Mantua Review	111 13	New Philadelphia (Tuscarawas)	The Daily Times	128 31
	Marietta Daily Journal	127 38	New Richmand (Clermont)	Independent News	111 75
	The Daily Register-Leader	126 75	New Vienna (Clinton)	The Reporter	114 25
Marion (Marion)	Marietta Daily Times	120 50	New Washington (Crawford)	New Washington Herald	112 38
	The Marion Tribune	142 38			
	Deutsche Presse	108 60	New Waterford (Columbiana)	The New Waterford Magnet	119 25
Martin's Ferry (Belmont)	The Evening Times	129 87	Niles (Trumbull)	The Niles Independent	113 63
	Ohio Valley News	123 63		The Niles Daily News	116 75
Marysville (Union)	The Marysville Republican	123 63	North Baltimore (Wood)	North Baltimore Times	114 25
	The Evening Tribune	115 19	North Lewisburg (Champaign)	North Lewisburg Reporter	111 13
	Union County Journal	117 38	Norwalk (Huron)	The Norwalk Reflector	120 50
Massillon (Stark)	Evening Independent	141 12		The Evening Herald	123 63
Maumee (Lucas)	The Maumee Advance-Era	111 75		The Huron County News	126 75
Mechanicsburg (Champaign)	The Morning Telegram	111 44	Norwood (Hamilton) ..	*The Norwood Enterprise	139 25
Medina (Medina)	The Medina County Gazette	133 00			
Miamisburg (Montgomery)	The Miamisburg News	114 88	Oak Harbor (Ottawa) ..	The Ottawa County Exponent	119 25
Middlefield (Geauga)	The Middlefield Times	114 25		The Press	113 00
Middlepoint (Van Wert)	The Middlepoint News	110 50	Oak Hill (Jackson)	The Jackson County Press	114 25
Middleport (Meigs)	The Republican	114 25	Oakwood (Paulding) ..	The Northwestern Ohio Independent News	113 00
Middletown (Butler) ..	The Daily Journal	123 62		The Oberlin News	114 25
	The News-Signal	129 87	Ohio City (Van Wert)	The Oberlin Tribune	120 50
Milford (Clermont)	The Valley Enterprise	115 81	Orrville (Wayne)	Ohio City Progress	113 00
Milford Center (Union)	Milford Center Ohioan	114 25		Orrville Courier Crescent	126 75
Millersburg (Holmes) ..	Millersburg Republican	117 38	Orwell (Ashtabula)	The News-Letter	111 13
	The Holmes County Farmer	123 63	Osborn (Greene)	The Osborn Local	112 69
Monroeville (Huron) ..	The Monroeville Spectator	111 13	Ottawa (Putnam)	Putnam County Democrat	109 00
Montpelier (Williams) ..	The Montpelier Enterprise	115 50		The Ottawa Gazette	114 25
Mt. Blanchard (Hancock)	Mt. Blanchard Journal	111 75	Painesville (Lake)	Putnam County Sentinel	123 63
Mt. Gilead (Morrow) ..	The Union Register	120 50		The Telegraph Republican	124 87
	The Morrow County Republican	120 50	Pandora (Putnam)	The Lake County Weekly Herald	114 25
	The Sentinel	121 75	Paulding (Paulding) ..	The Pandora Times	114 88
Mt. Vernon (Knox)	The Daily Republican News	119 25		The Paulding County Times	114 25
	Mt. Vernon Democratic Banner	120 50		Paulding Democrat	115 50
Murray City (Hocking)	The Independent	114 25		Paulding County Republican	117 37
Napoleon (Henry)	Northwest News	123 63	Pemberville (Wood)	Pemberville Leader	114 25
	Henry County Signal	119 25	Pioneer (Williams)	Tri-State Alliance	116 75
	Der Deutsche Demokrat	108 78	Piqua (Miami)	Die Miami Post (German)	108 50
Nelsonville (Athens) ..	The Buckeye News	118 62		The Piqua Leader Dispatch	129 88
	Valley Register	117 37		The Piqua Daily Call	131 06
Nevada (Wyandot)	The Nevada News	114 25	Plain City (Madison) ..	The Plain City Advocate	118 31
Newark (Licking)	Newark Express (German)	108 53		The Plain City Dealer	114 25
	The Newark News	141 13			
New Bremen (Auglaize)	The New Bremen Sun	108 67			
New Carlisle (Clark) ..	The New Carlisle Sun	113 00			
Newcomerstown (Tuscarawas)	Newcomerstown News	114 25			

* This advertising and distribution of supplements was done jointly by this paper and the Norwood Gazette and Norwood Republican.

Newspaper Advertising of Work of Convention.

City or Town and County.	Newspaper.	Amount	City or Town and County.	Newspaper.	Amount
Pleasant City (Guernsey)	The Pleasant City Recorder	113 31	Sunbury (Delaware)...	The Sunbury News...	114 56
Pleasantville (Fairfield)	Pleasantville Times...	111 13	Swanton (Fulton).....	The Swanton Enterprise	109 85
Pomeroy (Meigs).....	Tribune-Telegraph	123 63	Thornville (Perry)....	The Thornville News...	117 38
	The Daily News.....	114 25	Tiffin (Seneca).....	Die Tiffin Presse.....	108 35
	The Democrat.....	120 50		The Daily Advertiser...	123 62
	The Leader.....	126 75		Daily Tribune & Herald	122 06
Port Clinton (Ottawa)	Ottawa County News Democrat	114 25		Tiffin Weekly News...	114 25
	Ottawa County Herald.	117 38	Tippecanoe City (Miami)	The Weekly Herald...	112 38
	Ottawa County Zeitung	108 32	Toledo (Lucas)	Die Toledo Express...	108 00
	Ottawa County Republican	114 25		Toledo Blade	210 00
Portsmouth (Scioto)...	The Portsmouth Daily Blade	158 00	Tontogany (Wood)...	Tontogany Times.....	111 13
	The Portsmouth Daily Times	144 88	Toronto (Jefferson)...	Toronto Tribune.....	114 25
	Portsmouth Correspondent	109 80	Troy (Miami).....	The Miami Union.....	129 88
Prairie Depot (Wood)...	The Prairie Depot Observer	112 35		Troy Daily News.....	119 25
Prospect (Marion)....	Prospect Monitor.....	114 25		Troy Daily Record...	118 00
Quaker City (Guernsey)	The Quaker City Independent	114 25		Troy Democrat	115 82
Ravenna (Portage)....	The Ravenna Republican	128 63	Urbana (Champaign)...	Urbana Daily Citizen..	120 50
	Portage County Democrat	117 38		Champaign Democrat..	134 55
Ripley (Brown).....	The Ripley Bee.....	117 38	Uhrichsville (Tuscarawas)	Twin City Independent.	114 25
Rockford (Mercer)....	The Rockford Press...	114 75		Evening Chronicle....	120 50
Roseville (Muskingum)	Republican Citizen.....	114 25	Upper Sandusky (Wyandot)	The Daily Chief.....	120 00
Ross (Butler).....	The Graphic.....	114 25		Daily Wyandot Union-Republican	120 50
Rushsylvania (Logan)	Rushsylvania Record...	111 13	Utica (Licking).....	Utica Herald	123 63
Sabina (Clinton).....	Sabina News Record...	114 56	Van Wert (Van Wert)	The Daily Bulletin...	117 38
St. Clairsville (Belmont)	The Belmont Chronicle	118 00		Van Wert Republican..	120 50
	St. Clairsville Gazette.	117 38		Van Wert Daily Times	117 38
St. Marys (Auglaize)...	The Evening Leader...	117 38	Vermilion (Erie).....	Vermilion News.....	115 50
	The St. Marys Argus...	114 00	Versailles (Darke)...	Versailles Policy.....	118 63
	Die Minster Post.....	114 00	Wadsworth (Medina)...	Wadsworth Banner-Press	119 25
Salem (Columbiana)....	Weekly Bulletin.....	118 00		Daily News	119 25
	The Salem News.....	122 06	Wapakoneta (Auglaize)	Auglaize County Democrat	119 25
	The Republican Era...	125 50		Auglaize Republican..	115 50
	Salem Daily Herald...	128 00	Warren (Trumbull)...	Warren Tribune.....	133 00
Sandusky (Erie).....	The Sandusky Star Journal	142 37		Warren Daily Chronicle	123 63
	The Sandusky Register	139 25		Western Reserve Democrat	119 25
	Sandusky Demokrat...	108 58	Washington C. H. (Fayette)	Fayette Advertiser...	123 00
Seville (Medina).....	The Seville Weekly Times	111 13		Washington Daily Herald	116 13
Shelby (Richland).....	The Daily Globe.....	118 00		Record Republican....	129 88
Sherwood (Defiance)...	Sherwood Chronicle...	113 00		Ohio State Register...	117 75
Shiloh (Richland).....	The Shiloh Review....	114 25	Wauseon (Fulton).....	The Democratic Expositor	114 25
Shreve (Wayne).....	The Shreve News.....	114 25		Fulton County Tribune	123 63
Sidney (Shelby).....	The Sidney Daily News	124 09		Wauseon Republican..	117 37
	The Shelby County Anzeiger	108 40	Waverly (Pike).....	Waverly Democrat...	114 25
	The Sidney Daily Journal	120 50		Waverly News.....	122 06
Spencerville (Allen)...	Spencerville Journal-News	117 38	Waynesfield (Auglaize)	The Chronicle.....	115 82
Springfield (Clark)....	The Sun	186 13	Waynesville (Warren)	Miami Gazette.....	113 63
	The Tribune.....	139 25	Wellington (Lorain)...	Wellington Enterprise..	118 75
	The Daily News.....	179 25	Wellston (Jackson)...	Wellston Transcript...	114 25
	The Journal-Adler....	108 85		Wellston Telegram....	117 38
Steubenville (Jefferson)	The Herald	141 12		Daily Sentinel.....	114 25
	Steubenville Germania.	108 75	West Jefferson (Madison)	West Jefferson News...	114 25
Stryker (Williams)....	The Stryker Advance...	112 38	West Liberty (Logan)	West Liberty Banner..	116 50
Sugar Creek (Tuscarawas)	The Weekly Budget...	117 38	West Mansfield (Logan)	Enterprise	115 50
			West Milton (Miami)	West Milton Record..	117 38
			West Union (Adams)	Adams County Record.	133 00
				People's Defender....	120 50
			West Unity (Williams)	West Unity Reporter..	115 50
			Williamsport (Pickaway)	The Williamsport News.	111 00

Newspaper Advertising of Work of Convention—Report of Secretary.

City or Town and County.	Newspaper.	Amount	City or Town and County.	Newspaper.	Amount
Willoughby (Lake)...	Willoughby Independent	113 00	Yellow Springs (Greene) Youngstown (Mahoning)	Xenia Republican	123 63
Wilmington (Clinton) .	Clinton Republican....	118 00		Xenia Gazette.....	131 75
Woodsfield (Monroe) ..	Clinton County Democrat	115 50		Yellow Springs News..	114 25
	Wilmington Journal... ..	126 75		Vindicator	195 50
	Monroe County Republican	117 38	Zanesville (Muskingum)	Youngstown Telegram..	198 63
	Monroe Courier	115 50		Youngstown Rundschau	109 00
	Sentinel	119 25		Labor Journal.....	114 25
	Spirit of Democracy... ..	119 85		Zanesville Post	108 40
Woodville (Sandusky) .	Woodville News.....	111 75		Sunday News.....	160 50
Wooster (Wayne).....	The Wooster Daily Republican	126 75		Times Recorder.....	201 75
	Wayne County Democrat	126 75		Zanesville Daily Courier	129 88
	Xenia Herald & Democrat News.....	121 75		Signal Company.....	164 25
Xenia (Greene).....	Greene County Tribune	114 25	Total		\$62,891 71

That the president is authorized to make such additions to the above list as may be necessary to correct omissions growing out of lack of reports of claims for newspaper advertising.

Mr. Lampson moved that the rule be suspended and the resolution be considered at once.

The motion was carried.

The question being "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 83, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Miller, Crawford,
Baum,	Harbarger,	Miller, Fairfield,
Beatty, Morrow,	Harris, Ashtabula,	Miller, Ottawa,
Beatty, Wood,	Harter, Huron,	Nye,
Beyer,	Henderson,	Partington,
Brown, Pike,	Hoffman,	Peck,
Cassidy,	Holtz,	Peters,
Cody,	Hoskins,	Pierce,
Collett,	Hursh,	Read,
Colton,	Johnson, Madison	Redington,
Cordes,	Johnson, Williams,	Rockel,
Crosser,	Kehoe,	Roehm,
Davio,	Keller,	Shaffer,
DeFrees,	Kerr,	Shaw,
Donahay,	King,	Smith, Geauga,
Doty,	Knight,	Solether,
Dunlap,	Kunkel,	Stevens,
Dunn,	Lambert,	Stilwell,
Dwyer,	Lampson,	Stokes,
Earnhart,	Leete,	Taggart,
Eby,	Leslie,	Tannehill,
Elson,	Longstreth,	Thomas,
Evans,	Ludey,	Wagner,
Farnsworth,	Malin,	Walker,
Farrell,	Marriott,	Watson,
Fess,	Marshall,	Winn,
Fox,	Matthews,	Wise,
Hahn,	McClelland,	

The resolution was adopted.

Mr. DOTY: I understand the secretary has the report as to the situation of our work which should be read at this time.

The PRESIDENT: The secretary will now read his report.

The report was read as follows:

FINANCIAL.

There has been kept from the opening of the Convention in the office a carefully itemized record of all expenditures and the duplicate copies of all bills and vouchers. The accounts have been kept in a loose-leaf record book. We are a little proud of it. For the very creditable form in which it appears the Convention is indebted to Miss Julia E. Kersting.

Following is a summary of expenditures to August 26:

Salaries of members.....	\$119,000 00
Mileage of members.....	11,435 74
Salary of secretary.....	1,941 66
Per diem of sergeant-at-arms.....	810 00
Per diem of employees.....	39,663 00
Reporting debates	5,000 00
Printing	6,743 44
Contingent expenses.....	6,107 25

Total

Appropriation	\$200,000 00
Balance	9,298 91

On June 7, shortly before the adjournment of the Convention to meet again August 26, a resolution was adopted providing for the employment of seven clerks to assist the president and secretary, one clerk for one month to assist the historian and reference librarian, and five other persons for five days "to procure boxes and all necessary material for packing and shipping documents to delegates."

The following work was specifically assigned to the direction of the president and secretary in said resolution:

1. The issuing of pamphlets and documents and the preparation and placing of such advertising matter as the Convention shall authorize.
2. The indexing, proofreading and publication of the journal of the Convention.

Report of Secretary.

3. The editing, proofreading, indexing and publication of the debates of the Convention.

Promptly after the adjournment of the Convention the secretary had published five thousand copies of the constitution of Ohio with amendments proposed by the Constitutional Convention of 1912, authorized May 31. On June 22, five thousand copies of the Address to the People, in newspaper supplement form, were published for distribution. Three days later fifty thousand additional copies were purchased. This action was made necessary by a demand that came promptly after the adjournment of the Convention from almost every section of the state, for copies of the proposed amendments. Arrangements had not then been completed for the publication of the one hundred and sixty-nine thousand copies of the Address to the People in pamphlet form, and in the judgment of the president and secretary this purchase was warranted by the emergency presented. Later these pamphlets were published and distributed to the members of the Convention and citizens of the state. The first consignment was received from the printer July 16, and the last were delivered at the office of the secretary August 1. To meet insistent demands a second edition of the constitution of Ohio with proposed amendments was published and six thousand copies of the Address to the People in newspaper supplement form were purchased. Altogether there were delivered for distribution:

Address to the People in newspaper supplement form	71,000
Address to the People in pamphlet form	169,000
Constitution of Ohio with proposed amendments	10,000
Total	250,000

In addition to this there were purchased and distributed from the president's office 44,400 copies of the Address to the People, raising the total to 294,400 copies. Through the newspapers of Ohio, 1,177,559 copies were distributed, making a grand total of 1,471,959 copies. The work of no previous state convention of Ohio, and perhaps of no previous state constitutional convention in the United States, was so well advertised.

The preparation and placing of the advertising matter was done under the direction of the Committee on Submission and Address to the People and the president. In the office of the latter were let the contracts with the press of the state and advertising was checked up as it appeared in the different newspapers.

The work of indexing and proofreading the journal is under way in the office of the secretary. All but the index is in type and has been proofread. The greater portion of it has been printed. Its practical completion has been prevented by delay in printing.

The editing, proofreading, indexing and publication of the debates have also been retarded by delay in printing. Only about five hundred pages of type have been set to date, and as no forms

have been printed, it has been impossible even to commence the indexing. The editing is well under way and after final adjournment will be pushed to completion with the utmost promptitude consistent with creditable work.

The historian and reference librarian early in July delivered to the office of the secretary photographs and typewritten sketches of the members of the Convention. Since that time, a few photographs have been added, making the collection practically complete. It is the desire of the secretary, without additional expense to the Convention or the state, to arrange and edit this valuable material and supplement it with a brief history of the Constitutional Conventions of Ohio. Its publication may be left to the future.

Since the adjournment of the Convention June 7, the office of the secretary has been open each week day for the distribution of literature, the answering of correspondence and other routine work.

Circular letters and copies of two pamphlets, to which reference has already been made, were sent to all public libraries in the state and to the presidents of county teachers' institutes. Copies of these letters are submitted herewith. Many appreciative responses were received and assurances were given that in a number of these institutes space on programs would be given for the discussion of the work of the Convention. In that work the educational agencies of the state have manifested a lively interest and it is believed that prospects for its approval have not been diminished through intelligent investigation and study.

So much, in a very cursory way, for what has been accomplished to date. Much remains to be done. The index to the journal must be finished. That should not take long. The work on the debates is only fairly begun. Not a line of the index has been written. It is possible that some of the members of this Convention do not fully appreciate all that the work of editing and indexing these debates implies. Michigan paid for the indexing of the journal and debates of her Convention the sum of \$1,950. Your secretary suggested to the committee on Printing and Publication a plan by which the work could be done without extra expense. This seemed to meet the approval of the committee. The details of the plan are not a matter of interest now. Before this Convention adjourned it most generously provided help for the office of the secretary. It is not his purpose to ask a continuance of this generosity. The money that might have gone into the work that remains to be done has already been spent. The limit of the appropriation for this Convention is in sight as is also the very probable contingency of an appeal to the emergency board. For the latter, same provision should be made before final adjournment.

The time is at hand for the practice of that economy to which eloquent tribute was paid on more than one occasion in the proceedings of the Convention.

Report of Secretary—Advertising Work of Convention.

In view of these considerations the following suggestions are respectfully submitted.

1. A supplemental arrangement should be made with the printer which will insure the printing and binding of the debates not later than December 31, 1912.

2. Although this work does not usually go with the office, the secretary will undertake, without assistance, to index the debates and complete the index of the journal.

3. The continuance of Mr. E. S. Nichols to proofread the debates and assist in completing the editorial work is recommended as not only desirable but necessary.

4. The continuance of Miss Julia Kersting is recommended at her present pay for ten days to assist in work incident to the final adjournment of this Convention.

5. The continuance of Ira I. Morrison to the close of the current month to work on the index of the journal is also recommended.

6. Some provision should probably be made for the care of two rooms for the secretary and his assistant.

7. A sum of money, not to exceed four hundred dollars, might be set aside to employ additional help when it is needed, such help to be employed with the approval of the president and secretary.

It is believed that no argument is needed to show that the assistance here recommended is necessary. If, however, it is thought best to reduce or omit entirely the sum of four hundred dollars for additional help, the secretary will put his hand to the pen and prepare by this ancient method the manuscript for the index to the debates and journal and carry on any incidental correspondence that may come to his office.

Mr. DOTY: It is understood that this communication from the secretary will be a part of the journal, but for fear that it may not be I move that it be made a part of today's journal.

The motion was carried.

Mr. MILLER, of Crawford: Do I understand that these pamphlets were available to others than members?

The SECRETARY: Yes; there has not been any request sent to the office of the secretary that has not been honored. In many instances there was a greater number asked for than we could furnish, but we have always furnished some.

Mr. MILLER, of Crawford: Did the Ohio Bankers Association ask for any pamphlets?

The SECRETARY: Yes.

Mr. MILLER, of Crawford: Were they supplied?

The SECRETARY: Yes. I do not know whether they got as many as they desired, but we supplied them in part.

Mr. MILLER, of Crawford: I would like to read here from a letter from the Ohio Bankers Association. A pamphlet was sent out and some of the members objected to it going out under the stamp of the Ohio Bankers Association, and when I asked if they were sent out by the authority of the Bankers Association I received this letter:

Columbus, Ohio, August 14, 1912.

Hon. GEORGE W. MILLER, President,

The Farmers & Citizens Bank & Savings Co.
Bucyrus, Ohio.

My Dear Sir:

I beg to acknowledge receipt of your favor of the 13th inst. regarding the pamphlet containing proposed amendments of Ohio's constitution.

These pamphlets were sent out from the association headquarters simply for the purpose of putting the proposed amendments before the bankers of Ohio. We have had so many requests for copies of these amendments that we thought it would be an accommodation if we were to put out something of the kind, and these were the only ones available.

The arguments are not from the association. We have read only a few and while it is my opinion there are several that the Association would approve, there are also some it would not.

I would be pleased to have you advise me if there is anything objectionable in the pamphlet.

Very truly yours,

S. B. RANKIN,
Secretary.

I simply want to mention this at this time because I think it is due the members of the Ohio Bankers Association that this explanation be made, that the secretary of the association assumed the authority to send out these pamphlets with the stamp of the association.

The SECRETARY: If it is not considered out of order I would supplement my answer to your question, to emphasize the fact that no person has made a request at any time for a copy of these amendments when he has not gotten them. My recollection is that this is the Private Bankers Association.

Mr. MILLER, of Crawford: No; this is the Ohio Bankers Association, including all the banks, national and state.

The SECRETARY: I am certain that many of the bankers of that association have received the pamphlet, and I want to apologize for my somewhat extended report on this ground: There have been so many misstatements in regard to when these addresses to the people were available that I thought they should be corrected. There was one statement that none of them were available until the 19th of July, while my report shows they were available on the 22nd of June.

Mr. HOSKINS: I want the privilege of asking Mr. Miller a question. I did not gather the force of the statement made by Mr. Miller. There was so much confusion. I have examined this letter now and I want to know what excuse the president of the Ohio State Bankers Association gave for putting the stamp of this association upon that so-called argument?

Mr. MILLER, of Crawford: There was no excuse. I wrote repeatedly to the secretary asking whether this pamphlet was sent out by authority of the association, and that letter was the answer. He wanted to know whether there was any objection to it, and I answered but he has not replied. In addition to that I wrote the president of the association asking him if the Ohio Bank-

Retention of Employes after Adjournment of Convention.

ers Association would bear the odium of putting out such a circular and he has not answered that letter.

Mr. HOSKINS: Then, if I understand this so-called circular it is simply a voluntary act of some fellow who happens to hold the job of secretary of the Ohio Bankers Association?

Mr. MILLER, of Crawford: And that secretary is president of a private bank.

Mr. DOTY: Ah, now we see it!

Mr. HOSKINS: All I want to say is to comment upon that circular and the source from which it seems to come. According to my judgment it is from about the same source from which a good deal of the other literature put out in criticism of the Convention has come. I am glad to have the explanation that the Ohio State Bankers Association, as an association, is not responsible for it, but that the secretary alone is responsible, and that the secretary is the president of a private bank which one of our amendments touches.

Mr. DOTY: I do not suppose we want a history of all the circulars against the Convention, but I want to say a word about a circular that is being prepared. You have not got it yet, but you will get it. It purports to be signed by the Consumers League. The president is a farmer and the vice president is an ice dealer. They had a meeting last week and they are getting out a circular on the Home Rule proposition. That circular is being printed in Cleveland and is paid for by the public service corporations of Ohio. Now I have another resolution that I want to offer.

The resolution was read as follows:

Resolution No. 165:

Resolved, That the secretary of the Convention is hereby authorized to continue E. S. Nichols, Ira I. Morrison and Ella M. Scriven in the service of the Convention for the purpose of preparing copy of debates for the printer and proofreading and indexing of journal and debates, at the compensation heretofore paid and until such time as the work described shall be completed; the secretary is authorized to continue the services of Julia E. Kersting until September 10, 1912, at the compensation heretofore paid, and

Resolved, That the president of the Convention is hereby authorized to sign vouchers for the payment for the services provided for herein and for the payment of any bills arising by reason of any contract heretofore made by authority of the Convention for printing and publishing journal, debates and pamphlets.

Mr. DOTY: I move that the rules be suspended and that we consider this resolution at once. When the rules are suspended I shall be glad to explain it.

The motion to suspend the rules was carried.

The PRESIDENT: The question is now on the adoption of the resolution.

Mr. DOTY: I think it is perfectly apparent from the very able and complete report from the secretary that there is a great deal of work in closing up our proceedings and printing our debates, much more in fact than many of you anticipated when we adjourned. It has gone along just about as I thought it would at that time. I do not think the secretary has had more help than he

has needed up to now. Certainly, to complete the preparation and copy for the printer and the indexing the amount of help is small enough. It seems to me we ought to be willing to leave to the secretary of the Convention the time when he will get through. I do not think that anyone can tell now when it will be through. The secretary cannot. Therefore, I think we shall have to trust him to keep these people employed only such time as is necessary. He says he hopes to have the debates completed by the 31st of December. If he does he will be doing very well. I doubt whether he will get them done by that time. But if it can be done those persons named in this resolution can do it. Up to this time the force has been engaged on the advertising work. That is practically over, but there is a great deal more work to do in getting out the debates and the journal.

Mr. KNIGHT: I would like to ask a question. Early in the session it was reported officially from some committee that it was understood that after this Convention adjourned sine die no one could sign any vouchers.

Mr. DOTY: I am glad you mentioned that. The president asked one of the clerks to look that up and that attache has conferred with the auditor and the attorney general upon that very point. The auditor looked the matter up and said he thought he was able to pay our vouchers for the contracts that we have already entered into and the necessary work of completing them. Then he went to the attorney general's office and had a conference with one of the men in the office and they spent some little time over there looking up the matter and they verbally agreed with the auditor that he was right and that they would furnish him at his request at any time a statement to that effect. If they should decide we cannot pay our bills the whole thing stops. If they decide we can pay our bills, we can go on. This resolution, or something similar, should be passed. I am sure you will find the bills will be paid, but if not they will have to stop until the next session of the legislature.

Mr. KNIGHT: I understand then that we have not as a Convention any official reversal of the ruling of the attorney general some months ago, and that the only sure way at the present time is for us not to adjourn sine die until or unless we get such official opinion from the attorney general.

Mr. DOTY: I can see the force of that. It is just according to the chances. In view of what the two chief officers in the departments involved have stated, I think the chances are very small that the vouchers will not be paid.

This is the situation: The law states that we are not allowed to pay for any services or pay for any bills after we adjourn sine die. The publication of the debates was undertaken considerably before the time we shall adjourn sine die and the attorney general holds that any necessary assistance or clerical help to carry out that contract will be paid.

Mr. KNIGHT: I do not oppose the resolution, but I wanted to get an idea whether we were safe, having a written opinion of the attorney general one way and only a verbal opinion the other.

Mr. DOTY: I think we can get along all right.

Mr. HOSKINS: Who signs the vouchers?

Mr. DOTY: The president. For fear we may have forgotten to give him the authority to sign for the printing, I put it there.

Retention of Employes after Adjournment of Convention—Distribution of Proceedings and Debates.

Mr. HOSKINS: The president is practically the agent for the Convention after the adjournment of the Convention for signing vouchers?

Mr. DOTY: And for that purpose only.

Mr. CROSSER: I offer an amendment.

The amendment was read as follows:

Amend Resolution 165 by substituting the words "Anna L. Bower" for the name "Ira I. Morrison".

Mr. CROSSER: When the resolution was adopted on the seventh day of June I was in favor of Miss Bower being retained. I knew she was a very competent girl. She did her work well here and it occurred to me it is only performing a duty to place her name in the resolution. I have no doubt the other people are competent, but I know this lady is very competent.

Mr. KNIGHT: I wish there were room for two instead of one, but from having followed the work in the last two months, being in the state house frequently, I know the special work that Mr. Morrison has been doing has been on indexing the journal. That work is about half completed. If we swap horses in the middle of the stream it means we have to go back and have all the indexing done over again, and, with the highest respect for the young woman named in the amendment, I am opposed to the amendment.

Mr. STOKES: I move that the amendment be laid on the table.

The motion was carried.

The PRESIDENT: The question is "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 84, nays 1, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Miller, Fairfield,
Baum,	Harbarger,	Miller, Ottawa,
Beatty, Morrow,	Harris, Ashtabula,	Moore,
Beatty, Wood,	Harter, Huron,	Nye,
Beyer,	Henderson,	Okay,
Brown, Lucas,	Hoffman,	Partington,
Brown, Pike,	Holtz,	Peck,
Cassidy,	Hoskins,	Peters,
Cody,	Hursh,	Pierce,
Collett,	Johnson, Madison,	Read,
Colton,	Johnson, Williams,	Redington,
Cordes,	Kehoe,	Rockel,
Crosser,	Kerr,	Roehm,
Davio,	King,	Rorick,
DeFrees,	Knight,	Shaffer,
Donahey,	Kunkel,	Shaw,
Doty,	Lambert,	Smith, Geauga,
Dunlap,	Lampson,	Solether,
Dwyer,	Leete,	Stevens,
Earnhart,	Leslie,	Stokes,
Eby,	Longstreth,	Taggart,
Elson,	Ludey,	Tannehill,
Evans,	Malin,	Thomas,
Farrell,	Marriott,	Walker,
Fess,	Marshall,	Watson,
FitzSimons,	Matthews,	Winn,
Fox,	McClelland,	Wise,
Hahn,	Miller, Crawford,	Mr. President.

Mr. Stilwell voted in the negative.

So the resolution was adopted.

Mr. WATSON: I offer a resolution.

The resolution was read as follows:

Resolution No. 166:

Resolved, That the distribution of the printed debates of this Convention shall be as follows:

1. To each member of the Convention, fourteen sets.

2. To the state library of each state in the Union, one set.

3. To the secretary and official reporter, each two sets.

4. To each public library in the state, whether state, county or city, one set.

5. To each accredited reporter for the press, one set.

6. To the library of each college and university in the state, one set.

7. To each law library of the state, one set.

8. To each employe of the Convention, one set.

That all the remaining sets shall be turned over to the secretary of state and shall be placed on sale by him at \$6.00 per volume or \$12.00 per set of two volumes; the money derived from the sale of same to be covered into the state treasury.

All resolutions or orders of the Convention in conflict herewith are repealed, revoked or rescinded.

Mr. WATSON: That resolution seems to be necessary in order to correct the former resolution, as the former resolution was not in accordance with the contract made with the printer.

The PRESIDENT: The member from Guernsey [Mr. WATSON] moves that the rules be suspended and the resolution be considered at this time.

The motion to suspend was carried.

Mr. WATSON: As I started to say, this resolution seems to be necessary because the former resolution does not coincide with the contract made with the printer. The former resolution calls for three volumes and the contract with the printer calls for two, and this resolution is to conform to that contract.

Mr. DOTY: Does the original resolution call for a price of \$12 for our debates?

Mr. WATSON: Yes; \$12 for the set was fixed here, the same as before.

Mr. DOTY: It occurs to me that our debates are not worth \$12. I have been looking over my own remarks and I do not think they justify any such price. I move that we strike out "6" and insert "4" and strike out "12" and insert "8".

The amendment was agreed to.

Mr. HOSKINS: I don't think that under the resolution there would be many of our debates left for sale.

Mr. DOTY: There will be very few, a hundred or so.

The PRESIDENT: The question is "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted—yeas 78, nays none, as follows:

Those who voted in the affirmative are:

Baum,	Davio,	Eby,
Beatty, Morrow,	DeFrees,	Elson,
Beatty, Wood,	Donahey,	Farnsworth,
Beyer,	Doty,	Farrell,
Brown, Lucas,	Dunlap,	Fess,
Colton,	Dunn,	FitzSimons,
Cordes,	Dwyer,	Fox,
Crosser,	Earnhart,	Hahn,

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Halfhill,	Ludey,	Roehm,
Harbarger,	Malin,	Rorick,
Harris, Ashtabula,	Marshall,	Shaffer,
Henderson,	Matthews,	Shaw,
Hoffman,	McClelland,	Smith, Geauga,
Holtz,	Miller, Crawford,	Solether,
Hoskins,	Miller, Fairfield,	Stevens,
Hursh,	Miller, Ottawa,	Stokes,
Johnson, Madison,	Moore,	Taggart,
Johnson, Williams,	Nye,	Tannehill,
Kehoe,	Okey,	Thomas,
Kerr,	Partington,	Wagner,
King,	Peck,	Walker,
Knight,	Peters,	Watson,
Kunkel,	Pierce,	Weybrecht,
Lecte,	Read,	Winn,
Leslie,	Redington,	Wise,
Longstreth	Rockel,	Mr. President.

So the resolution as amended was adopted.

Mr. READ: There is a matter that has been mooted in our county and I have been requested to bring it before the Convention. It brings up the question of whether we should make any amendment to any proposal that has been adopted. I also have a request from a number of persons in Summit county and also from the Bar Association, by an unanimous vote, that we so word the first section of article IV that the people may know whether or not the office of justices of the peace is abolished. I tried to explain to them that it is not abolished except as provided in another proposal for the large cities, but the Bar Association of Summit county claims that on the first of January, if this proposal is adopted, all justices of the peace in the state will be out of office, and the demand now is that that be so amended as to make it clear that this will not occur. I accordingly present an amendment to that proposal.

The secretary started to read the amendment as follows:

Amend article IV, section 1, as follows:—

Mr. DOTY: Is that the introduction of a proposal?

Mr. READ: It is an amendment to a proposal.

Mr. DOTY: There is nothing before the Convention.

Mr. DWYER: Let it be read.

Mr. DOTY: I have heard enough of it read to ask the question and I would like to have it answered.

The PRESIDENT: The amendment is out of order in the form presented.

Mr. LAMPSON: I rise to a question of inquiry. This is a question which ought to be determined, and I ask unanimous consent that the general subject of justices of the peace as affected by the amendment which has been proposed by this Convention, be taken up for thirty minutes' discussion.

The PRESIDENT: If there is no objection the question is before the Convention and the member from Summit has the floor.

Mr. WATSON: I move that remarks be limited to three minutes each.

The motion was carried.

Mr. READ: In section 1 of article IV, as amended, justices of the peace are dropped out. They were included in the old article of the constitution. The old section read:

The judicial power of the state is vested in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and

such other courts inferior to the supreme court, as the general assembly may from time to time establish.

The new section reads:

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

Now it is claimed by some of those who say that justices of the peace are abolished that the dropping out of the words "justices of the peace" in this amendment has the effect of abolishing that office. I think that it is our duty to make that point clear. In Summit county alone it is claimed that this proposal will lose us a thousand votes.

Mr. ANDERSON: Does the dropping of the words "justices of the peace" take away from the legislature the power to make any kind of court it pleases? Has not that been passed upon by the supreme court?

Mr. READ: Sure.

Mr. ANDERSON: They can do as they please?

Mr. READ: Yes.

Mr. HOSKINS: I think the first thing in this discussion would be to hear from the chairman of the Judiciary committee, which committee had this matter in charge. He is probably as competent to instruct us as anybody. Of course, each of us has his own opinion about the matter, but we should hear from the chairman of the Judiciary committee.

Mr. LAMPSON: I ask unanimous consent that Judge Peck be given ten minutes, which time is not to be taken out of the thirty minutes.

The PRESIDENT: Without objection that will be ordered.

Mr. PECK: The Judiciary committee did not have entire charge of this subject. The matter in part came from the Judiciary committee and in part was decided by motions on the floor of the Convention.

Now, in the first place, there are several provisions in the constitution that bear on this subject, and you have to consider them all together if you are going to solve this question aright.

The first mention that is made of justices of the peace in the constitution is the one to which reference has just been made, section 1 of article IV, where it is cited that "The judicial power of the state is vested in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the general assembly may from time to time establish." Justices of the peace are specifically named there, but that mention is simply a mention. It does not provide for the direct creation of the office of justices of the peace. It does not provide any term of office or any duties, nor does it provide how many justices of the peace there shall be. The real section upon which the whole life and power of justices of the peace depend is section 9 of that article, and I submit to you that one section is as good as another. Section 9 of that chapter read this way:

A competent number of justices of the peace shall be elected, by the electors, in each township in the several counties. Their term of office shall

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be three years, and their powers and duties shall be regulated by law.

There you have it. That is the real provision for the existence of justices of the peace.

Mr. READ: The schedule under that—

Mr. PECK: I have not gotten to that. One thing at a time. I will come to that directly. I will explain this section first—"A competent number of justices of the peace shall be elected by the electors in each township in the several counties." I am pointing out that that is the real section from which justices of the peace derive their existence and power. It provides for their term of office and for their powers and duties, and that these shall be regulated by law, putting the duty upon the general assembly imperatively. So much for justices of the peace up to that time.

When that section came to be amended there was a general demand that the legislature should have power to change justices of the peace in certain parts of the state. There were cities in the state that did not want justices of the peace, other cities wanted them and there were other cities that wanted them to a certain extent and they also wanted other courts having similar power. And they wanted power to limit the justices of the peace, so that it was desired to put justices of the peace under the control of the general assembly, and that was the reason why the words "justices of the peace" were left out of section 1, that section 9 might be amended so as to put justices of the peace within the control of the general assembly. If section 1 stood as it was and justices of the peace were to be forever a constitutional office, nothing that the legislature would do could affect them. So in order that the matter might be in the power of the general assembly, "justices of the peace" had to be stricken out of section 1, and that was the object of striking it out there.

Then section 9 was changed. The new section provides for the election of justices of the peace in the same language as in the old section, but adds "until otherwise provided by law": "A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law." All that is new there is the "until otherwise provided by law." That leaves them, as I said before, under the control of the legislature.

Mr. READ: But if section 1 is adopted this does not go into effect?

Mr. PECK: You are mistaken about that. Don't get wild on the schedule. It is not as clear as light, but it is all right if you understand it.

Now, without referring to the schedule, there are the two provisions as they stand. There cannot be any doubt if these words stood by themselves, "A competent number of justices of the peace shall be elected by the electors of the several counties until otherwise provided by law," there would be ample provision for justices of the peace. Then the provision goes on:

Their term of office shall be for four years and their powers and duties shall be regulated by law; provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of

which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise, jurisdiction in such township.

That does not affect the question at all. That is simply for legal purposes. Then follows the schedule. It is not as clearly expressed as it might be, and all of the trouble has grown out of the expression of the schedule. It says:

If the amendment to article IV, sections 1, 2, and 6 be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing amendment, if adopted, shall be of no effect.

I understand that refers to the original section 9 and that the new section 9 is put in its place. It means that the original section 9 is repealed. Where it says, "and the foregoing amendment, if adopted, shall be of no effect", that is the amendment relating to the city of Cleveland.

Mr. READ: Does it not refer to the whole section?

Mr. PECK: No, sir; the whole section is not an amendment. It only refers to the part that is an amendment.

Mr. READ: And it does not refer to the whole section?

Mr. PECK: No, sir; just to the amendment. It was intended to refer to and does refer to that coming after the word "provided."

Mr. READ: Then you maintain that that section would and does remain in the constitution and would be in effect even though section 1 were not there?

Mr. PECK: Yes; section 1 has nothing to do with that. Section 1 leaves it in such a way that the general assembly can act upon it, and if section 1 were abolished and section 9 were left in, it would not affect the office of justice of the peace.

Mr. READ: The wording is rather unfortunate.

Mr. PECK: That is another matter. There are various other things in the constitution—amendments—which bear out what I say.

Turn to article XVII, section 2, of the existing constitution, which has not been changed. About the middle of it, it fixes the terms of office of various offices:

The term of office of justices of the peace shall be such even number of years not exceeding four (4) years, as may be prescribed by the general assembly.

There is a recognition of justices of the peace and a fixing of their term of office. That is continued in force. It is not interfered with. Then, at the end of that article you will find this, which affects justices of the peace:

Every elective officer holding office when this amendment is adopted, shall continue to hold such office for the full term for which he was elected, and until his successor shall be elected and qualified as provided by law.

Does that read like it was abolishing justices of the peace? Does it not continue them in office. Justice of the peace is an elective office. Take that with the other

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things to which I have called your attention, and it satisfies me that the intention of this body not to abolish the office of justice of the peace is perfectly apparent to anybody who wants to construe it without prejudice.

Certain gentlemen have been circulating the story that the office of justices of the peace is abolished, not because they care for justices of the peace, but for other reasons, to use it against the constitution generally, and not particularly against Proposal No. 19.

Mr. LAMPSON: With the gentleman's permission, I will call attention to section 15 of article IV: "And any existing court heretofore created by law shall continue in existence until otherwise provided." Does not that strengthen your contention?

Mr. PECK: Yes; it looks the same way. The intention creeps out every time you examine the constitution. There was no intention to abolish the justices of the peace. Everybody in the Convention knows it and the document itself shows it, when you examine it in the right spirit and in a proper way, and I can satisfy any court on that. It is unfortunate that it should require explanation, but we cannot help that now. I rather think that it is too late to add anything to it. My own impression is that we could not get any amendment before the people in time for them to act upon it. The president and some of the other members may know better about that than I, but it seems to me it is too late to attempt to publish anything new in time for the people to vote for it a week from tomorrow. You cannot satisfy these men who are opposing it. A man who has his mind made up and who thinks his office is in danger will vote "no" anyhow.

I have expressed my legal view of this matter. I have published it in the newspapers. There will be an article tomorrow in the Law Review of Cincinnati on this subject written by me which I will try to send to the members of the Convention and that will be generally circulated among the bar of the state. I have written several articles in several of the prominent newspapers and will be glad to furnish those.

Mr. FESS: Is there any objection to putting in "justices of the peace" in section 1?

Mr. PECK: I think I would object to that because it puts back the old status; you would have the justices of the peace forever and amen and the legislature could not abolish them. The legislature could not give you the local court you wanted; justices of the peace would be fixed and immovable. We know that that matter ought to be made flexible and jurisdiction over that matter should be vested in the general assembly.

Mr. ANDERSON: Is it not a fact that the opposition to this section and the pamphlet about this amendment, based upon doing away with the justices of the peace, was inspired by a justice of the peace lawyer of Toledo, a member of a large corporation firm, and that being true, why would it not be a good idea, since justices of the peace believe they will go out of office January 1, if the constitution is ratified, to instruct our secretary to write to the seventeen hundred justices in Ohio and call their attention to the sections that Judge Peck and Mr. Lampson have read?

Mr. PECK: I have no objection to that. Now any other question I can answer I shall be glad to do so.

Mr. PARTINGTON: I could not hear your explanation

in regard to the schedule where section 9 is repealed.

Mr. PECK: The schedule refers to the old section 9. We could not repeal something that is not existing at the time. We repeal old section 9 and substitute new section 9.

Mr. LAMPSON: Would it be possible to use the word "repeal" in referring to a proposed amendment, one which has not yet been adopted?

Mr. PECK: Of course not. You could not repeal something that did not exist. Unfortunately these matters were not foreseen or the schedule could have been written so as to exclude those matters.

Mr. WATSON: Would you object to heading a committee to prepare an address and statement referring to this matter?

Mr. PECK: I would not if it did not involve staying here tonight. I have to go home tonight. I have to be in Cincinnati tomorrow. I would serve in any way I can.

Mr. WALKER: I confess to a difficulty in understanding why, if this refers to section 9 of the present constitution, it will not repeal both sections 9. "The foregoing amendment"—that must refer to section 9—shall be of no effect."

Mr. PECK: The "foregoing amendment" is only a part of section 9. The fore part of section is not an amendment, but the same as the original section 9. The "foregoing amendment" is an amendment relating to the city of Cleveland. That is the matter that would be of no effect, because the whole matter is under the control of the legislature, and they could abolish justices of the peace if they wanted to.

Mr. READ: The people in our section are under the impression that if section 1 is adopted section 9 will be dropped entirely and will be of no effect.

Mr. PECK: I think anybody can see that the abolition of section 1 would not necessarily repeal section 9. Why should it?

Mr. READ: For my own part I do not believe it would abolish it, but I want to satisfy my people that the Convention has not abolished the justices of the peace.

Mr. PECK: Section 9 gives the life and power and section 1 is only an incidental mention, and the dropping out of the words "justices of the peace" in section 1 will permit section 9 to cover the whole subject.

Mr. LAMPSON: In order to make your argument complete, although it is pretty complete already, I want to ask you a question referring to the schedule on the bottom of page 47. It says: "All laws then in force, not inconsistent therewith shall continue in force until amended or repealed." That is, at the time of the adoption of any of these amendments. In your judgment would the law creating the office of justice of the peace and providing for the election and jurisdiction be inconsistent with any of these matters?

Mr. PECK: No, sir; and for the reasons already stated.

Mr. KING: I do not rise to disagree with the distinguished chairman of the Judiciary committee, but I do not put on section 9 and its schedule the force that he does. I say that section 1 is a declaratory section as to where the judicial power is vested. It does not establish any courts nor does it provide for any. It originally read: "The judicial power of the state is vested

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in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court as the general assembly may from time to time establish."

That is very indefinite. If this amendment had dropped the common pleas courts and the courts of probate out it would have been just as good and would have left our courts in the same position as they are today, because they are established by law as well as by the constitution. There is in the city of Cleveland a court of insolvency. Is that repealed by the constitutional amendment? There is a superior court in Cincinnati. Is that repealed because it is not mentioned in the first section of article IV? They could leave out of that section every court below the courts of appeals and we would still be in the same shape, because there is a provision that the general assembly may provide such other courts inferior to the courts of appeals as it pleases. It has established justices of the peace. They are in office under law, and under the section referred to by the gentleman from Cincinnati, they remain. That section is an absolute clincher on the argument and leaves no loophole. Every statute of the state not inconsistent with any of these amendments stands. The statute establishing justices of the peace is not inconsistent with anything in this section, so the power of the legislature to establish all kinds of courts and those that are established are protected not only by that section of the schedule but also by the following section in another amendment. Either by the amendment or by the original section they are protected. In other words, this constitutional amendment does not legislate any officer out of office except he is specially mentioned by the amendment as being legislated out of office. The board of public works is legislated out of office and it is stated when it shall go out. So also the commissioner of public schools. He is legislated out of office by a constitutional amendment, if it is adopted. But justices of the peace are not, for nowhere in the amendment is it provided that they shall go out of office, and if the legislature does not repeal the laws now on the statute books relating to the justices of the peace, they will be elected in the future as in the past even if we didn't have any section 1. Section 1 does not establish justices of the peace. Get that out of your head and go back to the bar of Summit county and tell them that justices of the peace are not created by that section at all. They are created "by law," although the original constitution by section 9 did provide for justices of the peace as a constitutional office. But it did not create them and there are laws upon the statute books which do create them. Now, if sections 1 and 9 are no longer in the constitution, still the laws are upon the statute books which create justices of the peace and also the laws under which they are elected and by which their terms of office are fixed and the manner in which they are compensated. So section 1 has not anything to do with the question, because this other section is so broad that it covers all the courts that the general assembly may establish and the general assembly has established courts of insolvency, municipal courts, superior courts, etc., and it can continue from time to time to do that, and these laws are in force and are not in conflict with anything adopted here and are not interfered with. So do you not see that it is

logically true and certain that justices of the peace do not go out of office? I say they certainly do not and they will continue until their terms expire, unless the legislature changes the term.

Mr. HARRIS, of Ashtabula: The gentleman insists that had the court of common pleas and court of probate been omitted here they would still be in force and effect as courts of the state. Now the average citizen in the rural districts wonders why justices of the peace were omitted and the others were not. Explain that.

Mr. KING: I was not present when that question was discussed.

Mr. HARRIS, of Ashtabula: I do not remember that it was discussed in the Convention.

Mr. KING: I don't think it was.

Mr. HARRIS, of Ashtabula: Can we have the reason now?

Mr. KING: The reason was fully given by Judge Peck.

Mr. HARRIS, of Ashtabula: I could not hear it.

Mr. KING: That it was to leave entirely to the general assembly the determination of the nature, character, term of office, manner of election and how many there should be.

Mr. HARRIS, of Ashtabula: Why not the same as to the others?

Mr. KING: They could have done it.

Mr. HARRIS, of Ashtabula: Why did they not?

Mr. KING: They followed the mark that was laid down in the old constitution which contained a long section in regard to the courts. But it didn't define any superior court of Cincinnati and why was not that done? Simply because it never was a constitutional court except under the provision that the general assembly may establish such courts as it pleases.

Mr. PECK: And it has existed for sixty years.

Mr. KING: So as to the court of insolvency and the juvenile courts. It might just as well be that way with the probate court, but there is another section in another part of the article that provides for constitutionally establishing the probate court. I do not believe that the justice court as a court has yet reached the stage of perfection. I think there is still opportunity for amendment by the general assembly and I think that is the general opinion. I know it is among the lawyers with whom I am acquainted and it was deemed a good deal better to leave it out of this constitution in the declaratory clause and permit the general assembly to deal with the subject from time to time as it sees fit. I believe that is the better way, but that goes to a question of policy. The other goes to a question of whether this abolished the justices from the face of the earth, and I say to the justices of the peace that they will be just as well off if this amendment is adopted as they were before.

Mr. ANDERSON: You say that if there had not been any mention of justices of the peace in the constitution of 1851 there would be just as many justices of the peace as there are now?

Mr. KING: Yes; the statute provides everything.

Mr. ANDERSON: And with the constitution of 1851 just as it is with reference to justices of the peace, if the legislature had never passed any laws in reference

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to the justices of the peace there would not be any in Ohio today?

Mr. KING: Not one.

Mr. DAVIO: How would it work in the city of Cleveland if this amendment is carried? Would not the justices of the peace be legislated out the first year?

Mr. KING: Yes, I think so, but I don't want to be too swift about that. No, I think not. I will tell you all that does. It provides that no new ones shall be elected:

Mr. DAVIO: Those elected will serve their terms out?

Mr. KING: Yes; their office is preserved by other sections of the constitution. It provides that in townships where there is another court having the same jurisdiction that justices have no justices shall be elected.

Mr. DAVIO: It also says that those justices of the peace shall have and exercise jurisdiction, etc.

Mr. KING: Yes, but you can not take away what they now have unless you also provide that they shall actually go out of office, and we do not provide that. If we do not do that in the constitution then there is another provision that holds them during their term of office. That term is secured for them and it cannot be taken away.

Mr. JOHNSON, of Williams: We had a discussion last Friday night in the rural county where I live on the subject whether or not justices of the peace would be legislated out of office. I had received a circular from some lawyers saying it did away with the justices court. I told that audience if this amendment carried that it would not, but that we would have the justices of the peace until the legislature passed laws abolishing them. Was I right?

Mr. PECK: Yes.

Mr. JOHNSON, of Williams: Why worry about the rural districts? I think the trouble is all with the lawyers. I am sure a lot of lawyers would like to overrule what we have done. I would not vote to change one thing, even if the whole constitution goes down. I do not believe in child's play. This matter will be all right no matter how adopted, and the supreme court will decide the matter. I think it is waste of time to adopt any amendment now to remedy a fancied or supposed wrong, a wrong that does not exist.

Mr. FESS: If Judge Peck's address and Judge King's address could be read by everybody there could not be any danger. We are talking in the Convention now about whether justices of the peace will be abolished. We are agreed that they will not. I am perfectly satisfied from what the gentlemen have said that they will not and it is up to you and to me to make the people in the rural districts see that justices of the peace are not abolished.

Mr. PECK: I do not know how we can make them see it any plainer.

Mr. FESS: I had a letter and I sent it to Judge Peck. I wanted a word from Judge Peck that I might read everywhere I go. I am one of the members of the Convention that is on the platform every day. Only three times yesterday I violated the Sabbath by speaking on these amendments, as you can see by my voice today, and to save my life I cannot make the fellows see that this office of justice of the peace is not disturbed, even

after quoting and reading from the letter of Judge Peck, which is as clear as sunlight. My point now is to sound a note of warning that if we want Proposal No. 19 adopted we must all get busy in the rural districts and overcome the prejudice that certain interests of the state are working against this constitution, interests that do not care the snap of the finger for justices of the peace, but they are everywhere poisoning the minds in the rural sections. Why, last Thursday night I spoke to a group of men in Tiffin, many of them lawyers. I insisted that the office of justice of the peace was not abolished and when I got through with my argument one of the judges of the town said to me that they had studied the matter and that I was wrong, that the justices were abolished.

Mr. JOHNSON, of Williams: And those men you talked to were not men from the backwoods districts.

Mr. FESS: No.

Mr. JOHNSON, of Williams: That is the trouble—with the cities. With about only three per cent of the people understanding the constitution what can we do? It is a simple matter to me. We take justices of the peace out of the constitution and we put them in the hands of the legislature.

Mr. FESS: My friend from Williams [Mr. JOHNSON] does not see what I am talking about. He has not touched one corner of it. We want to save what we have, but we do not want to go out of the Convention thinking that nobody is in doubt. It is our business when we go back home to spread this idea that the justices of the peace are not wiped out. That is what I am trying to talk about.

Mr. MAUCK: Can the gentleman suggest anything that ought to be done by the legislature to create an office except to provide for the election, the term of office, the salary and the jurisdiction?

Mr. FESS: Do you object to going back home and explaining these facts?

Mr. MAUCK: I have explained them to my people and they are perfectly satisfied.

Mr. FESS: I have explained it to my people and they are not satisfied.

Mr. DWYER: I want to ask Dr. Fess a question. Do you not believe that Mr. Anderson's proposal is a good one—to have the explanation made by Judge King and Judge Peck put in form and mailed to all of the justices of the peace?

Mr. FESS: I do. I want the Convention to understand that there is no suggestion on my part that we should amend at this point. But we ought to do something to get this matter before the people and convince them that our work has not been a work of demolition.

Mr. NYE: Mr. President and Gentlemen of the Convention: I had not expected to say one word at this meeting, but it does seem to me that there is absolutely no doubt about this proposition and every member of this Convention ought to be satisfied that the office of justice of the peace is not dispensed with.

By the old section 1 of article IV it is provided:

The judicial power of the state is vested in a supreme court, circuit court, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme

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court as the general assembly may from time to time establish.

The new section provides substantially the same thing, but it stops with the probate court and does not mention justices of the peace.

Now, we have in Ohio the superior court at Cincinnati, juvenile courts in all of the cities and insolvency courts in some of the cities. It might just as well be said that we are legislating them out of power as to say we legislate the justices of the peace out because justices of the peace are left out of this section. We have statutes providing for the establishment of the superior court. We have statutes providing for the establishment of the juvenile court, and recently there was an act passed by the legislature providing for the court in Cleveland, which has been talked of in this Convention, which is coextensive with the justices courts. All of those courts are still in existence and continue in existence notwithstanding the adoption of the amendment to the constitution.

We also have upon the statute books a statute providing that a certain number of justices of the peace shall be elected in each township of the state and the statute today provides the jurisdiction of those justices of the peace. Now it would be just as competent and just as proper, in my judgment, to say that the superior court of Cincinnati and all these other courts other than justices of the peace, were legislated out of existence as to say that the justices of the peace courts are. True, justice of the peace would no longer be a constitutional office, but it can be made an office and is made an office by the statutes of the state.

Now, if you look at the schedule at the close of the amendments you will find that it provides:

The several amendments passed and submitted by this Convention when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed.

Now, as I have said before, we have statutes providing for the establishment of justices of the peace, and until those laws are repealed the justices of the peace continue in office the same as today, and it seems to me that the proposition that they are legislated out of office by this amendment cannot be maintained, and I am surprised at any lawyer of the state claiming such a thing.

Mr. LAMPSON: Under the present constitution there is a grant of power to the legislature to creat the office of justice of the peace. The legislature has acted and has created that office and the law is now in force. Under the proposed amendment there is a grant of power to the legislature to creat courts inferior to the courts of appeals, which would include the office of justice of the peace. The schedule provides that all laws in force at the time of the adoption of this amendment not inconsistent therewith shall continue in force until amended or repealed. Can any court hold consistently that the law creating the office of justice of the peace under the grant of power contained in the present constitution is inconsistent with the similar grant of

power, although in different language, under the proposed amendment? I think not.

Mr. ANDERSON: I agree with the gentleman from Greene [Mr. Fess] that it is very necessary for us to do something to counteract the belief now in the minds of the justices of the peace and the friends of the justice of the peace and convince them that if this proposed amendment is ratified the office of justice of the peace will not be in any way disturbed. Enemies of our work are resorting to a campaign of misrepresentation the like of which was never known in this state or any other state. A corporation attorney at Toledo, who probably had never tried a case before a justice of the peace and who represents clients who have no interests in the justices of the peace, is the man who is sending out circulars to each justice of the peace. I have had justices come to see me and I have talked to them by the hour and with no more effect than the gentleman from Greene [Mr. Fess] says he has had. With Mr. Harter, of Stark, I went into the offices of several judges in Canton with the justice of the peace over there and tried to explain that it did not do away with justices of the peace or cut down their terms, and yet that justice of the peace agreed with the lawyer from Toledo. I have here a little slip of paper to which I want to call your attention. On one side it says:

ATTENTION! MERCHANTS! FARMERS!
WORKINGMEN!

YOUR COUNTY FAIR IS IN DANGER.

Amendment No. 38, to the Proposed New Constitution which will be voted on Tuesday, September 3rd, will make it impossible for your fair to be properly advertised. The fair managers have used posters, banners, signs and other forms of Out-Door Advertising all of which will be prohibited if Amendment No. 38 passes.

To protect the thousands of dollars invested in the fair grounds and buildings to insure the continued holding of these annual affairs, VOTE NO on Amendment No. 38. It will prohibit a circus poster too; it would prohibit sales signs; it would throw thousands out of employment and WHAT IS THERE TO BE GAINED FOR YOU OR ANYONE?

On the other side it says:

Vote NO on Amendment No. 38

38		Yes	Art. XV, Sec. 11.
	X	No	Out-Door Advertising.

and Save Your County Fair.

On the left of this it says: "And Save Your County Fair."

I presume the gentleman who got up this is connected with a circus.

I believe it is very necessary to do something to reach every justice in the state of Ohio and therefore I offer a resolution.

The resolution was read as follows:

Office of Justice of the Peace Not Abolished—Question of Personal Privilege.

Resolution No. 167:

Resolved, That Judges Peck, King and Nye be appointed a committee with the assistance of the secretary to draw a statement concerning the proposed amendments as affecting the office of justice of the peace and that the secretary send each justice of the peace a copy of such report.

The PRESIDENT: The gentleman from Mahoning moves a suspension of the rules and that this resolution be considered at this time.

The rules were suspended.

The PRESIDENT: The question is "Shall the resolution be adopted?"

The yeas and nays were taken, and resulted — yeas 72, nays 3, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Marshall,
Beatty, Morrow,	Halfhill,	Matthews,
Beatty, Wood,	Harbarger,	McClelland,
Beyer,	Harris, Ashtabula,	Miller, Crawford,
Cody,	Harter, Huron,	Miller, Fairfield,
Collett,	Henderson,	Miller, Ottawa,
Colton,	Hoffman,	Moore,
Cordes,	Holtz,	Okey,
Davio,	Hoskins,	Peck,
DeFrees,	Hursh,	Peters,
Donahay,	Johnson, Madison,	Pierce,
Doty,	Johnson, Williams,	Read,
Dunlap,	Kehoe,	Rockel,
Dunn,	Keller,	Roehm,
Dwyer,	Kerr,	Rorick,
Earnhart,	Knight,	Shaffer,
Eby,	Kunkel,	Shaw,
Elson,	Lambert,	Smith, Geauga,
Evans,	Lampson,	Solether,
Farnsworth,	Leete,	Stokes,
Farrell,	Leslie,	Thomas,
Fess,	Longstreth,	Winn,
FitzSimons,	Ludey,	Wise,
Fox,	Malin,	Mr. President.

Messrs. Mauck, Stevens and Taggart voted in the negative.

So the resolution was adopted.

Mr. WINN: Gentlemen of the Convention: I have hastily prepared a resolution bearing upon this same subject, which I am about to offer and touching which I desire to say a word before offering it.

I believe it will be wise if just at this moment we adopt a resolution declaring it to be the sense of this Convention that it was not the intention of the Convention to abolish justices of the peace and that the adoption of any amendment we have proposed will not legislate any person out of office. I offer the resolution.

The resolution was read as follows:

Resolution No. 168:

Resolved, That it is the sense of this Convention that the office of justice of the peace is not abolished by any amendment submitted by this Convention and that such is not the effect of any proposed amendment when considered in connection with other proposed amendments and with the provisions of the constitution bearing upon the subject not affected by any proposed amendment; that said office of justice of the peace will not be abolished nor will any justice of the peace be legislated out of office by reason of the adoption of any proposed amendment or amendments submitted by this Convention.

The PRESIDENT: The question is, Shall the rules be suspended?

The rules were suspended.

The PRESIDENT: The question is on the adoption of the resolution.

Mr. WINN: I just want to say one more word so that we may all understand fully the import of the resolution. It is not only that it may go out throughout the state that this Convention did not propose to abolish justices of the peace and has not done so, but that it may go into our proceedings, because if this question does reach the supreme court, and it may be that the lawyer in Toledo who has put out this pamphlet headed with these words, more familiar to him than anything else, "Stop, look and listen"—words familiar to all railroad lawyers—it may be possible that he will find some means by which he may procure the submission of this question to the supreme court, and in that event an expression by this Convention of its intention will probably have great weight with that body.

The PRESIDENT: The question is on the adoption of the resolution.

The resolution was adopted.

Mr. HALFHILL: As a matter of personal privilege I desire to explain my relations to the committee on Submission and Address to the People.

At the time that resolution was brought in by Mr. Doty, to whom we are under obligations for much of the work of the Convention, I was afraid of it because it conferred too much power on the president. I was especially afraid of it when I saw the able lieutenant of the president and the president working together in a team, because I had encountered that before and I knew how dangerous it was.

Mr. DOTY: "Stop, look and listen!"

Mr. HALFHILL: While I was calling some attention to that and doing it rightfully, because it was my business to see that the state treasury was not thrown wide open without some restrictions, the gentlemen from Cuyahoga [Mr. Doty], with his usual skill, slipped over and had somebody suggest that I be made a member of the committee, so that I could watch him and the president, and the president, quicker than a flash, said, "If there is no objection on he goes." So I was on that committee and it was supposed that we would have some little opportunity to look inside.

Mr. DOTY: Well, did you not get it?

Mr. HALFHILL: I was in the committee on the second of July at one session and then I was legislated off.

Mr. DOTY: Will the member from Allen allow me a word?

Mr. HALFHILL: When I finish you can have all the time you want, so far as I am concerned. What I mean is that all of the work of the committee was put in the hands of a subcommittee of three and I was on the outside. I did not even get a look-in.

Mr. DOTY: Is it not a fact that at the time that that subcommittee was being made up you were named as one of the original three and you declined to serve on that committee?

Mr. HALFHILL: I do not know but that that is so.

Mr. DOTY: It is correct.

Mr. HALFHILL: If you say it is correct, it is correct. I have no recollection on that point. But what

Question of Personal Privilege—Payment of Employees.

could I have done on that committee? I would have been in as bad shape as I was.

Mr. DOTY: Are you asking me?

Mr. HALFHILL: Yes.

Mr. DOTY: You would have had one vote out of three, two to one.

Mr. HALFHILL: I would have been where I was most of the time—when the time came the president, aided by his lieutenant from Cuyahoga [Mr. DOTY], would have steam-rolled me.

Mr. DOTY: Will the gentleman yield a moment?

Mr. HALFHILL: Yes.

Mr. DOTY: Do you know whether the member from Auglaize [Mr. HOSKINS] is in favor of the president of the Short Ballot Association for president of the United States?

Mr. HALFHILL: There is no accounting for taste, as the old woman said when she kissed the bull moose. So I say, Mr. President, further—

Mr. LAMPSON: Will the gentleman yield to me for a question?

Mr. HALFHILL: Just a moment. I say further about the gentleman from Auglaize [Mr. HOSKINS] that he might do worse in this campaign than to vote for Wilson.

Mr. LAMPSON: I want to ask if the gentleman from Allen [Mr. HALFHILL] was present when the kissing bee took place that he has referred to?

Mr. HALFHILL: I do not think I would follow that kissing bee very far. Now, I want to get to the question.

Mr. DOTY: I call attention to the fact that he refuses to answer my question about the member from Auglaize.

Mr. HALFHILL: No, sir; I answered it.

Mr. HOSKINS: I want to know what he said about me? I didn't hear it.

Mr. HALFHILL: He wanted to know if you were in favor of the president of the Short Ballot Association for president of the United States?

Mr. HOSKINS: Yes.

Mr. HALFHILL: That part at least is settled then. Evidently the skillful gentleman from Cuyahoga [Mr. DOTY] is endeavoring to flag me on the statement I want to make and I do not intend to be flagged. Now I shall not yield until I have finished the statement. I do not say but what the advertising contracts and the planning about them and everything was done just as reported by Mr. Lampson and that the interests of the state were protected in a business way. I have no reason to think otherwise, but here is what I am complaining about and I want you to look at this advertisement. This exhibit appeared in the Cleveland Plain Dealer: "Ballot must be marked forty-two times. A vote for an amendment is cast this way," and then there is an affirmative vote shown for the initiative and referendum and for municipal home rule. I do object to using the money of the state of Ohio to urge forward some particular proposal, and I objected when the president submitted that to me in the proof. I wrote him a letter to that effect and I want to be put on record to that effect. I said it was not fair and it was not right, and I put it down over my own signature, and yet later I bought a Cleveland Plain Dealer and found that advertisement in it. If the president is content to throw the power of

his high office at the last minute, as he did throw it so often during the course of this Convention, in favor of some proposal that he especially backed, and throw every obstacle in the way of anybody against him—if he thinks that is right, I want him to have the responsibility for it, and I do not want it to be known or understood that because I was on that committee I ever agreed to that form of advertisement. That is all I care to say on that point.

Mr. CASSIDY: I desire to offer a resolution and to give just a word of explanation. Several of our employees are serving here today and there is no provision for their compensation and I offer a resolution.

The resolution was read as follows:

Resolved, That the president and secretary be and they are hereby authorized and directed to issue vouchers in payment for today's services to the employees who are on duty.

Mr. DOTY: The spirit of the resolution should be carried out, but the form of the resolution is not right. In the first place, some of our former employees are on the pay roll. In the second place, we do not know how many of our former employees who are not now on the pay roll are present. I suppose the secretary knows, but we do not know. I think the names of those we want to pay should be put in this resolution.

Mr. CASSIDY: If the secretary will furnish me the names I will put them in.

The SECRETARY: I have the names.

The resolution was amended by the insertion of the names and read as follows:

Resolution No. 169:

Resolved, That the president and secretary be and they are hereby authorized and directed to issue vouchers in payment for today's services to the following employees:

Will T. Blake, T. H. Brown, Clement Kelly, J. C. Sherlock, William C. Ries, Fred Blankner, C. M. Fisher, William Todd, Allen G. Atwill, Nelson Winslow, A. Jacobs, Howard Fordyce, Albert Goodyear, Charles Mills, Harry Blair.

The PRESIDENT: The question is on the suspension of the rules to consider this resolution.

The rules were suspended.

The PRESIDENT: The question is now on the adoption of the resolution and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 52, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Longstreth,
Baum,	Halfhill,	Ludey,
Brown, Lucas,	Harbarger,	Malin,
Cassidy,	Harris, Ashtabula,	Marshall,
Collett,	Harter, Huron,	Matthews,
Davio,	Hoffman,	McClelland,
DeFrees,	Hoskins,	Miller, Crawford,
Doty,	Hursh,	Miller, Fairfield,
Dunlap,	Johnson, Madison,	Miller, Ottawa,
Earnhart,	Johnson, Williams,	Moore,
Evans,	Kerr,	Okey,
Earnsworth,	Knight,	Pierce,
Farrell,	Kunkel,	Price,
Fess,	Lampson,	Rockel,
FitzSimons,	Leete,	Roehm,
Fox,	Leslie,	Shaffer,

Address of President—Adjournment.

Shaw,
Smith, Geauga,
Solether,
Stevens,
Stokes,

Taggart,
Tannehill,
Thomas,
Wagner,
Walker,

Watson,
Winn,
Wise,
Mr. President.

So the resolution was adopted.

Mr. DOTY: I call for the reading of today's journal.

The journal was read.

VICE PRESIDENT FESS [in the chair]: You have heard the reading of the journal and if there is no objection or correction it will stand approved as read.

Mr. KERR: Will there be a copy of that furnished to each member to add to the journal he now has?

Mr. DOTY: Yes.

The VICE PRESIDENT: The chair recognizes the delegate from Hamilton [Mr. BIGELOW].

The PRESIDENT: Members of the Convention profoundly realize that the state of Ohio is at present facing a most important duty and opportunity. We believe we voice the sincere sentiment of an overwhelming majority of this Fourth Constitutional Convention of Ohio when we say that the issue at stake is real representative and progressive government. We look forward to next Tuesday certainly not without hope; but we are more impressed than ever before with the power of the enemy.

We believe that the opposition has not been fair, that questionable methods have been used to misrepresent the work of this Convention, not to enlighten but to confuse the voters of this state. I do not wish to sound any note of discouragement, yet I want to express what I believe to be the feeling of many delegates here, that the issue is at this hour in doubt. A few weeks ago it seemed inconceivable that such forces could have been marshalled or such an impression made, but with the

money to fill the country newspapers with "boiler-plate," with the means to send agents all over this state, to make even a house-to-house canvass of misrepresentation, with the line so tightly drawn that even today in my city certain large employers try to lock their men in their factories to prevent the men from hearing the speeches of those who are trying to explain these issues that the men may intelligently vote next Tuesday, we close this Convention with some misgivings. We know that next Tuesday is going to be a real battle. We believe that the power of money is on one side and the enthusiasm for liberty on the other. All we can do is to put forth our best efforts between now and next Tuesday, knowing that if the issue is decided in favor of the work of this Convention the door will be open for progressive and real representative government, but that if the issue goes against us next Tuesday the opportunity passes from the people of this state for another twenty years, because these opportunities cannot come again within the lifetime of many of us here—not for two decades. We go forth to battle next Tuesday with a sense of our obligation to the cause of progressive government and to the future of this state, bound to take our place upon the firing line and fight, even as we know we are fighting, for the good of the state of Ohio and for the good of our children. And with this determination, even with our knowledge of the power of the enemy, we go forth with the conviction that we are right and that truth will prevail. I now move that this Convention do finally adjourn.

Mr. DOTY: I second the motion.

The VICE PRESIDENT: It is moved and seconded that the Fourth Constitutional Convention of Ohio do now finally adjourn. Those in favor of the motion will say aye and those opposed no. The motion is carried and this Convention is finally adjourned.

ERRATA

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| <p>Page 147. Change "Resolution No. 36" to "Proposal No. 6."</p> <p>Page 675. Change "Folks note" to "Folkmoot."</p> <p>Page 794. In remarks by Mr. Harris change "except" to "expect."</p> <p>Page 942. Insert quotation marks after the last word of Mr. Bigelow's address.</p> <p>Page 1139. Column two, remarks by Mr. Doty change "motion" to "resolution."</p> | <p>Page 1195. Change "The proposal was read the second time" to "The question being, 'Shall the minority report be substituted for the majority report?'"</p> <p>Page 1235. Change "Thorn" to "Thorne."</p> <p>Page 1262. First column, line 9, insert "the crime" after "commits."</p> <p>Page 1493. After remarks by Mr. Crosser, insert "The amendment was laid on the table."</p> |
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OMISSIONS FROM RECORD

The following items were not included in the manuscript record. They should appear as indicated below:

Page 126. Preceding "Resolution No. 40—Mr. King was taken up" insert:

Resolution No. 39—Mr. Doty, was taken up.
On motion of Mr. Doty the resolution was referred to committee on Rules.

Page 552. After the verification of the roll call, insert:

So the proposal passed as follows:

Proposal No. 100—Mr. Fackler.

"To submit an amendment to article IV, section 9, of the constitution.—Relative to justice of the peace.

Resolved, by the Constitutional Convention of the state of Ohio,
That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE IV.

SECTION 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties. Their term of office shall be four years and their powers and duties shall be regulated by law. Provided that there shall be no justices of the peace in any township where a court, other than a mayor's court, is or may hereafter be maintained with the jurisdiction of all causes of which justices of the peace are given jurisdiction, and no justices of the peace

shall have or exercise jurisdiction in such township."

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Page 565. Preceding "Reports of standing committees" insert:

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposals were read by their titles and referred as follows:

Proposal No. 280—Mr. Earnhart. To the committee on Taxation.

Proposal No. 281—Mr. Eby. To the committee on Miscellaneous Subjects.

Proposal No. 282—Mr. Miller, of Ottawa. To the committee on County and Township Organization.

Proposal No. 283—Mr. DeFrees. To the committee on Taxation.

Proposal No. 284—Mr. Crosser. To the committee on Municipal Government.

Proposal No. 285—Mr. Miller, of Crawford. To the committee on Legislative and Executive Departments.

Proposal No. 286—Mr. Thomas. To the committee on Legislative and Executive Departments.

Proposal No. 287—Mr. Thomas. To the committee on Judiciary and Bill of Rights.

Proposal No. 288—Mr. Harter, of Stark. To the committee on Legislative and Executive Departments.

APPENDIX

(2097)

CONTENTS

- I. MEMBERS OF THE CONSTITUTIONAL CONVENTION.
- II. AMENDMENTS PROPOSED BY THE CONSTITUTIONAL CONVENTION OF 1912.
- III. VOTE ON AMENDMENTS SUBMITTED TO THE PEOPLE SEPTEMBER 3, 1912.
- IV. FINANCIAL STATEMENT.
- V. EXPENSES OF SPECIAL ELECTION, SEPTEMBER 3, 1912.
- VI. REPORT OF SPECIAL COMMITTEE RELATIVE TO OFFICE OF JUSTICE OF THE PEACE.
- VII. CONTRACT FOR PRINTING PROCEEDINGS AND DEBATES.
- VIII. CONSTITUTION OF THE STATE OF OHIO WITH AMENDMENTS PROPOSED BY THE CONSTITUTIONAL CONVENTION AND APPROVED BY THE PEOPLE.

(2098)

Members of the Constitutional Convention—1912

Name.	P. O. Address.	County.	Birth.		Occupation or Profession.
			State or Country.	Date.	
Anderson, D. F.	Youngstown	Mahoning	Ohio	June 3, 1864	Lawyer.
Antrim, Ernest I.	Van Wert	Van Wert	Ohio	February 21, 1869	Banker.
Baum, John L.	Storms Station	Ross	Ohio	September 19, 1861	Farmer.
Beatty, Richard A.	Bowling Green	Wood	Pennsylvania	February 23, 1859	Oil Operator.
Beatty, Robert A.	Cardington	Morrow	Ohio	September 24, 1847	Farmer.
Beyer, Andrew	Arlington, R. F. D.	Hancock	Germany	July 1, 1853	Farmer.
Bigelow, Herbert S.	Cincinnati, 514 Main St.	Hamilton	Indiana	January 4, 1870	Minister.
Bowdle, Stanley E.	Cincinnati, 1103 1st Nat'l Bank Bldg.	Hamilton	Ohio	September 4, 1867	Lawyer.
Brattain, W. B.	Paulding	Highland	Ohio	August 25, 1860	Lawyer.
Brown, H. M.	Hillsboro	Highland	Ohio	August 28, 1859	Physician.
Brown, Madison A.	Harrison Station	Pike	Ohio	January 2, 1869	Farmer.
Brown, Walter F.	Toledo, Nicholas Bldg.	Lucas	Ohio	May 31, 1869	Farmer.
Campbell, Wm. W.	Napoleon	Henry	Vermont	April 2, 1853	Lawyer.
Cassidy, John R.	Bellefontaine	Logan	Ireland	March 20, 1871	Lawyer.
Cody, M. T.	Marysville, R. F. D.	Union	Ohio	October 29, 1867	Farmer.
Collett, Bernard Y.	Wilmington, R. F. D.	Clinton	Ohio	August 7, 1853	Farmer.
Colton, George H.	Itham	Portage	Ohio	October 10, 1848	College President.
Cordes, Henry F.	Cincinnati, 210 Stetson St.	Hamilton	Ohio	October 2, 1868	Stair Builder.
Crites, H. M.	Circleville	Pickaway	Ohio	October 16, 1869	Manufacturer.
Crosser, Robert	Cleveland, Williamson Bldg.	Cuyahoga	Scotland	June 7, 1874	Lawyer.
Cunningham, David	Cadiz	Harrison	Canada	March 1, 1857	Lawyer.
Davio, Wm. C.	Cleveland, 6203 Quinby Ave.	Cuyahoga	Ohio	July 20, 1866	Lather.
DeFrees, Joseph	Piqua, R. F. D.	Miami	Ohio	February 21, 1847	Merchant.
Donahay, A. V.	New Philadelphia	Tuscarawas	Ohio	July 7, 1873	Printer.
Doty, Edward W.	Cleveland, 7981 Franklin Ave.	Cuyahoga	New York	September 15, 1863	Mgr. Mfg. Appraisal Co.
Dunlap, Charles O.	McArthur	Vinton	Michigan	July 12, 1856	Physician.
Dunn, Alexander	New Richmond	Clermont	Ohio	January 8, 1851	Minister.
Dwyer, Dennis	Dayton, 1201 Conover Bldg.	Montgomery	Ireland	February 2, 1830	Lawyer.
Earnhart, J. Milton	Lebanon	Warren	Ohio	May 3, 1846	Farmer.
Eby, Henry E.	Camden	Freble	Ohio	June 16, 1872	Farmer.
Elson, Henry W.	Athens	Athens	Ohio	March 29, 1857	Physician Professor.
Evans, Nelson W.	Portsmouth	Scioto	Ohio	June 4, 1842	Lawyer.
Fackler, John D.	Cleveland, 11 Rosalind Ave.	Cuyahoga	Ohio	January 18, 1878	Lawyer.
Farnsworth, W. W.	Waterville	Lucas	Ohio	November 21, 1855	Fruit Grower.
Farrell, Thomas S.	Cleveland, 3643 Carnegie Ave.	Cuyahoga	Vermont	December 25, 1878	Waiter.
Fess, S. D.	Yellow Springs	Greene	Ohio	December 11, 1861	College President.
FitzSimons, Thomas G.	Cleveland, 2352 E. 40th St.	Cuyahoga	Ohio	August 6, 1848	Manufacturer.
Fluke, James M.	Coldwater	Ashland	Ohio	September 22, 1865	Farmer.
Fox, H. C.	Cleveland, 1914 E. 66th St.	Mercer	Ohio	April 26, 1860	Merchant.
Halenkamp, Wm. P.	Norwood, 4810 Beech St.	Hamilton	Bohemia	June, 1848	Lawyer.
Halfhill, James W.	Lima	Allen	Ohio	September 24, 1855	Foreman.
Harbarger, James W.	Columbus, 3147 N High St.	Franklin	Pennsylvania	March 1, 1861	Lawyer.
Harris, Geo. W.	Cincinnati, 309 Traction Bldg.	Hamilton	Ohio	January 20, 1852	Iron Moulder.
Harris, W. S.	Saybrook	Ashtabula	Ohio	January 30, 1892	Capitalist.
Harter, Isaac	Canton	Stark	Ohio	February 14, 1846	Farmer.
Harter, Otto M.	Norwalk	Huron	Ohio	September 25, 1848	Banker.
Henderson, Robert	Irishana	Champaign	Virginia	May 19, 1863	Druggist.
Hoffman, John C.	Cincinnati, 1329 Main St.	Hamilton	Ohio	March 22, 1851	Physician.
Holtz, Charles D.	Tiffin, R. F. D. 7	Cincinnati	Ohio	August 13, 1859	Solicitor.
Hoskins, S. A.	Wapakoneta	Auglaize	Ohio	January 3, 1845	Farmer.
Hirsch, Frank G.	McGuffey	Hardin	Ohio	March 5, 1863	Lawyer.
Johnson, E. W.	West Jefferson	Madison	Ohio	November 22, 1863	Farmer.
Johnson, Solomon	Stryker	Williams	Ohio	October 27, 1876	Lawyer.
Jones, Humphrey	Bloomington	Fayette	Ohio	March 2, 1850	Farmer.
Kehoe, J. W.	Georgetown	Brown	Ohio	January 31, 1857	Lawyer and Banker.
Keller, Henry C.	Hanover, R. F. D.	Licking	Ohio	May 25, 1853	Banker.
Kerr, Frank H.	Steubenville	Jefferson	Ohio	June 14, 1853	Farmer.
Kilpatrick, W. B.	Warren	Trumbull	Ohio	February 5, 1862	Lawyer.
King, Edmund B.	Sandusky, Columbus Ave.	Erie	Ohio	September 5, 1877	Lawyer.
Knight, Geo. W.	Columbus, 651 E Broad.	Erie	Ohio	July 4, 1850	Lawyer.
Kramer, John F.	Mansfield	Franklin	Michigan	June 25, 1858	College Professor.
Kunkel, Lawrence P.	Zanesville	Richland	Ohio	February 10, 1869	Lawyer.
Lambert, Frank P.	Wellston	Muskingum	Ohio	January 9, 1865	Glass Worker.
Lampson, Elbert L.	Jefferson	Jackson	Kentucky	December 22, 1842	Carpenter.
Leete, Fred G.	Ironton	Ashtabula	Ohio	July 30, 1852	Lawyer and Editor.
Leslie, Daniel E.	Cleveland, 90 Roxbury Rd.	Lawrence	Ohio	July 14, 1860	Civil Engineer.
Longstreth, Robt. B.	Union Furnace	Cuyahoga	Ohio	February 22, 1852	Accountant.
Ludey, Chris.	Woodsfield	Mocking	Ohio	December 19, 1852	Farmer.
McClelland, Raymond G.	Fredericktown	Monroe	Ohio	March 3, 1850	Merchant.
Malin, Fletcher D.	Painesville	Knock	Pennsylvania	November 14, 1848	Minister and Farmer.
Marriott, F. M.	Delaware	Lake	Ohio	August 30, 1861	Lumberman.
Marshall, Allen M.	Coshocton, R. F. D.	Delaware	Ohio	September 5, 1847	Lawyer.
Matthews, N. E.	Ottawa	Coshocton	Ohio	March 6, 1849	Farmer.
Mauck, Roscoe J.	Gallipolis	Putnam	Ohio	April 14, 1852	Banker.
Miller, Frank P.	Lancaster	Gallia	Ohio	May 17, 1870	Lawyer.
Miller, Geo. W.	Bucyrus	Fairfield	Ohio	November 10, 1872	Farmer.
Miller, Wm.	Cuyahoga	Crawford	Ohio	January 22, 1859	Banker.
Moore, Tilton E.	Cuyahoga	Ottawa	Ohio	February 4, 1884	Fruit Grower.
Moore, Caleb H.	Marion	Muskingum	Ohio	February 8, 1866	Farmer.
Nye, David J.	Elvria	Marion	Ohio	September 29, 1850	Lawyer.
Okey, J. A.	Caldwell	Lorain	New York	December 8, 1843	Lawyer.
Partington, Wm. E.	Sidney	Noble	Ohio	January 9, 1861	Lawyer.
Peck, Hiram D.	Cincinnati, 518 Walnut St.	Shelby	Ohio	September 27, 1855	Teacher.
Peters, Edward A.	Groveport	Hamilton	Kentucky	March 23, 1844	Lawyer.
Pettit, Geo. W.	West Union	Franklin	Ohio	August 5, 1860	Farmer.
Pierce, David	Hamilton	Adams	Ohio	April 5, 1866	Lawyer.
Price, T. D.	New Lexington	Butler	Ohio	October 18, 1857	Lawyer.
Read, A. Ross	Akron	Perry	Ohio	June 30, 1872	Lawyer.
Redington, H. G.	Elyria	Summit	Pennsylvania	April 13, 1849	Farmer.
		Lorain	Ohio	July 10, 1858	Lawyer.

Members of the Constitutional Convention — 1912.—Concluded.

Name.	P. O. Address.	County.	Birth.		Occupation or Profession.
			State or Country.	Date.	
Riley, John H.....	Marietta	Washington	Virginia	Lawyer.
Rockel, Wm. M.....	Springfield, Bushnell Bldg.....	Clark	Ohio	July 18, 1865.....	Lawyer.
Roehm, John	Dayton	Montgomery	Ohio	January 29, 1871.....	Lawyer.
Rorick, John C.....	Wauseon	Fulton	New York.....	February 13, 1834..	Retired.
Shaffer, Stanley	Hamilton	Butler	Ohio	October 5, 1861.....	Lawyer.
Shaw, Eli D.....	Minerva	Carroll	Ohio	October 12, 1852....	Lawyer.
Smith, Henry K.....	Chardon	Geauga	Ohio	August 10, 1832....	Lawyer.
Smith, Starbuck	Cincinnati, St. Paul Bldg.....	Hamilton	Ohio	March 25, 1872.....	Lawyer.
Solether, J. C.....	Jerry City.....	Wood	Ohio	December 23, 1864..	Farmer.
Stalter, Franklin J.....	Upper Sandusky.....	Wyandot	Ohio	September 18, 1870.	Lawyer.
Stamm, Martin	Fremont	Sandusky	Switzerland ..	November 16, 1847..	Physician.
Stevens, Wm. B.....	Uhrichsville	Tuscarawas	Ohio	May 12, 1866.....	Lawyer.
Stewart, O. H.....	Middleport	Meigs	Ohio	July 26, 1863.....	Lawyer.
Stilwell, Stephen S.....	Cleveland, 1861 Superior Ave.....	Cuyahoga	Michigan	October 9, 1871.....	Deputy Clerk of Courts.
Stokes, Wm. W.....	Dayton	Montgomery	Ohio	December 8, 1849....	Real Estate.
Taggart, Frank	Wooster	Wayne	Ohio	June 8, 1862.....	Lawyer.
Tallman, James C.....	Bellaire	Belmont	Ohio	April 8, 1850.....	Lawyer.
Tannehill, J. W.....	McConnelsville	Morgan	Ohio	March 12, 1865.....	Editor.
Tellow, Percy	Letonia	Columbiana	Ohio	December 16, 1875..	Miner.
Thomas, Harry D.....	Cleveland, 7706 Lockyear Ave.....	Cuyahoga	England	December 24, 1864..	Carpenter.
Ulmer, John	Toledo, 2206 Rosewood Ave.....	Lucas	Switzerland ..	September 26, 1851.	Retired Merchant.
Wagner, Edwin T.....	Greenville	Darke	Ohio	March 23, 1874.....	Farmer.
Walker, Wilmer R.....	Killbuck	Holmes	Iowa	July 5, 1869.....	Minister.
Watson, Harvey	New Concord.....	Guernsey	Ohio	August 26, 1865....	Teacher.
Weybrecht, B. F.....	Alliance	Stark	Ohio	March 17, 1861.....	Manufacturer.
Winn, John W.....	Defiance	Defiance	Ohio	March 4, 1855.....	Lawyer.
Wise, Frank C.....	New Berlin.....	Stark	Ohio	February 14, 1864..	Retired Farmer.
Woods, Frank W.....	Medina	Medina	Ohio	August 5, 1871.....	Lawyer.
Worthington, Wm.	Cincinnati, 7 E. 5th St.....	Hamilton	Ohio	Aug. 3, 1847.....	Lawyer.

Amendments to the Constitution of Ohio

Resolution Adopted in Convention May 31, 1912, and Signed June 1, 1912

Resolved by the Constitutional Convention of the State of Ohio, That the amendments proposed to the constitution and adopted by this Convention, as hereinafter set forth, shall be submitted to the electors for adoption or rejection on the third day of September, A. D., 1912, and that the president and secretary of this Convention be, and they are hereby, directed to certify the same to the secretary of state for submission to the electors according to law.

ARTICLE I.

SEC. 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

ARTICLE I.

SEC. 9. All persons shall be bailable by sufficient sureties, except those charged with murder in the first degree, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted; nor shall life be taken as a punishment for crime. Until otherwise provided by law, persons convicted of crimes heretofore punishable by death shall be punished by imprisonment in the penitentiary during life.

ARTICLE I.

SEC. 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance cannot be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to

testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

ARTICLE I.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

ARTICLE I.

SEC. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

ARTICLE II.

SEC. 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

SEC. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

SEC. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors

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and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

SEC. 1c. The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided.

When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

SEC. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

SEC. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

SEC. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

SEC. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the af-

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fiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be It Resolved by the People of the State of Ohio." The basis upon which the required number of

petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provision or the powers herein reserved.

SCHEDULE.

The foregoing amendment, if adopted by the electors, shall take effect October 1, 1912.

ARTICLE II.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

ARTICLE II.

SEC. 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or

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items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the re-passage of a bill.

ARTICLE II.

SEC. 33. Laws may be passed to secure to mechanics artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

ARTICLE II.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

ARTICLE II.

SEC. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employes and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employes. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

ARTICLE II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

ARTICLE II.

SEC. 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise.

ARTICLE II.

SEC. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

ARTICLE II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

ARTICLE II.

SEC. 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof, and for settling and determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

ARTICLE II.

SEC. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political subdivision thereof or to any public institution owned, managed or controlled by the state or any political subdivision thereof, shall not be sold within this state unless the same are conspicuously marked "prison made." Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof.

ARTICLE III.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

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ARTICLE IV.

SEC. 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which the circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of

office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof, and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court.

ARTICLE IV.

SEC. 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision there-

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for, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein.

SEC. 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per centum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined.

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years.

SEC. 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

SCHEDULE.

If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and sub-division thereof, until one resident judge of the court of common pleas is elected and qualified therein.

ARTICLE IV.

SEC. 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law. Their term of office shall be for four years and their powers and duties shall be regulated by law: provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise jurisdiction in such township.

SCHEDULE.

If the amendment to article IV, sections 1, 2 and 6, be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing amendment, if adopted, shall be of no effect.

ARTICLE IV.

SEC. 21. Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating proceedings in contempt, and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in such controversies shall, upon demand, be granted a trial by jury as in criminal cases.

ARTICLE V.

SEC. 1. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state for one year next preceding the election, and of the county, township or ward in which he or she resides such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

ARTICLE V.

SEC. 1. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he resides, such time as may be provided by law, shall have the qualifications of an elector and be entitled to vote at all elections.

SCHEDULE.

If the amendment to article V, section 1, to the constitution—Woman's Suffrage, be adopted by the electors and become a part of the constitution, then the foregoing amendment, if adopted, shall be of no effect.

ARTICLE V.

SEC. 2. All elections shall be either by ballot or by mechanical device, or by both, preserving the secrecy of the vote. Laws may be enacted to regulate the preparation of the ballot and to determine the application of such mechanical device.

ARTICLE V.

SEC. 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name

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of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

ARTICLE VI.

SEC. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

SEC. 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

If the foregoing amendment be adopted by the electors it shall take effect and become a part of the constitution on the second Monday of July, 1913.

ARTICLE VIII.

SEC. 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever; provided, however, that laws may be passed to contract debts and authorize issues of bonds to an amount which in the aggregate of all issues shall not exceed fifty million dollars for the purpose of constructing, rebuilding, improving and repairing a system of inter-county wagon roads throughout the state. Not to exceed ten million dollars of such bonds shall be issued in any one year, and there shall be levied and collected annually by taxation an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their redemption at maturity, and laws shall be passed to provide for the maintenance of said roads. Such wagon roads shall be determined under general laws and the cost of constructing, rebuilding, improving, repairing and maintaining the same shall be paid by the state. The provisions of this section shall not be limited or controlled by section 6, of article XII.

ARTICLE VIII.

SEC. 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations

or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

ARTICLE VIII.

SEC. 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

Section 13 of article VIII is hereby repealed.

ARTICLE XII.

SEC. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SEC. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

SEC. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

SEC. 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

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SEC. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

SEC. 11. No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

ARTICLE XIII.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

ARTICLE XIII.

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank," "banker" or "banking," or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

ARTICLE XV.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

ARTICLE XV.

SEC. 4. No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector: provided that women who are citizens may be appointed, as notaries public, or as members of boards of, or to positions in, those departments and institutions established by the state or any political sub-

division thereof involving the interests or care of women or children or both.

ARTICLE XV.

SEC. 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law, and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local sub-division while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word "saloon" as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

At said election a ballot shall be in the following form:

INTOXICATING LIQUORS.

	For License to traffic in intoxicating liquors.
	Against License to traffic in intoxicating liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License," if he desires to vote in favor of the article

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above mentioned and opposite the words "Against License," within the blank space if he desires to vote against said article. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV of the constitution, and the present section 9 of said article, also known as section 18 of the schedule shall be repealed.

ARTICLE XV.

SEC. 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

ARTICLE XV.

SEC. 11. Laws may be passed regulating and limiting the use of property on or near public ways and grounds for erecting bill-boards thereon and for the public display of posters, pictures and other forms of advertising.

ARTICLE XVI.

SEC. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SEC. 3. At the general election to be held in the year one thousand nine hundred and thirty-two, and in

each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution," shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any

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other utility in an amount not exceeding in either case, fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

SEC. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or other-

wise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SEC. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SEC. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SEC. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

SCHEDULE.

If the foregoing amendment to the constitution be adopted by the electors and become a part of the constitution, it shall take effect on November 15, 1912.

SCHEDULE.

The several amendments passed and submitted by this convention when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized by law. Any provision of the amendments passed and submitted by this convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail.

Amendments to the Constitution Submitted by Convention.

METHOD OF SUBMISSION.

The several proposals duly passed by this convention shall be submitted to the electors as separate amendments to the constitution at a special election to be held on the third day of September, 1912. The several amendments shall be designated on the ballot by their proper article and section numbers and also by their approved descriptive titles and shall be printed on said ballot and consecutively numbered in the manner and form hereinafter set forth. The adoption of any amendment by its title shall have the effect of adopting the amendment in full as finally passed by the convention. Said special election shall be held pursuant to all provisions of law applicable thereto including special registration. Ballots shall be marked in accordance with instructions printed thereon. Challengers and witnesses shall be admitted to

all polling places under such regulations as may be prescribed by the secretary of state. Within ten days after said election the boards of deputy state supervisors of elections of the several counties shall forward by mail in duplicate sealed certified abstracts of the votes cast on the several amendments, one to the secretary of state and one to the auditor of state at Columbus. Within five days thereafter such abstracts shall be opened and canvassed by the secretary of state and auditor of state in the presence of the governor who shall forthwith, by proclamation, declare the results of said election. Each amendment on which the number of affirmative votes shall exceed the number of negative votes shall become a part of the constitution.

[Here follows the form of ballot identical with that on pages 2007-2011.]

C. B. GALBREATH,

SECRETARY.

Columbus, Ohio, June 1, 1912.

HERBERT S. BIGELOW,

PRESIDENT.

DAVID F. ANDERSON,
ERNEST I. ANTRIM,
JOHN L. BAUM,
ROBERT A. BEATTY,
RICHARD A. BEATTY,
A. BEYER,
STANLEY E. BOWDLE,
WESLEY B. BRATTAIN,
H. M. BROWN,
WALTER F. BROWN,
M. A. BROWN,
WILLIAM W. CAMPBELL,
JOHN R. CASSIDY,
M. T. CODY,
BERNARD Y. COLLETT,
GEO. H. COLTON,
HENRY F. CORDES,
HENRY M. CRITES,
ROBERT CROSSER,
DAVID CUNNINGHAM,
WILLIAM C. DAVIO,
JOE DEFREES,
A. V. DONAHEY,
EDWARD W. DOTY,
CHARLES O. DUNLAP,
ALEXANDER DUNN,
DENNIS DWYER,
HENRY E. EBY,
J. MILTON EARNHART,
HENRY W. ELSON,
JOHN D. FACKLER,
W. W. FARNSWORTH,
THOMAS S. FARRELL,
S. D. FESS,
THOS. G. FITZSIMONS,
JAMES M. FLUKE,
HENRY C. FOX,
AARON HAHN,
WM. P. HELENKAMP,

JAMES W. HALFHILL,
JAMES W. HARBARGER,
WM. S. HARRIS,
GEO. W. HARRIS,
OTTO M. HARTER,
ISAAC HARTER,
ROBERT HENDERSON,
JOHN C. HOFFMAN,
CHARLES D. HOLTZ,
SAMUEL A. HOSKINS,
FRANK G. HURSH,
EDWARD W. JOHNSON,
SOLOMON JOHNSON,
HUMPHREY JONES,
J. W. KEHOE,
HENRY C. KELLER,
FRANK H. KERR,
WM. B. KILPATRICK,
E. B. KING,
G. W. KNIGHT,
JOHN F. KRAMER,
LAWRENCE P. KUNKLE,
FRANK P. LAMBERT,
E. L. LAMPSON,
FRED G. LEETE,
DANIEL E. LESLIE,
ROBERT B. LONGSTRETH,
CHRIS LUDEY,
FLETCHER D. MALIN,
FRANK M. MARRIOTT,
ALLEN M. MARSHALL,
N. E. MATTHEWS,
ROSCOE J. MAUCK,
R. G. MCCLELLAND,
GEO. W. MILLER,
FRANK P. MILLER,
WM. MILLER,
ILLION E. MOORE,
CALEB H. NORRIS,

DAVID J. NYE,
J. A. OKEY,
W. E. PARTINGTON,
HIRAM D. PECK,
EDWARD A. PETERS,
GEO. W. PETTIT,
DAVID PIERCE,
T. D. PRICE,
A. ROSS READ,
HORACE G. REDINGTON,
JNO. H. RILEY,
WM. M. ROCKEL,
JOHN ROEHM,
JOHN C. RORICK,
STANLEY SHAFFER,
ELI D. SHAW,
H. K. SMITH,
STARBUCK SMITH,
J. C. SOLEATHER,
FRANKLIN J. STALTER,
M. STAMM,
W. B. STEVENS,
STEPHEN S. STILWELL,
O. H. STEWART,
WILLIAM WORTH STOKES,
FRANK TAGGART,
JAMES C. TALLMAN,
J. W. TANNEHILL,
PERCY TETLOW,
HARRY D. THOMAS,
JOHN ULMER,
EDWIN T. WAGNER,
WILMER R. WALKER,
HARVEY WATSON,
BENJ. F. WEYBRECHT,
JOHN W. WINN,
FRANK C. WISE,
F. W. WOODS,
WM. WORTHINGTON.

Vote on Amendments Submitted to the People by the Convention

SPECIAL ELECTION, SEPTEMBER 3, 1912

No.	TITLES OF AMENDMENTS (For article and section covered by each title see Form of Ballot, pages 2007-2011.)		Votes.	Total.	Majority For.	Majority Against.
1	Reform in Civil Jury System.....	Yes No	345,686 203,953	549,639	141,733	
2	Abolition of Capital Punishment.....	Yes No	258,706 303,246	561,952		44,540
3	Depositions by State and Comment on Failure of Ac- cused to Testify in Criminal Cases.....	Yes No	291,717 227,547	519,264	64,170	
4	Suits Against the State.....	Yes No	306,764 216,634	523,398	90,130	
5	Damage for Wrongful Death.....	Yes No	355,605 195,216	550,821	160,389	
6	Initiative and Referendum.....	Yes No	312,592 231,312	543,904	81,280	
7	Investigations by Each House of General Assembly.....	Yes No	348,779 175,337	524,116	173,442	
8	Limiting Veto Power of Governor.....	Yes No	282,412 254,186	536,598	28,226	
9	Mechanics' and Builders' Liens.....	Yes No	278,582 242,385	520,967	36,197	
10	Welfare of Employes.....	Yes No	353,588 189,728	543,316	163,860	
11	Workmen's Compensation	Yes No	321,558 211,772	533,330	109,786	
12	Conservation of Natural Resources.....	Yes No	318,192 191,893	510,085	126,299	
13	Eight Hour Day on Public Work.....	Yes No	333,307 232,898	566,206	100,409	
14	Removal of Officials.....	Yes No	347,333 185,986	533,319	161,347	
15	Regulating Expert Testimony in Criminal Trials.....	Yes No	336,987 185,458	522,445	151,529	
16	Registering and Warranting Land Titles.....	Yes No	346,373 171,807	518,180	174,566	
17	Abolishing Prison Contract Labor.....	Yes No	333,034 215,208	548,242	117,826	
18	Limiting Power of General Assembly in Extra Sessions..	Yes No	319,100 192,130	511,230	126,970	
19	Change in Judicial System.....	Yes No	264,922 244,375	509,297	20,547	
20	Judge of Court of Common Pleas for Each County.....	Yes No	301,891 223,287	525,178	78,604	
21	Abolition of Justices of the Peace in Certain Cities.....	Yes No	264,832 252,936	517,768	11,896	

PROCEEDINGS AND DEBATES

2113

Vote on Amendments Submitted to the People September 3, 1912.

No.	TITLES OF AMENDMENTS (For article and section covered by each title see Form of Ballot, pages 2007-2011.)		Votes.	Total.	Majority For.	Majority Against.
22	Contempt Proceedings and Injunctions.....	Yes No	240,896 257,302	498,198		16,406
23	Woman's Suffrage	Yes No	249,420 386,875	586,295		87,455
24	Omitting Word "White".....	Yes No	242,735 265,693	508,428		22,958
25	Use of Voting Machines.....	Yes No	242,342 288,652	530,994		46,310
26	Primary Elections	Yes No	349,801 183,112	532,913	166,689	
27	Organization of Boards of Education.....	Yes No	298,460 213,337	511,797	85,123	
28	Creating the Office of Superintendent of Public Instruction to Replace State Commissioner of Common Schools..	Yes No	256,615 251,946	508,561	4,669	
29	To Extend State Bond Limit to Fifty Million Dollars for Inter-County Wagon Roads.....	Yes No	272,564 274,582	547,146		2,018
30	Regulating Insurance	Yes No	321,388 196,628	518,016	124,760	
31	Abolishing Board of Public Works.....	Yes No	296,635 214,829	511,464	81,806	
32	Taxation of State and Municipal Bonds, Inheritances, Incomes, Franchises and Production of Minerals.....	Yes No	269,039 249,864	518,903	19,175	
33	Regulation of Corporations and Sale of Personal Property.	Yes No	300,466 212,704	513,170	87,762	
34	Double Liability of Stockholders and Inspection of Private Banks	Yes No	377,272 156,688	533,960	220,584	
35	Regulating State Printing.....	Yes No	319,612 192,378	511,990	127,234	
36	Eligibility of Women to Certain Offices.....	Yes No	261,806 284,370	546,176		22,564
37	Civil Service	Yes No	306,767 204,580	511,347	102,187	
38	Out-Door Advertising	Yes No	261,361 262,440	523,801		1,079
39	Methods of Submitting Amendments to the Constitution...	Yes No	271,827 246,687	518,514	25,140	
40	Municipal Home Rule.....	Yes No	301,861 215,120	516,981	86,741	
41	Schedule of Amendments.....	Yes No	275,062 213,979	489,041	61,083	
	For License to Traffic in Intoxicating Liquors.....		273,361			
	Against License to Traffic in Intoxicating Liquors.....		188,825	462,186	84,536	

Comparative Election Statistics.

COMPARATIVE ELECTION STATISTICS

Vote for Governor, 1851.....	282,182
Vote on Constitution, 1851, Special Election June 17.....	234,840
Vote for Secretary of State, 1874.....	467,425
Vote on Constitution, 1874, Special Election, August 18.....	353,054
Vote for Governor, 1908.....	1,123,198
Vote for Governor, 1910.....	932,262
Highest Vote on any Constitutional Amendment Submitted September 3, 1912.....	586,295

Financial Statement

APPROPRIATIONS.

O. L., Vol. 102, Page 195, 1911.....	\$200,000 00
O. L., Vol. 103, Page 30, 1913.....	62,891 71
O. L., Vol. 103, Page 593, 1913.....	552 28
O. L., Vol. 103, Page 650, 1913.....	4,100 00
Emergency Board, July 12, 1913.....	2,127 12
Total	\$269,671 11

EXPENDITURES.

SALARIES AND MILEAGE OF DELEGATES.

Salaries, 119 delegates.....	\$119,000 00
Mileage	11,430 22

SALARY OF SECRETARY.

C. B. Galbreath.....	3,000 00
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PER DIEM OF SERGEANT-AT-ARMS.

J. C. Sherlock, 162 days @ \$5.....	810 00
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PER DIEM OF EMPLOYEES.

Clerks.

Will T. Blake, 144 days @ \$5.....	\$720 00
T. H. Brown, 144 days @ \$5.....	720 00
H. L. Rebrassier, 151 days @ \$5.....	755 00
E. G. Wulff, 223 days @ \$5.....	1,115 00
Ira I. Morrison, 531 days @ \$5.....	2,655 00
E. S. Nichols, 388 days @ \$5.....	1,940 00
Ella M. Scriven, 539 days @ \$5.....	2,695 00
James B. Lewis, 231 days @ \$5.....	1,155 00
H. S. Brown, 231 days @ \$5.....	1,155 00
S. E. Neff, 223 days @ \$5.....	1,115 00
Clement Kelley, 144 days @ \$5.....	720 00

Stenographers.

Miletus Garner, 143 days @ \$5.....	\$715 00
Ada Pemberton, 151 days @ \$5.....	755 00
Florine Files, 147 days @ \$5.....	735 00
Ethel North, 143 days @ \$5.....	715 00
Lida Judge, 143 days @ \$5.....	715 00
Ella Quigley, 143 days @ \$5.....	715 00
Julia E. Kersting, 231 days @ \$5.....	1,155 00
Anna L. Bower, 151 days @ \$5.....	755 00
Etheline Dille, 143 days @ \$5.....	715 00
Minnie Rodgers, 143 days @ \$5.....	715 00
Gertrude H. Lake, 136 days @ \$5.....	680 00

Committee Clerks.

George Cartwright, 223 days @ \$5.....	\$1,115 00
Mary Turner, 136 days @ \$5.....	680 00
Katherine Kellar, 216 days @ \$5.....	1,080 00

President's Messenger.

Carl A. Mutschler, 175 days @ \$5.....	\$875 00
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Assistant Sergeant at Arms Etc.

Wm. C. Ries, 154 days @ \$5.....	\$770 00
Fred Blankner, 162 days @ \$5.....	810 00
J. F. Cunningham, 156 days @ \$5.....	780 00
W. E. Childs, 143 days @ \$5.....	715 00

Door-Keepers.

John B. Lewis, 151 days @ \$3.50.....	\$528 50
O. A. Shetler, 143 days @ \$3.50.....	500 50

James Vines, 143 days @ \$3.50.....	500 50
James Mitchell, 143 days @ \$3.50.....	500 50

\$2,030 00

Cloak Room Attendants.

Allen G. Atwill, 164 days @ \$3.50.....	\$574 00
William Crites, 151 days @ \$3.50.....	528 50

\$1,102 50

Custodians of Committee Rooms.

James E. Allen, 143 days @ \$3.50.....	\$500 50
Wm. B. Hassett, 143 days @ \$3.50.....	500 50
D. M. Welty, 153 days @ \$3.50.....	535 50
Thomas Goldrick, 38 days @ \$3.50.....	133 00
Alfred Jacobs, 151 days @ \$3.50.....	528 50

\$2,198 00

Porters.

Lewis Miller, 151 days @ \$3.50.....	\$528 50
Oliver Henson, 143 days @ \$3.50.....	500 50
Harry Reasoner, 90 days @ \$3.50.....	315 00
Joseph Rosenberger, 143 days @ \$3.50..	500 50
John Littlejohn, 161 days @ \$3.50.....	563 50
William Todd, 162 days @ \$3.50.....	567 00
C. M. Fisher, 152 days @ \$3.50.....	532 00
Nelson Winslow, 161 days @ \$3.50.....	563 50
George Riley, 231 days @ \$3.50.....	808 50

\$4,879 00

Pages.

J. C. Scott, 151 days @ \$2.50.....	\$377 50
Howard Fordyce, 152 days @ \$2.50.....	380 00
Glenn Emerson, 151 days @ \$2.50.....	377 50
Harry Blair, Jr., 94 days @ \$2.50.....	247 50
Charles Mills, 154 days @ \$2.50.....	285 00
R. J. Bartlett, 151 days @ \$2.50.....	377 50
Albert Goodyear, 152 days @ \$2.50....	380 00
George C. Bond, 143 days @ \$2.50.....	357 50
Charles Abbott, 143 days @ \$2.50.....	357 50
H. D. Sites, 143 days @ \$2.50.....	357 50
Raymond Stremel, 131 days @ \$2.50....	327 50

\$3,825 00

Temporary employes

532 50

Reporting Proceedings and Debates.

Clarence E. Walker.....	\$5,000 00
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CONTINGENT EXPENSES.

Daily Journal	\$2,303 84
Proposals and Calendars.....	1,929 41
Printing and binding Journal.....	1,500 00
*Proceedings and Debates.....	5,245 00
Miscellaneous	2,487 39
Advertising Special Election.....	1,821 50
Telephones	1,704 86
Postage	441 87
Express	511 79
Typewriter rentals	377 55
Miscellaneous	2,245 44

\$20,568 65

EXPENSES OF EMPLOYEES.

Railroad fare to Chillicothe.....	\$56 25
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NEWSPAPER ADVERTISING.

Various newspapers of the state.....	\$63,198 99
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Total

\$267,571 11

†Unexpended balance

2,100 00

*Partial payment for printing and binding Proceedings and Debates.

†This is the unexpended balance of appropriation for printing and binding Proceedings and Debates. Out of it will be paid balance due when the work of printing and binding is completed.

Election Expenses

Following are the expenses, as returned by the election officers of the different counties, of holding the special election of September 3, 1912, at which the constitutional amendments were submitted to the people:

Adams	\$795 08	Hamilton	37,878 99	Noble	739 83
Allen	2,803 44	Hancock	2,151 48	Ottawa	893 70
Ashland	957 60	Hardin	1,219 20	Paulding	942 00
Ashtabula	2,400 00	Harrison	696 00	Perry	1,081 55
Athens	1,302 90	Henry	812 60	Pickaway	780 55
Auglaize	1,038 20	Highland	1,100 00	Pike	533 85
Belmont	2,461 75	Hocking	799 70	Portage	878 70
Brown	728 20	Holmes	850 00	Preble	828 38
Butler	2,667 78	Huron	1,059 70	Putnam	1,208 40
Carroll	737 00	Jackson	958 44	Richland	1,629 30
Champaign	827 69	Jefferson	2,412 45	Ross	1,357 76
Clark	3,500 00	Knox	848 47	Sandusky	994 45
Clermont	1,046 68	Lake	710 90	Scioto	2,335 56
Clinton	784 24	Lawrence	1,205 70	Seneca	1,208 90
Columbiana	3,151 10	Licking	2,174 01	Shelby	1,100 00
Coshocton	1,135 71	Logan	968 49	Stark	5,346 50
Crawford	1,176 20	Lorain	2,168 86	Summit	3,731 50
Cuyahoga	24,000 00	Lucas	8,659 90	Trumbull	1,559 72
Darke	1,500 00	Madison	875 64	Tuscarawas	1,862 90
Defiance	694 04	Mahoning	7,083 14	Union	964 05
Dealware	886 39	Marion	1,450 00	Van Wert	827 02
Erie	1,413 43	Medina	637 25	Vinton	636 21
Fairfield	1,280 40	Meigs	723 60	Warren	818 60
Fayette	859 71	Mercer	756 81	Washington	1,472 68
Franklin	9,800 00	Miami	2,019 49	Wayne	1,414 00
Fulton	683 45	Monroe	818 91	Williams	740 00
Gallia	852 50	Montgomery	8,455 02	Wood	1,961 17
Geauga	567 81	Morgan	558 85	Wyandot	662 15
Greene	1,001 65	Morrow	363 70		
Guernsey	1,897 01	Muskingum	3,079 51	Total	\$204,956 20

Report of Special Committee Relative to Office of Justice of the Peace

The special committee appointed, pursuant to Resolution No. 167, on the last day of the convention (page 2092), met immediately after adjournment and framed a statement which was sent to each justice of the peace in the state in printed circular form as follows:

CONSTITUTIONAL CONVENTION.
COLUMBUS, OHIO, August 26, 1912.

OFFICE OF JUSTICE OF THE PEACE

IT IS NOT ABOLISHED BY THE PROPOSED AMENDMENTS TO
THE CONSTITUTION

Report of special committee appointed by the Convention:

The undersigned, appointed by the Fourth Constitutional Convention at its session in Columbus August 26, 1912, as a committee to prepare and have published a statement as to whether or not the adoption of No. 19, on the constitutional amendments ballot, relating to change in the judicial system, will abolish the office of justice of the peace, beg leave to submit the following report:

This office, by the existing constitution, is declared to be one of the courts in which judicial power is vested. But this section of article IV, now in force, as well as amended section 1, vests the judicial power in certain named courts and such other inferior courts as may from time to time be established by law. While the office of justice of the peace is recognized by the constitution as a judicial one, it is also established by law, for there exists on the statute books a provision for election of justices of the peace, their number in each township, the terms of their office, their jurisdiction and the manner of their compensation.

Provision is made in the General Code for justices of the peace, as well as their election and duties, in sections 1712-1806, inclusive, and for their jurisdiction and powers in sections 10223-10491, inclusive; and none of these statutes will be repealed by the adoption of any of the constitutional amendments proposed.

Section 15 of article IV of the constitution, both in

the present constitution and in the amendment proposed, provides that "any existing court heretofore created by law shall continue in existence until otherwise provided." Section 1 of the original schedule and the schedule adopted by the Convention, known as amendment No. 41 on the ballot, provides that all laws in force, not inconsistent with these amendments, "shall continue in force until amended or repealed." These two provisions of the constitution protect in office every official until the end of his term, and they protect forever, until repealed by the general assembly, the statutes creating and regulating the jurisdiction of the office of justice of the peace, because it is not inconsistent with the constitutional provisions contained in section 1 of article IV. Section 1 is only declarative of the courts in which judicial power is vested. It omits to name several important courts now existing in Ohio, as for instance, the superior court of Cincinnati, the court of insolvency of Cuyahoga county, the municipal court of the city of Cleveland, and there may be others, all of which are created by statute and all of which will remain in existence until the statutes creating them are repealed or changed. This is so with justices of the peace. The justices now in office will continue until their terms expire, and they will continue to be elected until the general assembly changes the law relating to them. It may be just as well said that the superior court of Cincinnati, the court of insolvency of Cuyahoga county and the municipal court of Cleveland are abolished by these amendments, because they are not named in section 1 as constitutional courts; yet no one would claim that these courts are interfered with.

This we believe to be the legal construction and effect of the proposed amendments that relate to the office of justice of the peace.

HIRAM D. PECK,
E. B. KING,
D. J. NYE.

The foregoing report has been submitted pursuant to resolution No. 167.

C. B. GALBREATH,
Secretary of the Convention.

Contract for Printing Proceeding and Debates

WHEREAS, It has become desirable to cause the proceedings and debates of the Fourth Constitutional Convention of Ohio to be printed and published in some durable form, this contract regarding the same entered into by and between the State of Ohio and The F. J. Heer Printing Company- WITNESSETH:—

That the F. J. Heer Printing Company, for and in consideration of the performance by the State of Ohio of its promises and agreements hereinafter set forth, does hereby agree to furnish all the necessary paper and do all the necessary printing and binding for the publication of twenty-five hundred (2500) copies of reports of the said proceedings and debates, to be bound in two volumes. It is understood and agreed that the paper so furnished shall be of a quality, weight and grade suitable and proper for such work, the size of the page to be 9 x 12, type surface 7 x 9 $\frac{3}{4}$ including heading, type to be ten point, style of Michigan Constitutional Convention (1907) report, the binding to be buckram of a good grade and quality and all the work, both printing and binding, to be done in a good and workmanlike manner.

As a compensation for the performance of the foregoing the State of Ohio is to pay said The F. J. Heer Printing Company the sum of four thousand nine hundred and ninety-two and fifty hundredths dollars, (\$4,992.50), such sum being based on an estimate that said volumes shall contain in the aggregate fifteen hundred (15000) pages. It is hereby agreed that if there shall be fewer than fifteen hundred pages in said two volumes there shall be deducted from said amount (\$4,992.50) so to be paid The F. J. Heer Printing Company the sum of two and fifty hundredths dollars (\$2.50) per page for each page less than said number of fifteen hundred that said volumes shall contain, but if said volumes shall contain more than fifteen hundred pages the said The F. J. Heer Printing Company, in addition to said amount of \$4,992.50, shall receive and be paid the sum of two and fifty hundredths dollars (\$2.50) for each page said vol-

umes may contain in excess of such estimated number of fifteen hundred.

It is further understood and agreed that The F. J. Heer Printing Company shall be paid for printing the index to said debates and furnishing the paper therefor the sum of three and fifty hundredths dollars (\$3.50) per page for each full printed page of such index, such pages to be set in brier type, double column.

It is further understood and agreed that the copy from which all of said printing, including index, shall be done, shall be furnished by the secretary of the convention to the said printing company and that no matter shall be included in said volumes except what shall have been so furnished by said secretary.

It is also further understood and agreed that The F. J. Heer Printing Company on its part will use all due diligence to secure the completion and delivery of the bound volumes of said reports at the earliest possible date after the final adjournment of the Convention and further to secure that no delay in such completion and delivery shall occur on account of any act or omission of said printing company.

In witness whereof the parties aforesaid have hereunto affixed their signatures this eleventh day of April, 1912.

THE STATE OF OHIO,

By

HERBERT S. BIGELOW,
President of the Fourth Constitutional Convention of Ohio.

And

JOHN R. CASSIDY,
Chairman of the Committee on Claims.

THE F. J. HEER PRINTING COMPANY,

By

F. J. HEER,

Manager.

The Constitution of the State of Ohio

With Amendments Proposed by the Constitutional Convention of 1912 and Approved by the People

ARTICLE I.

BILL OF RIGHTS.

SECTION

1. Inalienable rights.
2. Where political power vested; special privileges.
3. Right of petition; instruction.
4. Bearing arms; standing armies; military power.
5. Trial by jury.
6. Slavery and involuntary servitude.
7. Religious liberty, etc.; test; education.
8. Habeas corpus.
9. Bail; punishment.
10. Trial for crimes; witnesses.
11. Freedom of speech; libel.
12. Transportation; forfeiture.
13. Quarters of soldiers.
14. Search warrants.
15. Imprisonment for debt.
16. Remedy in courts.
17. Hereditary honors, etc.
18. Suspension of laws.
19. Private property inviolate, unless, etc.
- 19a. Damages recoverable.
20. Powers not delegated.

ARTICLE II.

LEGISLATIVE.

1. Legislative power in senate, house and people.
- 1a. Initiative.
- 1b. Method of using.
- 1c. Referendum.
- 1d. Tax levies and emergency laws.
- 1e. Single tax inhibition.
- 1f. Municipal initiative and referendum.
- 1g. Signers, explanations, etc.
2. Election and term of senators and representatives.
3. Who eligible.
4. Who ineligible.
5. Who ineligible to any office.
6. Who to determine qualification, etc.; members; quorum; attendance.
7. Mode of organizing.
8. Officers of general assembly; rules; punishment of members, etc.
9. Journal; yeas and nays; majority to pass a law.
10. Protest.
11. Vacancies.
12. Privilege as to arrest, and speech.
13. Proceedings public, unless, etc.
14. Adjournments.
15. 16. Bills, where to originate; to be read three times; title; to contain one subject; governor's veto; acts revived or amended.
17. Signatures to bills.
18. Style of laws.
19. Exclusion of members from office.
20. Terms of office to be fixed; salary.
21. Trial of contested elections.
22. Appropriations.
23. 24. Impeachments.
25. When sessions to commence.
26. What laws to have uniform operation; upon whose approval to take effect.
27. Power of appointment to office; vote for U. S. senator.
28. Retroactive laws, etc.
29. Extra compensation.
30. New counties.

SECTION

31. Compensation of members and officers of general assembly; perquisites.
32. Divorce, and judicial power.
33. Direct lien upon property.
34. Minimum wage.
35. Workmen's compensation.
36. Conservation of natural resources.
37. Eight hour day on public work.
38. Removal of officers.
39. Expert witnesses.
40. Guaranteeing land titles.
41. Prison labor.

ARTICLE III.

EXECUTIVE.

1. Executive department.
2. Term of office.
3. Election returns.
4. Same subject.
5. Executive power vested in governor.
6. He may require written information, etc.
7. He shall recommend measures, etc.
8. When and how he may convene the general assembly; business limited.
9. When he may adjourn the general assembly.
10. Commander-in-chief.
11. Reprieves, pardons, etc.
12. The seal of the state.
13. Grants and commissions.
14. Who ineligible for governor.
15. Vacancy in his office, etc.
16. Lieutenant governor.
17. Vacancy in his office, etc.
18. What vacancies governor to fill, etc.
19. Compensation of executive officers.
20. What officers shall report to the governor, and when, etc.

ARTICLE IV.

JUDICIAL.

1. In whom judicial power vested.
2. The supreme court.
3. 4. The common pleas court.
5. [Repealed October 9, 1883.]
6. Courts of appeals.
7. 8. Probate courts.
9. [Repealed September 3, 1912.]
10. Election of other judges, and term of office.
11. [Repealed October 9, 1883.]
12. Common pleas judges; term of office, and residence.
13. Vacancies in the office of judge.
14. Compensation; when ineligible as candidate for other office.
15. Changes in number of judges, courts, districts, etc.
16. Clerks of courts.
17. How judges removed.
18. Jurisdiction at chambers, etc.
19. Courts of arbitration.
20. Style of process; conclusion of indictments.
22. [21] Supreme court commission.

ARTICLE V.

ELECTIVE FRANCHISE.

1. Who may vote.
2. How.
3. Electors privileged from arrest.
4. Forfeiture of elective franchise.
5. Who deemed non-resident.

Constitution of Ohio with Amendments Approved by the People September 3, 1912.

SECTION

6. Idiots and insane.
7. Direct primaries.

ARTICLE VI.

EDUCATION.

1. The school and religious fund.
2. Common school fund to be raised; how controlled.
3. Organization of school system.
4. Superintendent of public instruction.

ARTICLE VII.

PUBLIC INSTITUTIONS.

1. Insane, blind, deaf and dumb.
2. Penitentiary.
3. Vacancies; how filled.

ARTICLE VIII.

PUBLIC DEBT AND PUBLIC WORKS.

- 1, 2, 3. Limitation upon public debt.
4. Credit of state; the state shall not become joint owner or stockholder.
5. No assumption of debts by the state.
6. Counties, cities, towns, or townships, not authorized to become stockholders, etc.
7. Sinking fund.
8. The commissioners of the sinking fund.
9. Their biennial report.
10. Application of sinking fund.
11. Semi-annual report.
12. Superintendent of public works.
13. [Repealed September 3, 1912.]

ARTICLE IX.

MILITIA.

1. Who to perform military duty.
2. Officers of militia.
3. How appointed.
4. Their commissions; when governor to call out militia.
5. Public arms.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATIONS.

1. County and township officers.
2. Election of county officers.
3. Eligibility of sheriff and treasurer.
4. Election of township officers.
5. County and township funds.
6. Removal of officers.
7. Local taxation.

ARTICLE XI.

APPORTIONMENT.

1. Apportionment for members of the general assembly.
- 2, 3, 4, 5. Ratio in the house.
6. Ratio for senator.
- 7, 8, 9. Senatorial districts.
10. Apportionment of representatives for ten years.
11. When ratio determined by governor, auditor, etc.
12. Judicial apportionment.
13. New counties.

ARTICLE XII.

FINANCE AND TAXATION.

1. Poll tax.
2. All property taxed, except, etc., and by uniform rule; exemptions published.
3. How property of banks to be taxed.
4. What revenue to be raised.
5. Levying of taxes, and application.
6. Debt for internal improvements.
7. Inheritance tax.
8. Income tax.
9. Amount returned to cities, etc.
10. Taxation of excises, franchises, etc.
11. Redemption of bonded indebtedness.

ARTICLE XIII.

CORPORATIONS.

SECTION

1. Special acts of incorporation.
2. General acts of incorporation.
3. Personal liability of stockholders, etc.
4. Taxation of corporate property.
5. Right of way.
6. Organization of cities, etc.; taxes, etc., therein.
7. Incorporation of banks.

ARTICLE XIV.

JURISPRUDENCE.

1. Code commissioners.
2. Their duties.
3. Their reports.

ARTICLE XV.

MISCELLANEOUS.

1. Seat of government.
2. Printing for state.
3. Publication of receipts and expenditures.
4. Who eligible to office.
5. Duelists ineligible.
6. Lotteries.
7. Official oath.
8. Bureau of statistics.
9. License to traffic in intoxicating liquors.
10. Civil service.

ARTICLE XVI.

AMENDMENTS.

- 1, 2, 3. Amendments to constitution.

ARTICLE XVII.

ELECTIONS.

1. Time for holding.
2. Terms of officers.
3. Present incumbents.

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

1. Classification.
2. Incorporation.
3. Self-government.
4. Public utilities.
5. Referendum thereon.
6. Surplus product of.
7. Charters.
8. Charter commission.
9. Amendments to charter.
10. Bonds for improvements.
11. Property assessments.
12. Mortgage bonds.
13. Regulatory laws.
14. Elections.

SCHEDULE.

(1851)

1. Of prior laws.
2. First election for general assembly.
3. For state officers.
4. For judges, etc.
5. Who to continue in office.
6. As to certain courts.
7. County and township officers.
8. Vacancies.
9. When constitution took effect.
10. Term of office.
11. Successors of the court in bank.
12. Of the supreme court.
13. Of the common pleas.
14. The probate court.
15. Election of judges and clerks.

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16. Returns of electors.
17. Vote on the adoption of the constitution.
18. Vote on provisions as to intoxicating liquors.
19. Apportionment of house of representatives.

SCHEDULE.

(1912)

When amendments take effect.

THE CONSTITUTION OF THE STATE OF OHIO.

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this constitution.

ARTICLE I.

BILL OF RIGHTS.

SEC. 1. All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

SEC. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

SEC. 3. The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

SEC. 4. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

SEC. 5. The right of trial by jury shall be inviolate.

SEC. 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

SEC. 6. There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

NOTE:—The sections of the constitution to which no amendments were adopted, at the special election, September 3, 1912, are printed in uniform type like that used in sections 1, 2, 3 and 4 of article I. The smaller type, like that first used in sections 5 and 10 of article I, indicates the sections of the constitution to which amendments have been made. The black or bold-faced type, like that used in the second instance in sections 5 and 10 of article I, indicates the amendments adopted. If the sections in smaller type are omitted and those in the bold-faced type are retained, there will remain the constitution as it is with the amendments approved September 3, 1912. If the sections in bold-faced type are omitted, the constitution as it was January 1, 1912, will remain.

SEC. 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

SEC. 8. The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

SEC. 9. All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

SEC. 10. Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in cases of petit larceny and other inferior offenses, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district, in which the offense is alleged to have been committed; nor shall any person be compelled, in any criminal case, to be a witness against himself, or be twice put in jeopardy for the same offense.

SEC. 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his

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failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

SEC. 11. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

SEC. 12. No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

SEC. 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

SEC. 14. The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

SEC. 17. No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state.

SEC. 18. No power of suspending laws shall ever be exercised, except by the general assembly.

SEC. 19. Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

SEC. 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

ARTICLE II.

LEGISLATIVE.

SEC. 1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and house of representatives.

SEC. 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

SEC. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

SEC. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general elec-

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tion, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

Sec. 1c. The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of

such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

Sec. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

Sec. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

Sec. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

Sec. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of

The amendments to the constitution approved September 3, 1912, are printed in bold-faced type. Sections amended or superseded are in small type. See note, page 2121.

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the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots

so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be It Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

Schedule.

The foregoing amendment, if adopted by the electors shall take effect October 1, 1912.

SEC. 2. Senators and representatives shall be elected biennially by the electors of the respective counties or districts, on the first Tuesday after the first Monday in November; their term of office shall commence on the first day of January next thereafter, and continue two years. (*As amended October 13, 1885.*)

SEC. 3. Senators and representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this state.

SEC. 4. No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia.

SEC. 5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the general assembly, until he shall have accounted for, and paid such money into the treasury.

SEC. 6. Each house shall be judge of the election, returns, and qualifications of its own members; a majority of all the members, elected to each house shall be a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

SEC. 7. The mode of organizing the house of representatives, at the commencement of each regular session, shall be prescribed by law.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may

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determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

SEC. 9. Each house shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed in either house, without the concurrence of a majority of all the members elected thereto.

SEC. 10. Any member of either house shall have the right to protest against any act, or resolution thereof; and such protest, and the reasons therefor, shall, without alteration, commitment, or delay, be entered upon the journal.

SEC. 11. All vacancies which may happen in either house shall, for the unexpired term, be filled by election, as shall be directed by law.

SEC. 12. Senators and representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either house, they shall not be questioned elsewhere.

SEC. 13. The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than two days, Sundays excluded; nor to any other place than that in which the two houses shall be in session.

SEC. 15. Bills may originate in either house; but may be altered, amended, or rejected in the other.

SEC. 16. Every bill shall be fully and distinctly read three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contain the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed.

Every bill passed by both houses of the general assembly shall, before said bill can become law, be presented to the governor. If he approves he shall sign said bill and thereupon said bill shall be law. If he object he shall not sign and shall return said bill, together with his objection thereto in writing, to the house wherein said bill originated, which house shall enter at large upon its journal said objection and shall proceed to reconsider said bill. If, after said reconsideration, at least two-thirds of the members-elect of that house vote to repass said bill it shall be sent, together with said objection, to the other house, which shall enter at large upon its journal said objection and shall proceed to reconsider said bill. If, after said reconsideration, at least two-thirds of the members-elect of that house vote to pass said bill it shall be law, otherwise it shall not be law. The votes for the repassage of said bill shall in each house respectively be no less than those given on the original passage. If any bill passed by both houses of the general assembly and presented to the governor is not signed and is not returned to the house wherein it originated and within ten days after being so presented, exclusive of Sunday and the day said bill was presented, said bill shall be law as in like manner as if signed, unless final adjournment of the general assembly prevents such return, in which case [it] shall be law, unless objected to by the governor and filed, together with his

objection thereto in writing, by him in the office of the secretary of state within the prescribed ten days; and the secretary of state shall at once make public said fact and shall return said bill, together with said objection, upon the opening of the next following session of the general assembly, to the house wherein said bill originated, where it shall be treated in like manner as if returned within the prescribed ten days.

If any bill passed by both houses of the general assembly and presented to the governor contains two or more sections, or two or more items of appropriation of money, he may object to one or more of said sections or to one or more of said items of appropriation of money, and approve the other portion of said bill, in which case said approved portion may be signed and then shall be law; and such section or sections, item or items of appropriation of money objected to shall be returned within the time and in the manner prescribed for, and shall be separately reconsidered as in the case of, a whole bill; but if final adjournment of the general assembly prevents such return the governor shall file said section or sections, item or items of appropriation of money together with his objection thereto in writing, with the secretary of state as in the case of a whole bill, and the secretary of state shall then make public said fact, but shall not further act as in the case of a whole bill (As amended November 3, 1903.)

SEC. 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

SEC. 17. The presiding officer of each house shall sign, publicly in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the general assembly.

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SEC. 18. The style of the laws of this state shall be, "*Be it enacted by the General Assembly of the State of Ohio.*"

SEC. 19. No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected.

SEC. 20. The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

SEC. 21. The general assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted.

SEC. 22. No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.

SEC. 23. The house of representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the senate; and the senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators.

SEC. 24. The governor, judges, and all state officers, may be impeached for any misdemeanor in office; but judgment shall not extend further than removal from office, and disqualification to hold any office under the authority of this state. The party impeached, whether convicted or not, shall be liable to indictment, trial, and judgment, according to law.

SEC. 25. All regular sessions of the general assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two.

SEC. 26. All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

SEC. 27. The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the general assembly, except as prescribed in this Constitution, and in the election of United States senators; and in these cases the vote shall be taken "*viva voce.*"

SEC. 28. The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in in-

struments and proceedings, arising out of their want of conformity with the laws of this state.

SEC. 29. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly.

SEC. 30. No new county shall contain less than four hundred square miles of territory, nor shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided, whenever a majority of the voters residing in each of the proposed divisions shall approve of the law passed for that purpose; but no town or city within the same shall be divided, nor shall either of the divisions contain less than twenty thousand inhabitants.

SEC. 31. The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

SEC. 32. The general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred.

SEC. 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power.

SEC. 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

SEC. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payments shall be made therefrom, and taking away any or all rights of action or defenses from employes and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employes. Laws may be passed establishing a board which may be empowered to classify all occupations,

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according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto.

Sec. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

Sec. 37. Except in cases of extraordinary emergency, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise.

Sec. 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

Sec. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

Sec. 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof, and for settling and determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system.

Sec. 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political sub-division

thereof or to any public institution owned, managed or controlled by the state or any political sub-division thereof, shall not be sold within this state unless the same are conspicuously marked "prison made". Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof.

ARTICLE III.

EXECUTIVE.

SEC. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places of voting for members of the general assembly. (*As amended October 13, 1885.*)

SEC. 2. The governor, lieutenant governor, secretary of state, treasurer, and attorney general shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified.

SEC. 3. The returns of every election for the officers named in the foregoing section shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who, during the first week of the session, shall open and publish them, and declare the result in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen by the joint vote of both houses.

SEC. 4. Should there be no session of the general assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

SEC. 5. The supreme executive power of this state shall be vested in the governor.

SEC. 6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

SEC. 7. He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.

SEC. 8. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened.

SEC. 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except

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that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.

SEC. 9. In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.

SEC. 10. He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.

SEC. 11. He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly, at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

SEC. 12. There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio."

SEC. 13. All grants and commissions shall be issued in the name, and by the authority, of the state of Ohio; sealed with the great seal; signed by the governor, and countersigned by the secretary of state.

SEC. 14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided.

SEC. 15. In case of the death, impeachment, resignation, removal, or other disability of the governor; the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

SEC. 16. The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*.

SEC. 17. If the lieutenant governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as governor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives.

SEC. 18. Should the office of auditor, treasurer, sec-

retary, or attorney general, become vacant, for any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed, or a successor is elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

SEC. 19. The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected.

SEC. 20. The officers of the executive department and of the public state institutions shall, at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message to the general assembly.

ARTICLE IV.

JUDICIAL.

SEC. 1. The judicial power of the state is vested in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the general assembly may from time to time establish. (As amended October 9, 1883.)

Sec. 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provide [provided] by law, consist of five judges; a majority of whom competent to sit shall be necessary to form a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus and procedendo, and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large, for such term, not less than five years, as the general assembly may prescribe, and they shall be elected and their official term shall begin at such time as may be fixed by law. In case the general assembly shall increase the number of such judges, the first term of each of such additional judges shall be such, that in each year after their first election, an equal number of judges of the supreme court shall be elected, except in elections to fill vacancies; and whenever the number of such judges shall be increased, the general assembly may authorize such court to organize divisions thereof, not exceeding three, each division to consist of an equal number of judges; for the adjudication of cases, a majority of each division shall constitute a quorum, and such an assignment of the cases to each division may be made as such court may deem expedient, but whenever all the judges of either division hearing a case shall not concur as to the judgment to be rendered therein, or whenever a case shall involve the constitutionality of an act of the general assembly or of an act of congress, it shall be reserved to the whole court for adjudication. The judges of the supreme court in office when this amendment takes effect, shall continue to hold their offices until their successors are elected and qualified. (As amended October 9, 1883.)

Sec. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving ques-

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tions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

SEC. 3. The state shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal in population as practicable; in each of which, one judge of the court of common pleas for said district, and residing therein, shall be elected by the electors of said subdivision. Courts of common pleas shall be held, by one or more of these judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district.

SEC. 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein.

SEC. 4. The jurisdiction of the courts of common pleas, and of the judges thereof shall be fixed by law.

SEC. 5. [*Repealed October 9, 1883.*]

SEC. 6. The circuit court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as

may be provided by law. Such courts shall be composed of such number of judges as may be provided by law, and shall be held in each county, at least once in each year. The number of circuits, and the boundaries thereof, shall be prescribed by law. Such judges shall be elected in each circuit by the electors thereof, and at such time and for such term as may be prescribed by law, and the same number shall be elected in each circuit. Each judge shall be competent to exercise his judicial powers in any circuit. The general assembly may change, from time to time, the number or boundaries of the circuits. The circuit courts shall be the successors of the district courts, and all cases, judgments, records, and proceedings pending in said district courts, in the several counties of any district, shall be transferred to the circuit courts, in the several counties, and be proceeded in as though said district courts had not been abolished, and the district courts shall continue in existence until the election and qualification of the judges of the circuit courts. (As amended October 9, 1883.)

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof, and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court.

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No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court.

SEC. 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of three years, and shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law.

Sec. 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per centum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined.

SEC. 8. The probate court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators, and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses and for the sale of land by executors, administrators, and guardians, and such other jurisdiction, in any county or counties, as may be provided by law.

SEC. 9. A competent number of justices of the peace shall be elected by the electors, in each township in the several counties. Their term of office shall be three years, and their powers and duties shall be regulated by law.

SEC. 9. [*Repealed September 3, 1912.*]

SEC. 10. All judges, other than those provided for in this constitution, shall be elected by the electors of the

judicial district for which they may be created, but not for a longer term of office than five years.

SEC. 11. [*Repealed October 9, 1883.*]

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the district for which they are elected; and their term of office shall be for five years.

Sec. 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years.

SEC. 13. In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty days after the vacancy shall have happened.

SEC. 14. The judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void.

SEC. 15. The general assembly may increase, or diminish, the number of the judges of the supreme court, the number of the districts of the court of common pleas, the number of judges in any district, change the districts, or the subdivisions thereof, or establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition, or diminution, shall vacate the office of any judge.

Sec. 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

Schedule.

If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and sub-division thereof, until one resident judge of the court of common pleas is elected and qualified therein.

SEC. 16. There shall be elected in each county, by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein; but, the general as-

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sembly may provide, by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the judge of the probate court to perform the duties of clerk for his court, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause and in such manner as shall be prescribed by law.

SEC. 17. Judges may be removed from office, by concurrent resolution of both houses of the general assembly, if two-thirds of the members, elected to each house, concur therein; but no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor, until the party charged shall have had notice thereof, and an opportunity to be heard.

SEC. 18. The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

SEC. 19. The general assembly may establish courts of conciliation, and prescribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

SEC. 20. The style of all process shall be "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

SEC. 22. [21]. A commission, which shall consist of five members, shall be appointed by the governor, with the advice and consent of the senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the supreme court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a decision, and its decision shall be certified, entered, and enforced as the judgments of the supreme court, and at the expiration of the term of said commission, all business undisposed of shall by it be certified to the supreme court and be disposed of as if said commission had never existed. The clerk and reporter of said court shall be the clerk and reporter of said commission, and the commission shall have such other attendants not exceeding in number those provided by law for said court, which attendants said commission may appoint and remove at its pleasure. Any vacancy occurring in said commission, shall be filled by appointment of the governor, with the advice and consent of the senate, if the senate be in session, and if the senate be not in session, by the governor, but in such last case, such appointment shall expire at the end of the next session of the general assembly. The general as-

sembly may, on application of the supreme court duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such [each] house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.

ARTICLE V.

ELECTIVE FRANCHISE.

SEC. 1. Every white male citizen* of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

SEC. 2. All elections shall be by ballot.

SEC. 3. Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest, in all cases, except treason, felony, and breach of the peace.

SEC. 4. The general assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime.

SEC. 5. No person in the military, naval, or marine service of the United States, shall, by being stationed in any garrison, or military, or naval station, within the state, be considered a resident of this state.

SEC. 6. No idiot, or insane person, shall be entitled to the privileges of an elector.

SEC. 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

ARTICLE VI.

EDUCATION.

SEC. 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

The amendments to the constitution approved September 3, 1912, are printed in bold-faced type. Sections amended or superseded are in small type. See note, page 2121.

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SEC. 2. The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

SEC. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

SEC. 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

Schedule.

If the foregoing amendment be adopted by the electors it shall take effect and become a part of the constitution on the second Monday of July, 1913.

ARTICLE VII.

PUBLIC INSTITUTIONS.

SEC. 1. Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the general assembly.

SEC. 2. The directors of the penitentiary shall be appointed or elected in such manner as the general assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the general assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the senate.

SEC. 3. The governor shall have power to fill vacancies that may occur in the offices aforesaid, until the next session of the general assembly, and, until a successor to his appointee shall be confirmed and qualified.

ARTICLE VIII.

PUBLIC DEBT AND PUBLIC WORKS.

SEC. 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall

be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

SEC. 2. In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

SEC. 3. Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state.

SEC. 4. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

SEC. 5. The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

SEC. 6. The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation or association.

SEC. 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit.

SEC. 7. The faith of the state being pledged for the payment of its public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent. per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the state, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid.

SEC. 8. The auditor of state, secretary of state, and attorney general, are hereby created a board of com-

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missioners, to be styled, "The Commissioners of the Sinking Fund."

SEC. 9. The commissioners of the sinking fund shall, immediately preceding each regular session of the general assembly, make an estimate of the probable amount of the fund, provided for in the seventh section of this article, from all sources except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, to the governor, who shall transmit the same with his regular message, to the general assembly; and the general assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

SEC. 10. It shall be the duty of the said commissioners faithfully to apply said fund, together with all moneys that may be, by the general assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the state, excepting only, the school and trust funds held by the state.

SEC. 11. The said commissioners shall, semi-annually, make a full and detailed report of their proceedings to the governor, who shall, immediately, cause the same to be published, and shall also communicate the same to the general assembly, forthwith, if it be in session, and if not, then at its first session after such report shall be made.

SEC. 12. So long as this state shall have public works which require superintendence, there shall be a board of public works, to consist of three members, who shall be elected by the people, at the first general election after the adoption of this constitution, one for the term of one year, one for the term of two years, and one for the term of three years; and one member of said board shall be elected annually thereafter, who shall hold his office for three years.

SEC. 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law.

Schedule.

Section 13 of article VIII is hereby repealed.

SEC. 13. The powers and duties of said board of public works, and its several members, and their compensation, shall be such as now are, or may be, prescribed by law.

SEC. 13. [Repealed September 3, 1912.]

ARTICLE IX.

MILITIA.

SEC. 1. All white male citizens, residents of this state, being eighteen years of age, and under the age of forty-five years, shall be enrolled in the militia, and perform military duty, in such manner, not incompatible with the constitution and laws of the United States, as may be prescribed by law.

SEC. 2. Majors general, brigadiers general, colonels, lieutenant colonels, majors, captains, and subalterns, shall be elected by the persons subject to military duty, in their respective districts.

SEC. 3. The governor shall appoint the adjutant general, quartermaster general, and such other staff officers, as may be provided for by law. Majors general, brigadiers general, colonels, or commandants of regiments, battalions, or squadrons, shall, severally, appoint their staff, and captains shall appoint their non-commissioned officers and musicians.

SEC. 4. The governor shall commission all officers of the line and staff, ranking as such; and shall have power to call forth the militia, to execute the laws of the state, to suppress insurrection, or to repel invasion.

SEC. 5. The general assembly shall provide, by law, for the protection and safe keeping of the public arms.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATIONS.

SEC. 1. The general assembly shall provide, by law, for the election of such county and township officers as may be necessary.

SEC. 2. County officers shall be elected on the first Tuesday after the first Monday in November, by the electors of each county in such manner, and for such term, not exceeding three years, as may be provided by law. (*As amended October 13, 1885.*)

SEC. 3. No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years.

SEC. 4. Township officers shall be elected by the electors of each township, at such time, in such manner, and for such term, not exceeding three years, as may be provided by law; but shall hold their offices until their successors are elected and qualified. (*As amended October 13, 1885.*)

SEC. 5. No money shall be drawn from any county or township treasury, except by authority of law.

SEC. 6. Justices of the peace, and county and township officers, may be removed, in such manner and for such cause, as shall be prescribed by law.

SEC. 7. The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law.

ARTICLE XI.

APPORTIONMENT.

SEC. 1. The apportionment of this state for members of the general assembly shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the state, as ascertained by the federal census, or in such other mode as the general assembly may direct, shall be divided by the number "one hundred," and the quotient shall be the ratio of representation in the house of representatives, for ten years next succeeding such apportionment.

SEC. 2. Every county having a population equal to one-half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three-fourths over, shall be entitled to two representatives; every county containing three times said ratio, shall be entitled to three representatives; and so on, requiring after the first two, an entire ratio for each additional

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representative. Provided, however, that each county shall have one representative. (*As amended November 3, 1902.*)

SEC. 3. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only one ratio, a representative shall be allotted to the fifth session of the decennial period; if there be two ratios, a representative shall be allotted to the fourth and third sessions, respectively; if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

SEC. 4. Any county, forming with another county or counties, a representative district, during one decennial period, if it have acquired sufficient population at the next decennial period, shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, a population sufficient for a representative; but no such change shall be made, except at a regular decennial period for the apportionment of representatives.

SEC. 5. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a representative, such county shall be attached to the county adjoining it, having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

SEC. 6. The ratio for a senator shall forever, hereafter, be ascertained by dividing the whole population of the state by the number thirty-five.

SEC. 7. The state is hereby divided into thirty-three senatorial districts, as follows: The county of Hamilton shall constitute the first senatorial district; the counties of Butler and Warren, the second; Montgomery and Preble, the third; Clermont and Brown, the fourth; Greene, Clinton, and Fayette, the fifth; Ross and Highland, the sixth; Adams, Pike, Scioto, and Jackson, the seventh; Lawrence, Gallia, Meigs, and Vinton, the eighth; Athens, Hocking, and Fairfield, the ninth; Franklin and Pickaway, the tenth; Clark, Champaign, and Madison, the eleventh; Miami, Darke, and Shelby, the twelfth; Logan, Union, Marion, and Hardin, the thirteenth; Washington and Morgan, the fourteenth; Muskingum and Perry, the fifteenth; Delaware and Licking, the sixteenth; Knox and Morrow, the seventeenth; Coshocton and Tuscarawas, the eighteenth; Guernsey and Monroe, the nineteenth; Belmont and Harrison, the twentieth; Carroll and Stark, the twenty-first; Jefferson and Columbiana, the twenty-second; Trumbull and Mahoning, the twenty-third; Ashtabula, Lake, and Geauga, the twenty-fourth; Cuyahoga, the twenty-fifth; Portage and Summit, the twenty-sixth; Medina and Lorain, the twenty-seventh; Wayne and Holmes, the twenty-eighth; Ashland and Richland, the twenty-ninth; Huron, Erie, Sandusky, and Ottawa, the thirtieth; Seneca, Crawford, and Wyandot, the thirty-first; Mercer, Auglaize, Allen, Van Wert, Paulding, Defiance, and Williams, the thirty-second; and Hancock, Wood, Lucas, Fulton, Henry and

Putnam, the thirty-third. For the first decennial period, after the adoption of this constitution, each of said districts shall be entitled to one senator, except the first district, which shall be entitled to three senators.

SEC. 8. The same rules shall be applied, in apportioning the fractions of senatorial districts, and in annexing districts, which may hereafter have less than three-fourths of a senatorial ratio, as are applied to representative districts.

SEC. 9. Any county forming part of a senatorial district, having acquired a population equal to a full senatorial ratio, shall be made a separate senatorial district, at any regular decennial apportionment, if a full senatorial ratio shall be left in the district from which it shall be taken.

SEC. 10. For the first ten years, after the year one thousand eight hundred and fifty-one, the apportionment of representatives shall be as provided in the schedule, and no change shall ever be made in the principles of representation, as herein established, or, in the senatorial districts, except as above provided. All territory, belonging to a county at the time of any apportionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

SEC. 11. The governor, auditor, and secretary of state, or any two of them, shall at least six months prior to the October election, in the year one thousand eight hundred and sixty-one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years, within the next ensuing ten years, and the governor shall cause the same to be published, in such manner as shall be directed by law.

JUDICIAL APPORTIONMENT.

SEC. 12. For judicial purposes, the state shall be apportioned as follows:

The county of Hamilton, shall constitute the first district, which shall not be subdivided; and the judges therein, may hold separate courts or separate sittings of the same court, at the same time.

The counties of Butler, Preble, and Darke, shall constitute the first subdivision; Montgomery, Miami, and Champaign, the second; and Warren, Clinton, Greene, and Clark, the third subdivision, of the second district; and, together, shall form such district.

The counties of Shelby, Auglaize, Allen, Hardin, Logan, Union, and Marion, shall constitute the first subdivision; Mercer, Van Wert, Putnam, Paulding, Defiance, Williams, Henry, and Fulton, the second; and Wood, Seneca, Hancock, Wyandot, and Crawford, the third subdivision, of the third district; and, together, shall form such district.

The counties of Lucas, Ottawa, Sandusky, Erie, and Huron, shall constitute the first subdivision; Lorain, Medina, and Summit, the second; and the county of Cuyahoga, the third subdivision, of the fourth district; and, together, shall form such district.

The counties of Clermont, Brown, and Adams, shall constitute the first subdivision; Highland, Ross, and Fayette, the second; and Pickaway, Franklin, and Madi-

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son, the third subdivision, of the fifth district; and, together, shall form such district.

The counties of Licking, Knox, and Delaware, shall constitute the first subdivision; Morrow, Richland, and Ashland, the second; and Wayne, Holmes, and Coshoc-ton, the third subdivision, of the sixth district; and, to-gether, shall form such district.

The counties of Fairfield, Perry, and Hocking, shall constitute the first subdivision; Jackson, Vinton, Pike, Scioto, and Lawrence, the second; and Gallia, Meigs, Athens, and Washington, the third subdivision, of the seventh district; and, together, shall form such district.

The counties of Muskingum and Morgan, shall con-stitute the first subdivision; Guernsey, Belmont, and Monroe, the second; and Jefferson, Harrison, and Tus-carawas, the third subdivision, of the eighth district; and, together, shall form such district.

The counties of Stark, Carroll, and Columbiana, shall constitute the first subdivision; Trumbull, Portage, and Mahoning, the second; and Geauga, Lake, and Ashta-bula, the third subdivision, of the ninth district; and, together, shall form such district.

SEC. 13. The general assembly shall attach any new counties, that may hereafter be erected, to such districts, or subdivisions thereof, as shall be most convenient.

ARTICLE XII.

FINANCE AND TAXATION.

SEC. 1. The levying of taxes, by the poll, is grievous and oppressive; therefore, the general assembly shall never levy a poll tax, for county or state purposes.

Sec. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting bonds of the state of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institu-tions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. (As amended Novem-ber 7, 1905.)

Sec. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the State of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxa-tion; but burying grounds, public school houses, houses used exclusively for public worship, institu-tions used exclusively for charitable purposes, public property used exclusively for any public pur-pose, and personal property, to an amount not ex-ceeding in value five hundred dollars, for each indi-vidual, may, by general laws, be exempted from taxa-

tion; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SEC. 3. The general assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description, (without deduction,) of all banks, now existing, or hereafter created, and of all bankers, so that all property employed in banking, shall always bear a burden of taxation, equal to that imposed on the property of individuals.

SEC. 4. The general assembly shall provide for rais-ing revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the in-terest on the state debt.

SEC. 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, dis-tinctly, the object of the same, to which only, it shall be applied.

SEC. 6. The state shall never contract any debt for purposes of internal improvement.

Sec. 6. Except as otherwise provided in this con-stitution the state shall never contract any debt for purposes of internal improvement.

Sec. 7. Laws may be passed providing for the taxa-tion of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at dif-ferent rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

Sec. 8. Laws may be passed providing for the tax-ation of incomes, and such taxation may be either uniform or graduated, and may be applied to such in-comes as may be designated by law; but a part of each annual income not exceeding three thousand dol-lars may be exempt from such taxation.

Sec. 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax[es] originate.

Sec. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other min-erals.

Sec. 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

ARTICLE XIII.

CORPORATIONS.

SEC. 1. The general assembly shall pass no special act conferring corporate powers.

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SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.

Sec. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. (As amended November 3, 1903.)

Sec. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank", "banker" or "banking", or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

SEC. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

SEC. 5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

SEC. 6. The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

SEC. 7. No act of the general assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

ARTICLE XIV.

JURISPRUDENCE.

SEC. 1. The general assembly, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, and prescribe their tenure of office, compensation, and the mode of filling vacancies in said commission.

SEC. 2. The said commissioners shall revise, reform, simplify, and abridge the practice, pleadings, forms, and proceedings of the courts of record of this state; and, as far as practicable and expedient, shall provide for the abolition of the distinct forms of action at law, now in use, and for the administration of justice by a uniform mode of proceeding, without reference to any distinction between law and equity.

SEC. 3. The proceedings of the commissioners shall, from time to time, be reported to the general assembly, and be subject to the action of that body.

ARTICLE XV.

MISCELLANEOUS.

SEC. 1. Columbus shall be the seat of government, until otherwise directed by law.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, by such executive officers, and in such manner, as shall be prescribed by law.

Sec. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

SEC. 3. An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom, and on what account, shall, from time to time, be published, as shall be prescribed by law.

SEC. 4. No person shall be elected or appointed to any office in this state, unless he possesses the qualifications of an elector.

SEC. 5. No person who shall hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry, a challenge therefor, shall hold any office in this state.

SEC. 6. Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this state.

SEC. 7. Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office.

SEC. 8. There may be established, in the secretary of state's office, a bureau of statistics, under such regulations as may be prescribed by law.

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Sec. 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law, and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local sub-division while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word "saloon" as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

At said election a ballot shall be in the following form:

Intoxicating Liquors.

	For License to traffic in intoxicating liquors.
	Against License to traffic in intoxicating liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License," if he desires to vote in favor of the

article above mentioned and opposite the words "Against License," within the blank space if he desires to vote against said article. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV of the constitution, and the present section 9 of said article, also known as section 18 of the schedule shall be repealed.

Sec. 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

ARTICLE XVI.

AMENDMENTS.

Sec. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be published in at least one newspaper in each county of the state, where a newspaper is published, for six months preceding the next election for senators and representatives, at which time the same shall be submitted to the electors, for their approval or rejection; and if a majority of the electors, voting at such election, shall adopt such amendments, the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

Sec. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

Sec. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote, at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting at said election, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose, aforesaid.

Sec. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against

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a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

SEC. 3. At the general election, to be held in the year one thousand eight hundred and seventy-one, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution," shall be submitted to the electors of the state; and, in case a majority of all the electors, voting at such election, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

Sec. 3. At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution[?]" shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

ARTICLE XVII.

ELECTIONS.

SEC. 1. Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years. (*As amended November 7, 1905.*)

SEC. 2. The term of office of the governor, lieutenant governor, attorney-general, secretary of state and treasurer of state shall be two years, and that of the auditor of state shall be four years. The term of office of judges of the supreme court and circuit courts shall be such even number of years not less than six (6) years as may be prescribed by the general assembly; that of the judges of the common pleas court six (6) years and of the judges of the probate court, four (4) years, and that of other judges shall be such even number of years not exceeding six (6) years as may be prescribed by the general assembly. The term of office of justices of the peace shall be such even number of years not exceeding four (4) years, as may be prescribed by the general assembly. The term of office of the members of the board of public

works shall be such even number of years not exceeding six (6) years as may be so prescribed; and the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed.

And the general assembly shall have power to so extend existing terms of office as to affect [effect] the purpose of section 1 of this article.

Any vacancy which may occur in any elective state office other than that of a member of the general assembly or of governor, shall be filled by appointment by the governor until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law. (*As amended November 7, 1905.*)

SEC. 3. Every elective officer holding office when this amendment is adopted, shall continue to hold such office for the full term for which he was elected, and until his successor shall be elected and qualified as provided by law.

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall

act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

Sec. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

Sec. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Sec. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter[?]." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

Sec. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the mun-

icipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

Sec. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

Sec. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

Sec. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

Sec. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Sec. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The

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percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

Schedule.

If the foregoing amendment to the constitution be adopted by the electors and become a part of the constitution, it shall take effect on November 15th, 1912.

SCHEDULE.

(1851)

SEC. 1. All laws of this state, in force on the first day of September one thousand eight hundred and fifty-one, not inconsistent with this constitution, shall continue in force, until amended, or repealed.

SEC. 2. The first election for members of the general assembly, under this constitution, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one.

SEC. 3. The first election for governor, lieutenant governor, auditor, treasurer, and secretary of state and attorney general, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one. The persons, holding said offices on the first day of September, one thousand eight hundred and fifty-one, shall continue therein, until the second Monday of January, one thousand eight hundred and fifty-two.

SEC. 4. The first election for judges of the supreme court, courts of common pleas, and probate courts, and clerks of the courts of common pleas, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one, and the official term of said judges and clerks, so elected, shall commence on the second Monday of February, one thousand eight hundred and fifty-two. Judges and clerks of the courts of common pleas and supreme court, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office with their present powers and duties, until the second Monday of February, one thousand eight hundred and fifty-two. No suit or proceeding, pending in any of the courts of this state, shall be affected by the adoption of this constitution.

SEC. 5. The register and receiver of the land office, directors of the penitentiary, directors of the benevolent institutions of the state, the state librarian, and all other officers, not otherwise provided for in this constitution, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until their terms expire, respectively, unless the general assembly shall otherwise provide.

SEC. 6. The superior and commercial courts of Cincinnati, and the superior court of Cleveland, shall remain, until otherwise provided by law, with their present powers and jurisdiction; and the judges and clerks of said courts, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until the expiration of their terms of office, respectively, or, until otherwise provided by law; but neither of said courts shall continue after the second Monday of February, one thousand eight hundred and fifty-three; and

no suits shall be commenced in said two first mentioned courts, after the second Monday of February, one thousand eight hundred and fifty-two, nor in said last mentioned court, after the second Monday in August, one thousand eight hundred and fifty-two; and all business in either of said courts, not disposed of within the time limited for their continuance as aforesaid, shall be transferred to the court of common pleas.

SEC. 7. All county and township officers and justices of the peace, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office until their terms expire, respectively.

SEC. 8. Vacancies in office, occurring after the first day of September, one thousand eight hundred and fifty-one, shall be filled, as is now prescribed by law, and until officers are elected or appointed, and qualified, under this constitution.

SEC. 9. This constitution shall take effect, on the first day of September, one thousand eight hundred and fifty-one.

SEC. 10. All officers shall continue in office, until their successors shall be chosen and qualified.

SEC. 11. Suits pending in the supreme court in bank, shall be transferred to the supreme court provided for in this constitution, and be proceeded in according to law.

SEC. 12. The district courts shall, in their respective counties, be the successors of the present supreme court; and all suits, prosecutions, judgments, records, and proceedings, pending and remaining in said supreme court, in the several counties of any district, shall be transferred to the respective district courts of such counties, and be proceeded in, as though no change had been made in said supreme court.

SEC. 13. The said courts of common pleas, shall be the successors of the present courts of common pleas in the several counties, except as to probate jurisdiction; and all suits, prosecutions, proceedings, records and judgments, pending or being in said last mentioned courts, except as aforesaid, shall be transferred to the courts of common pleas created by this constitution, and proceeded in, as though the same had been therein instituted.

SEC. 14. The probate courts provided for in this constitution, as to all matters within the jurisdiction conferred upon said courts, shall be the successors, in the several counties, of the present courts of common pleas; and the records, files, and papers, business and proceedings, appertaining to said jurisdiction, shall be transferred to said courts of probate, and be there proceeded in, according to law.

SEC. 15. Until otherwise provided by law, elections for judges and clerks shall be held, and the poll books returned, as is provided for governor, and the abstract therefrom, certified to the secretary of state, shall be by him opened, in the presence of the governor, who shall declare the result, and issue commissions to the persons elected.

SEC. 16. Where two or more counties are joined in a senatorial, representative, or judicial district, the returns of elections shall be sent to the county, having the largest population.

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SEC. 17. The foregoing constitution shall be submitted to the electors of the state, at an election to be held on the third Tuesday of June, one thousand eight hundred and fifty-one, in the several election districts of this state. The ballots at such election shall be written or printed as follows: Those in favor of the constitution, "New Constitution, Yes;" those against the constitution, "New Constitution, No." The polls at said election shall be opened between the hours of eight and ten o'clock A. M., and closed at six o'clock P. M.; and the said election shall be conducted, and the returns thereof made and certified, to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of all the votes, cast at such election, are in favor of the constitution, the governor shall issue his proclamation, stating that fact, and said constitution shall be the constitution of the state of Ohio, and not otherwise.

SEC. 18. At the time when the votes of the electors shall be taken for the adoption or rejection of this constitution, the additional section, in the words following, to-wit: "No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general assembly may, by law, provide against evils resulting therefrom," shall be separately submitted to the electors for adoption or rejection, in form following, to-wit: A separate ballot may be given by every elector and deposited in a separate box. Upon the ballots given for said separate amendment shall be written or printed, or partly written and partly printed, the words: "License to sell intoxicating liquors, Yes;" and upon the ballots given against said amendment, in like manner, the words: "License to sell intoxicating liquors, No." If, at the said election, a majority of all the votes given for and against said amendment, shall contain the words: "License to sell intoxicating liquors, No," then the said amendment shall be a separate section of article fifteen of the constitution.

[See section 9, article XV.]

SEC. 19. The apportionment of the house of representatives, during the first decennial period under this constitution, shall be as follows:

The counties of Adams, Allen, Athens, Auglaize, Carroll, Champaign, Clark, Clinton, Crawford, Darke, Delaware, Erie, Fayette, Gallia, Geauga, Greene, Hancock, Harrison, Hocking, Holmes, Lake, Lawrence, Logan, Madison, Marion, Meigs, Morrow, Perry, Pickaway, Pike, Preble, Sandusky, Scioto, Shelby, and Union, shall, severally, be entitled to one representative, in each session of the decennial period.

The counties of Franklin, Licking, Montgomery, and Stark, shall each be entitled to two representatives, in each session of the decennial period.

The counties of Ashland, Coshocton, Highland, Huron, Lorain, Mahoning, Medina, Miami, Portage, Seneca, Summit, and Warren, shall, severally, be entitled to one

representative, in each session; and one additional representative in the fifth session of the decennial period.

The counties of Ashtabula, Brown, Butler, Clermont, Fairfield, Guernsey, Jefferson, Knox, Monroe, Morgan, Richland, Trumbull, Tuscarawas, and Washington, shall, severally, be entitled to one representative, in each session; and two additional representatives, one in the third, and one in the fourth session of the decennial period.

The counties of Belmont, Columbiana, Ross and Wayne, shall, severally, be entitled to one representative, in each session; and three additional representatives, one in the first, one in the second, and one in the third session of the decennial period.

The county of Muskingum shall be entitled to two representatives, in each session; and one additional representative, in the fifth session, of the decennial period.

The county of Cuyahoga shall be entitled to two representatives, in each session; and two additional representatives, one in the third, and one in the fourth session of the decennial period.

The county of Hamilton shall be entitled to seven representatives, in each session; and four additional representatives, one in the first, one in the second, one in the third, and one in the fourth session, of the decennial period.

The following counties, until they shall have acquired a sufficient population to entitle them to elect, separately, under the fourth section of the eleventh article, shall form districts in manner following, to-wit: The counties of Jackson and Vinton, one district; the counties of Lucas and Fulton, one district; the counties of Wyandot and Hardin, one district; the counties of Mercer and Van Wert, one district; the counties of Paulding, Defiance, and Williams, one district; the counties of Putnam and Henry, one district; and the counties of Wood and Ottawa, one district; each of which districts shall be entitled to one representative, in every session of the decennial period.

Done in convention, at Cincinnati, the tenth day of March, in the year of our Lord, one thousand eight hundred and fifty-one, and of the independence of the United States, the seventy-fifth.

Schedule.

(1912.)

The several amendments passed and submitted by this convention when adopted at the election shall take effect on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then

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in force, not inconsistent therewith shall continue in force until amended, or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized

by law. Any provision of the amendments passed and submitted by this convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail.

A. C. Galbraith
Secretary

Columbus, Ohio, June 1, 1912

Herbert S. Bigelow
President

David F. Anderson

Ernest I. Antrim

John L. Baum

Robert A. Beatty

Richard A. Beatty

A. Beyer

Stanley V. Bonvale

Wesley B. Bratton

John Brown

Willie F. Brown

M. A. Brown

William W. Campbell

John R. Cassidy

M. T. Cady

Bernard G. Callitt

Geo. H. Colton

Henry F. Cordes

Henry M. Crites

Robert Crosser

David Cunningham

William C. Darco

Joe DeFrees

W. L. Danahy

Edward W. Doty

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Charles O Dunlap
Alexander Dunn
Dennis Dwyer
J Milton Earhart
Henry E Eby
Henry W. Elson

Blair Fackler
Wm Farnsworth
Thomas S Farrell
Ed Fess
Thos Fitzsimons
James M. Fluke
Henry C Fox
Carson Hahne
Wm. H. Habel
James H. Haskill

James W. Harbarger
Wm. B. Harris
Wm. B. Harris
Otto M. Hart
Ed. B. Harter
Robert Henderson
John C. Heppman
Charles W. Holz
Samuel A. Hoskins
Frank S. Hursh
Edward W. Johnson
Solomon Johnson
Amos Jones
J. W. Kehoe
Henry C. Keller
Frank H. Kerr
Wm. B. Kiepatrick
E. D. King

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G. W. Smyth	Wm. Miller
John F. Krauer	Allan E. Moore
Lawrence P. Kunkel	Caleb H. Norris
Frank P. Lambert	David J. Nye
E. L. Lamson	J. A. Okey
Fred. G. Lee	J. E. Partington
Daniel E. Leslie	William D. Peck, of Hamilton County
Robert B. Longenecker	Edward A. Peters
John L. Lundy	Geo. W. Pettit
Fletcher D. Malin	David Price
Frank M. Mansueti	P. D. Price
Allan M. Marshall	A. Rose Read
N. E. Matthews	Horace G. Redington
River & Mawer	Wm. H. Riley
R. L. McClelland	James R. Rost
Geo. W. Miller	John Toehner
Frank P. Miller	J. C. Solverson
	Stanley Shaffer

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Eli D. Shaw

A. K. Bennett

Starbuck Smith

John C. Rorick

Franklin J. Scatter

M. Hamm

W. R. Stevens

O. H. Hettewort

Stephen S. Stilwell

William Wink Jones

Frank Taggart

James L. Gallman

J. W. Farnuchill

Percy Dettlow

Harry D. Thomas

John Uleman

Edwin Wagner

Wilbur R. Walker

Harvey Watson

Benj. F. Weybrecht

John W. Warr

Frank B. Wise

F. W. Wood

Wm. Worthington

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			Ordered printed	1248	
			Amendments offered.....	1284, 1287, 1289, 1290	
			Passed and referred to committee on Arrangement and Phraseology	1291	
			Reported with amendments.....	1790	
			Third reading	1837	
			Debated	1837-1839	
			Amendments offered	1837, 1838	
			Passed	1839	
			Referred to committee on Arrangement and Phraseology	1839	
			Reported without amendment.....	1953	
			Finally passed	1953	
PROPOSAL NO. 58—MR. HALFHILL:			PROPOSAL NO. 65—MR. MILLER, OF FAIRFIELD:		
An amendment to Article XII, Sections 1 and 2, of the constitution. Authorizing the classification of property for taxation, and to abolish the general property tax.			An amendment to the constitution. Relative to protection of the Sabbath.		
Introduced and read the first time.....	95		Introduced and read the first time.....	95	
Referred to committee on Taxation.....	102		Referred to committee on Education.....	102	
			Reported with recommendation for indefinite postponement	755	
			Report agreed to.....	755	
PROPOSAL NO. 59—MR. HALFHILL:					
Substitute for Section 18 of the schedule, made by vote of the electors a separate section of Article XV, of the constitution, and providing a method to authorize either prohibition or license of the manufacture and sale of intoxicating liquors.					
Introduced and read the first time.....	95				
Referred to committee on Liquor Traffic.....	102				
Reported with recommendation for indefinite postponement	336				
Report agreed to.....	336				
PROPOSAL NO. 60—MR. HALFHILL:					
An amendment to Article VIII, Section 1, of the constitution. Permitting public debt for the purpose of establishing a system of good roads.					
Introduced and read the first time.....	95				
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Referred to committee on Method of Amending the constitution	102	Introduced and read the first time.....	96
		Referred to committee on Judiciary and Bill of Rights	102
		Reported with recommendation for indefinite postponement	746
		Report agreed to	746
PROPOSAL NO. 67—MR. BEYER:		PROPOSAL NO. 76—MR. EVANS:	
An amendment to Article XII, Section 2, of the constitution. Relative to burying grounds.		An amendment to Article II, Sections 1 to 32, of the constitution. Relative to the legislative power.	
Introduced and read the first time.....	95	Introduced and read the first time.....	96
Referred to committee on Taxation.....	102	Referred to committee on Legislative and Executive Departments	102
PROPOSAL NO. 68—MR. BEYER:		PROPOSAL NO. 77—MR. EVANS:	
An amendment to Article XII, Section 2, of the constitution. Relative to mortgages.		An amendment to Article III, Sections 1 to 20, of the constitution. Relative to the executive.	
Introduced and read the first time.....	95	Introduced and read the first time.....	96
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Introduced and read the first time.....	95	Introduced and read the first time.....	96
Referred to committee on Judiciary and Bill of Rights.	102	Referred to committee on Legislative and Executive Departments	102
Reported with recommendation for indefinite postponement	1312		
Report agreed to.....	1312	PROPOSAL NO. 79—MR. EVANS:	
PROPOSAL NO. 70—MR. ULMER:		An amendment to Article II, Sections 1 to 32, of the constitution. Relative to the initiative and referendum.	
An amendment to Article II, Section 15, of the constitution. Relative to where bills shall originate.		Introduced and read the first time.....	96
Introduced and read the first time.....	95	Referred to committee on Initiative and Referendum..	102
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PROPOSAL NO. 71—MR. DWYER:		PROPOSAL NO. 80—MR. EVANS:	
An amendment to the constitution. Relative to labor.		An amendment to Article IV, Sections 1 to 22, of the constitution. Relative to the judiciary.	
Introduced and read the first time.....	96	Introduced and read the first time.....	96
Referred to committee on Labor.....	102	Referred to committee on Judiciary and Bill of Rights..	103
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Referred to committee on Corporations other than Municipal	102	An amendment to Article V, Sections 1 to 6, of the constitution. Relative to the elective franchise.	
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Reported with amendments.....	1740	Referred to committee on Taxation	103
Third reading	1767		
Debated	1767	PROPOSAL NO. 83—MR. EVANS:	
Amendment offered	1767	An amendment to Article IX, Sections 1 to 5, of the constitution. Relative to removal of officers.	
Passed	1768	Introduced and read the first time.....	96
Referred to committee on Arrangement and Phraseology	1768	Referred to committee on Legislative and Executive Departments	103
Reported without amendment	1953		
Finally passed	1954	PROPOSAL NO. 84—MR. EVANS:	
PROPOSAL NO. 73—MR. STOKES:		An amendment to Article X, Sections 1 to 7, of the constitution. Relative to county, township and city organization.	
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PROPOSAL NO. 87—MR. EVANS:			Reported with amendments.....		1791
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Introduced and read the first time.....	96		Introduced and read the first time.....	102	
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Introduced and read the first time.....	96		Introduced and read the first time.....	102	
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Passed		1772			
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PROPOSAL NO. 101—MR. HAHN:			PROPOSAL NO. 110—MR. HAHN:		
An amendment to the constitution. Relative to the protection of employees.			An amendment to the constitution. Relative to impeachment and contempt of court.		
Introduced and read the first time		102	Introduced and read the first time		102
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Report agreed to		755	Report agreed to		746
PROPOSAL NO. 102—MR. HAHN:			PROPOSAL NO. 111—MR. HAHN:		
An amendment to the constitution. Relative to limitation of dower claims.			An amendment to the constitution. Relative to surety companies as preferred creditors.		
Introduced and read the first time		102	Introduced and read the first time		102
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Report agreed to		143	Reported with recommendation for indefinite postponement		747
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An amendment to the constitution. Relative to simplification of writs.			PROPOSAL NO. 113—MR. HAHN:		
Introduced and read the first time		102	An amendment to the constitution. Relative to consolidation of competing railroad companies.		
Referred to committee on Judiciary and Bill of Rights		107	Introduced and read the first time		102
Reported with recommendation for indefinite postponement		143	Referred to committee on Corporations other than Municipal		107
Report agreed to		143	Reported with recommendation for indefinite postponement		336
PROPOSAL NO. 105—MR. HAHN:			Report agreed to		336
An amendment to the constitution. Relative to waiving of technicalities in criminal cases.			PROPOSAL NO. 114—MR. HAHN:		
Introduced and read the first time		102	An amendment to Article XII, Section 2, of the constitution. Relative to taxation by uniform rule.		
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Report agreed to	143	Ordered printed	755
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		Passed and referred to committee on Arrangement and Phraseology	1338
		Reported with amendments	1742
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		Amendment offered	1784
		Passed	1786
		Referred to committee on Arrangement and Phraseology	1933
		Reported without amendment	1955
		Finally passed	1956
PROPOSAL NO. 116—MR. KEHOE:		PROPOSAL NO. 123—MR. FARRELL:	
An amendment to the constitution. Relative to capitalization of banks.		An amendment to Article VIII, Section 14, of the constitution. Relative to limitation of working hours on public works.	
Introduced and read the first time	102	Introduced and read the first time	106
Referred to committee on Banks and Banking	107	Referred to committee on Labor	118
		Reported with recommendation for indefinite postponement	755
		Report agreed to	755
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An amendment to Article XIII, Section 5, of the constitution. Relative to the right of eminent domain.		An amendment to Article VI, of the constitution, by adding Sections 3 and 4. Relative to education.	
Introduced and read the first time	102	Introduced and read the first time	106
Referred to committee on Corporations other than Municipal	107	Referred to committee on Education	118
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Introduced and read the first time	106	Introduced and read the first time	106
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Introduced and read the first time	106	Introduced and read the first time	106
Referred to committee on Judiciary and Bill of Rights	118	Referred to committee on Corporations other than Municipal	118
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Report agreed to	1312	Report agreed to	1131
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To submit an amendment to the preamble of the constitution.		An amendment to Article XIII, Section 6, of the constitution. Relative to municipal corporations.	
Introduced and read the first time	106	Introduced and read the first time	106
Referred to committee on Judiciary and Bill of Rights	118	Referred to committee on Municipal Government	118
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		PROPOSAL NO. 129—MR. KING:	
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		Introduced and read the first time	106
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An amendment to Section 18, of the schedule of the constitution. Relative to the liquor traffic.			An amendment to Article IV, of the constitution, by adding Section 22. Relative to limiting the jurisdiction of courts established or authorized by the constitution.		
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Reported without recommendation.....		1326	Introduced and read the first time.....		248
Amendment offered		1326	Referred to committee on Legislative and Executive Departments		318
Ordered printed		1326	Reported with amendments		448
Second reading		1683	Second reading		1164
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Amendment offered		1686	Passed and referred to committee on Arrangement and Phraseology		1164
Laid on the table.....		1690	Reported with amendments		1741
PROPOSAL NO. 228—MR. ROCKEL:			Third reading		1770
An amendment to the constitution. Submitting to vote propositions under initiative and referendum.			Passed		1770
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PROPOSAL NO. 229—MR. ROCKEL:			Finally passed		1959
An amendment to the constitution. To provide a method for districting the state for congressional and other district purposes.			PROPOSAL NO. 237—MR. HOFFMAN:		
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PROPOSAL NO. 230—MR. TETLOW:			Reported with recommendation for indefinite postponement		671
An amendment to the constitution. Relative to the conservation of minerals.			Report agreed to		671
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Referred to committee on Judiciary and Bill of Rights.		318	An amendment to Article VIII, Section 1, of the constitution. Relative to public debt.		
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PROPOSAL NO. 231—MR. THOMAS:			To submit substitute for Section 18 of the schedule, of the constitution. Relative to licensing the traffic in intoxicating liquors in municipalities.		
An amendment to Article XII, of the constitution, by adding Sections 7 and 8. Relative to taxation.			Introduced and read the first time.....		248
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PROPOSAL NO. 232—MR. DOTY:			An amendment to Article I, of the constitution. Relative to damages for wrongful death.		
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RESOLUTION NO. 148—MR. MILLER, OF OTTAWA. Relative to holding the first annual reunion of delegates of this Convention at Put-in-Bay, Ohio.		Adopted	2063
Offered	2022	RESOLUTION NO. 160—MR. LAMPSON. Authorizing the president to sign certain vouchers after adjournment of the Convention.	
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RESOLUTION NO. 149—Mr. HARTER, OF STARK. Extending the thanks of the Convention to Nelson W. Evans for his work as historian.		Adopted	2064
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RESOLUTION NO. 150—MR. FESS. Extending thanks to Clarence E. Walker for his accurate record of the proceedings.		Adopted	2064
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